



# NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY

## HEAD OFFICE

**Address:** 7th Floor, Industria House, 350 Victoria Rd, Salt River, 7925

**Tel:** 021 460 4020 **Fax:** 021 460 4191 **Post:** PO Box 1142, Woodstock 7915 **Website:** www.nbc.org.za

### NATIONAL MAIN COLLECTIVE AGREEMENT

#### PART C: PROVISIONS FOR THE KWAZULU-NATAL REGION

Herewith follows the preamble and Part C of the Agreement published under Government Notice No R.1154 in Government Gazette No 28280 of 15 December 2005, as Amended, Extended, Re-Enacted, Corrected and Renewed as per the Government Notices below:

<b>Amended/Extended/Re-Enacted/Corrected/Renewed</b>	<b>Government Notice</b>	<b>Government Gazette</b>	<b>Date of Publication</b>
Correction Notice	R.647	28976	07.07.2006
Renewed from 08/09/06 to 31/08/07	R.884	29174	08.09.2006
Cancellation Notice	R.1078	29332	03.11.2006
Re-Enacted, Amended & Extended further to 31/08/08	R.1079	29332	03.11.2006
Correction Notice	R.1232	29434	08.12.2006
Renewed from 14/09/07 to 31/08/12	R.844	30276	14.09.2007
Cancellation Notice	R.1052	30443	09.11.2007
Re-Enacted, Amended & Extended further to 31/08/08	R.1053	30443	09.11.2007
Correction Notice	R.28	30681	25.01.2008
Cancellation Notice	R.1008	31434	19.09.2008
Re-Enacted, Amended & Extended	R.1009	31434	19.09.2008
Cancellation Notice	R.214	33040	19.03.2010
Re-Enacted, Amended & Extended	R.215	33040	19.03.2010
Cancellation Notice	R.1219	33893	24.12.2010
Re-Enacted, Amended & Extended	R.1220	33893	24.12.2010
Extension Notice to 31/08/15	R.761	35683	14.09.2012
Re-Enacted, Amended & Extended further to 31/08/15	R.762	35683	14.09.2012
Extension Notice to 31/08/16	R.278	36360	12.04.2013
Re-Enacted, Amended & Extended further to 31/08/16	R.279	36360	12.04.2013

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#### DISCLAIMER

Whilst every care has been taken to ensure that this Consolidated Agreement is accurate in all respects, the Council does not accept responsibility for any inaccuracy or deviation from the original text of the Agreements as published under the Government Notices listed on the front cover of this document.

The text of the agreement, amendments thereto and correction notices where applicable, as published in the abovementioned Government Notices are binding in terms of each thereof.

#### REGIONAL CHAMBERS:

**CAPE**  
Industria House  
350 Victoria Road  
Salt River 7925  
P.O. Box 1142  
Woodstock 7915  
Tel: 021 460 4000  
Fax: 021 447 0628

**KWAZULU NATAL**  
127/129 Magwaza Maphalala Street (Gale Street)  
Umbilo, Durban 4001  
P.O. Box 18354  
Dalbridge 4014  
Tel: 031 362 0700  
Fax: 031 307 6716

**NORTHERN**  
1st Floor, Garment Centre  
148 Kerk Street  
Johannesburg 2001  
P.O. Box 5101  
Johannesburg 2000  
Tel: 011 402 2737  
Fax: 011 402 7375

**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY  
NATIONAL MAIN COLLECTIVE AGREEMENT  
PART C: PROVISIONS FOR THE KWAZULU-NATAL REGION**

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## **GOVERNMENT NOTICE**

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**DEPARTMENT OF LABOUR**

**No. R. 1154**

**15 December 2005**

**LABOUR RELATIONS ACT, 1995**

**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING  
INDUSTRY: EXTENSION TO NON-PARTIES OF NATIONAL MAIN COLLECTIVE  
AGREEMENT**

I, MEMBATHISI MPHUMZI SHEPHERD MDLADLANA, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the National Bargaining Council for the Clothing Manufacturing Industry, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 19 December 2005 and for the period ending 31 August 2006.

**M M S MDLADLANA**  
**Minister of Labour**

**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY**

**NATIONAL MAIN COLLECTIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

Cape Clothing Association

Coastal Clothing Manufacturers' Association

Eastern Province Clothing Manufacturers' Association

Free State and Northern Cape Clothing Manufacturers' Association

Transvaal Clothing Manufacturers' Association

(hereinafter referred to as the "employers" or the "employers' organisations")  
of the one part, and the

Southern African Clothing and Textile Workers' Union

(hereinafter referred to as the "employees" or the "trade union"),  
of the other part, being the parties to the National Bargaining Council for the  
Clothing Manufacturing Industry.

## **1. SCOPE OF APPLICATION**

- (1) The terms of this Agreement shall be observed in the Clothing Manufacturing Industry in all areas of the Republic of South Africa as individually provided for in each of the following Parts:

Part A Provisions for the Eastern Cape Region

Part B Provisions for the Free State and Northern Cape Region

Part C Provisions for the KwaZulu-Natal Region

Part D Provisions for the Northern Region (Clothing)

Part E Provisions for the Northern Region (Knitting)

Part F Provisions for the Western Cape Region (Clothing)

Part G Provisions for the Western Cape Region (Country Areas)

Part H Provisions for the Western Cape Region (Knitting)

Part I Provisions for the Non-Metro Areas

- (b) by the employers and employees in the Clothing Industry who are members of the employers' organisations and the trade union, respectively.

- (2) Clauses 1 (1) (b) and 2 of this Agreement shall not apply to employers and employees who are not members of the employers' organisations and the trade union respectively.

## **2. PERIOD OF OPERATION OF THIS AGREEMENT**

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 (2) of the Act, and shall remain in force until 31 August 2016. This Agreement shall bind the Parties and their members and shall remain effective beyond the expiry date determined by the Minister or until the Parties agree otherwise.

## **3. SPECIAL PROVISIONS**

The provisions contained in clause 11.1 (1) and (5), 14.4B and 14.6(5) of Part A; clauses 19B, 23A (1) and (5) and 34 (5) of Part B; clauses 4 (5), 23B, 27 (1) and (4) and 38 (5) of Part C; clauses 19B, 22(5), 25 (1) and 26A (1) and (2) of Part D; clauses 13A(1) and (2), 16B and 28(5) of Part E; clauses 11(4)(b), 14(1) and (5), 19B, 26(13)(a) to 26(13)(g)(v) and 37(5) of Part F; clauses 11 (4) (b), 14 (1) and (5), 19B, 26 (13) (a) to 26 (13) (g) (v) and 37 (5) of Part G; clauses 11 (4) (b), 14 (1) and (5), 19B, 26 (13) (a) to 26 (13) (g) (v) and 37 (5) of Part H and clause 34 (5) of Part I of the Agreement published under Government Notices Nos. R. 1154 of 15 December 2005, R. 884 of 8 September 2006 and R. 844 of 8 September 2007 (hereinafter referred to as the "Former Agreement"), as further amended, extended and re-enacted from time to time, shall apply to employers and employees who are members of the parties to the collective agreement.

## **4. GENERAL PROVISIONS**

The provisions contained in clauses 3 to 10, 11.1 (2) to (4), 11.2 to 14.4A, 14.5 to 14.6 (4) and 14.6 (6) to 18 of Part A; clauses 3 to 19A, 20 to 22, 23A (2) to (4), 23B to 34 (4) and 34 (6) to 38 of Part B; clauses 3 to 4(4), 4(6) to 23A, 24 to 26, 27(2) and (3), 27(5) to 38(4) and 38(6) to 41 of Part C; clauses 3 to 19A, 20 to 22 (4), 22 (6) to 24, 25 (2) to (12) and 26A (3) to 29 of Part D; clauses 3 to 12, 13A (3) to 16A, 17 to 28 (4) and 28 (6) to 33 of Part E; clauses 3 to 11 (4) (a), 11 (5) to 13, 14 (2) to (4), 15 to 19A, 20 to 26 (12), 26 (13) (g) (vi) to 37 (4) and 37 (6) to 45 of

Part F; clauses 3 to 11 (4) (a), 11 (5) to 13, 14 (2) to (4), 15 to 19A, 20 to 26 (12), 26 (13) (g) (vi) to 37 (4) and 37 (6) to 45 of Part G; clauses 3 to 11 (4) (a), 11 (5) to 13, 14 (2) to (4) 15 to 19A, 20 to 26 (12), 26 (13) (g) (vi) to 37 (4) and 37 (6) to 45 of part H; clauses 3 to 34 (4) and 34 (6) to 42 of Part I of the Former Agreement (as further amended, extended and re-enacted from time to time), shall apply to employers and employees.

Original Agreement signed at **CAPE TOWN** on behalf of the Parties the **14th day of SEPTEMBER 2005**. Latest amendments signed on 12 April 2013.

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**AMANDA CRONJE**  
Chairperson

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**F OOSTHYSEN**  
Vice-Chairperson

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**S D NDUNA**  
General Secretary

## **PART C : PROVISIONS FOR THE KWAZULU-NATAL REGION**

### **1. SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed-
  - (a) by all employers who are members of the employers' organisation and who are engaged in the Clothing Industry, and by all employees who are members of the trade union and who are employed in the Industry;
  - (b) in the Magisterial Districts of Chatsworth, Durban, Inanda, Pinetown, Pietermaritzburg and Lower Tugela.
- (2) Notwithstanding the provisions of subclause (1), the terms of this part of the Agreement shall-
  - (a) apply in respect of employees for whom wages are prescribed in this part of the Agreement; and
  - (b) not apply in respect of employees whose basic wages exceed two and a half times the wage rate for a qualified Grade 1 employee or whose occupation is monthly paid and of a managerial, specialist, technical or non-production related nature.
- (3) The terms of this part of the Agreement shall also cover all garment knitting employees and who shall receive the same package labour cost increase as agreed to for all other employees covered by the scope of the Council.
- (4)
  - (a) The purpose of this part of the Agreement shall be to establish levels of remuneration and other conditions of employment for employees without seeking to restrict entrepreneurial initiative and employment opportunities.
  - (b) Employers employing five (5) or less employees shall, upon application to the council in terms of clause 23, be exempted from this part of the Agreement.
  - (c) Where an employer or an employee can satisfy the Council that any of the provisions of this part of the Agreement are restricting entrepreneurial initiative and/or employment opportunities, such employer or employee may apply to the Council for exemption from those specific provisions in terms of clause 23 of this part of the Agreement.
- (5) Clauses 1(1)(a), 2, 4(5), 23B and 38(5) of this part of the Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade union, respectively.

### **2. PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT**

This part of the Agreement shall come into operation on the same date as fixed by the Minister of Labour in terms of Clause 2 of this Agreement.

### **3. DEFINITIONS**

Any expressions used in this part of the Agreement which are defined in the Act shall have the same meaning as in the Act. Any reference to an Act includes any amendments of such Act, and, unless the contrary intention appears, any reference to one gender shall include the other, further, unless inconsistent with the context-

## A. General Definitions

**"Accounting Officer"** means -

- (a) any Manager or Secretary of an establishment who is a member of a recognised profession as set out in section 60 of the Close Corporations Act, 1984; and
- (b) any other person approved by the Council.

**"Act"** means the Labour Relations Act, 1995;

**"Clothing Industry" or "Industry"** means, without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the making of all classes of the undermentioned items of apparel/clothing/garments:

Belts (manufactured from cloth), braces, brassieres, caps, collars, corsetry, cummerbunds, gloves, handkerchiefs, hats, hosiery (including ladies' stockings, pantihose and socks), knitted outerwear, knitted underwear; nightwear (including pyjamas), outerwear, protective wear (including overalls and wetsuits), scarves, shirts, suspenders, ties (including bowties), and underwear;

### **A. and includes-**

- (a) all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees, irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;
- (b) all types of hand-sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and irrespective of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (c) any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial administration, S A Airways, Telkom, Transnet or local authority;
- (d) any part(s) of garments whether by means of a knitting process or otherwise;
- (e) design-room services, irrespective of whether or not such services are provided by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;
- (g) screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
- (h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;
- (i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (j) the making of buttonholes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (k) the ironing of garments and/or parts of garments, irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;
- (l) the making up of garments from knitted fabric in the establishment in which the fabric

was knitted;

- (m) the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (n) the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) is(are) performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and
- (o) the packing of garments and/or parts of garments, irrespective of whether or not such packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with newly manufactured garments on behalf of such employers and any of their employees;

**B. but excludes-**

- (a) belts, braces, garters, suspenders and armlets manufactured from leather;
- (b) boxing gloves;
- (c) retail dressmaking, i.e., the making of single garments to the measurement of individual persons;
- (d) retail millinery, i.e., the making of hats in shops for sale in such shops and the making of single hats to the measurement of individual persons;
- (e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory;

**"complying employer"** means an employer whose company or concern is fully registered with the Council or a Council which amalgamated to form the National Council, who has given effect to this and other agreements or who has received due exemption therefrom, who is up to date with Council and any benefit fund contributions or who has implemented a signed Council- approved arrears repayment plan, and who has registered all permanent and contract employees with the Council;

**"contract worker"** means an employee who is employed on a fixed-term contract;

**"Council"** means the Kwazulu-Natal Chamber (formerly the Bargaining Council for the Clothing Industry (Natal) of the National Bargaining Council for the Clothing Manufacturing Industry;

**"earnings"** means the total remuneration due to an employee for the time actually worked;

**"employee"** means -

- (a) any person within the scope of application of this part of the Agreement as set out in clause 1, excluding an independent contractor, who works for another person in the Clothing Industry and who receives, or is entitled to receive, any remuneration; and
- (b) any other person within the scope of application of this part of the Agreement as set out in clause 1, who in any manner assist in carrying on or conducting the business of an employer in the Clothing Industry.

**"establishment"** means any place in which any operation in connection with the Clothing Industry is carried on;

**"experience"** means the total period of employment an employee has had in the Clothing Industry, whether within the Republic of South Africa or elsewhere, in any capacity other than as a driver of a motor vehicle, or mechanic, and includes-

- (a) in the case of a clerical employee, all periods of employment which such employee has had as a clerical employee, irrespective of the trade, industry or undertaking in which such experience was gained;
- (b) in the case of a retail or private dressmaker seeking employment in the Clothing Industry in a capacity other than that of a clerical employee, traveller, mechanic, belt man, boiler



attendant or driver of a motor vehicle, half of his total experience as a retail or private dressmaker;

- (c) in the case of a presser and/or folder who has been in the Laundry Trade, seeking employment as a presser, ironer and/or folder in the Clothing Industry, half of his total experience in the Laundry Trade;
- (d) in the case of all other employees, each completed period of six months' training in any work similar to that for which wages are prescribed in this part of the Agreement shall entitle the employee to one increment on the appropriate wage scale;

**"hourly wage or rate"** means the weekly wage divided by 42½.

**"Laundry Trade"** means the trade in which employers and employees are associated for the purpose of laundering, cleaning or dyeing all types of woven, spun, knitted or crocheted fabrics or articles made from such fabrics, including all operations incidental thereto or consequent thereon, if carried out by such employers and their employees;

**"learner"** means an employee whose period or periods of employment do not entitle him to be paid the qualified wage prescribed in clause 4 (1) for an employee of that class;

**"monthly wage"** means the weekly wage multiplied by four and one-third;

**"National Council"** means the National Bargaining Council for the Clothing Manufacturing Industry, registered in terms of the Act;

**"night shift"** means any period of work performed in an establishment, the major portion of which falls between the hours 18:00 and 06:00;

**"paternity"** means any event connected to the birth or adoption of a child parented by a male employee;

**"piece-work"** means any system by which earnings are calculated upon the quantity or output of work performed;

**"premium"** means, without in any way limiting the ordinary meaning of the term, any consideration of whatever nature given in return for the training of an employee;

**"qualified employee"** means in relation to an employee in the Industry, an employee other than a learner, labourer, watchman and driver of a motor vehicle;

**"qualified wage"** means the maximum wage prescribed in clause 4 (1) for an occupation;

**"rates"** means piece-work rates or rates of payment for overtime;

**"retail dressmaking"** means the making of single garments for girls and women to the measurement of individual persons, not as special measure orders from dealers whose customers' measurements are taken by or the responsibility of such dealers;

**"retail millinery"** means the making of hats in shops for sale in such shops and the making of hats to the measurements of individual persons;

**"task-work"** means the setting by an employer or his representative to an employee of a definite number of garments or portions of garments to be made up by such employee in a specified time;

**"unladen mass"** means the mass of any motor vehicle and/or trailer as expressed in a licence or certificate issued by a licensing authority in respect of such motor vehicle or trailer: Provided that in the case of a two or three-wheeled motor vehicle (other than a mechanical horse), the unladen mass shall be deemed to be under 454 kg;

**"weekly wage" or "wage"** means that portion of the remuneration payable in money to an employee in respect of the ordinary hours of work set out in clause 9 (1);

**"workshop"** means any premises in which one or more employees are engaged on operations in the Clothing Industry.

**B. Definitions of the occupations, capacities and duties of employees in the Clothing Sector only:**

**"assistant head cutter"** means a person who assist the head cutter in creating designs, styles, fashions and in making patterns, grading patterns and planning cutting jobs;

**"assistant storeman"** means an employee other than a labourer who, under the supervision of a storeman, assists in issuing or receiving goods;

**"automatic hydraulic hat presser"** means an employee operating an automatic hydraulic hat press used solely for shaping hats;

**"bandknife cutter"** means an employee who cuts out all articles of wearing apparel, linings, trimmings or interlinings with a bandknife;

**"baster"** means an employee engaged in hand sewing in setting a coat or parts of a coat into position preparatory to other operations and/or underbasting, i.e. hand sewing of linings of coats into position preparatory to sewing the edge seams;

**"belt man"** means an employee other than a learner mechanic, engaged in fixing machine belts, oiling bearings, filling oil cans and similar work and assisting the establishment's mechanic;

**"boiler attendant (Clothing)"** means an employee who, under the supervision of a foreman or factory manager, is responsible for maintaining the water level and steam pressure of a boiler in an establishment, and who may stoke, rake, slice and draw the fire in such boiler;

**"cardboard box maker"** means an employee engaged in operating a cardboard box making machine;

**"cleaner"** means an employee engaged in cutting or trimming off loose ends of cotton left in the garments by previous operators;

**"clerical employee"** means an employee who is engaged in-

- (a) writing, typing and filling;
- (b) operating a calculating machine, computer terminal, punch card machine or accounting machine;
- (c) any other clerical work and includes a cashier, despatch clerk (clothing), storeman, shipping clerk, invoice clerk, work study clerk and telephone switchboard operator but does not include any other class of employee elsewhere defined, notwithstanding the fact that clerical work may form part of such employee's work.

**"clicker"** means an employee who cuts out parts of garments from dies using a mechanical or hydraulic press;

**"coat-turner"** means an employee engaged in turning coat facings out after machining;

**"conveyor" or "conveyor belt"** means a special machine used for the purpose of conveying articles or shirts and/or clothing from one employee to another on an automatic moving belt;

**"conveyor feeder"** means an employee responsible for feeding prepared parts of garments on to a conveyor for further operations and who may be assisted by one or more sorters;

**"cutter"** means an employee who cuts out all articles of wearing apparel, linings, trimmings or interlinings by any method;

**"despatch packer (Clothing)"** means an employee who, under the supervision of a foreman or clerical employee, is wholly or mainly engaged in making up orders and in packing goods for transport, including the sealing of cellophane bags by hand or machine, or delivering in connection with the despatch department of an establishment;

**"dressmaker"** means a person engaged in making dresses to individual measurements for private persons;

**"driver 1"** means the driver of a motor vehicle with unladen mass of less than 454 kilograms;

"**driver 2**" means the driver of a motor vehicle with unladen mass of between 454 and 2 722 kilograms;

"**driver 3**" means the driver of a motor vehicle with unladen mass of between 2 723 and 4 540 kilograms;

"**driver 4**" means the driver of a motor vehicle with unladen mass of more than 4 540 kilograms;

"**examiner**" means an employee who examines finished garments for quality;

"**factory clerk (Clothing)**" means an employee who is engaged in one or more of the following duties and capacities:

- (a) Calculating bonus payments from production schedules for the computation of wages;
- (b) checking or recording for production control;
- (c) copying invoices or other documents by machine or hand;
- (d) issuing machine parts, tools, oil and other equipment from a workshop store and/or recording same;
- (e) checking attendance records or recording particulars of employees at work or absent from work, preparing wage cards or envelopes for subsequent use by another employee;
- (f) checking invoices or other documents;
- (g) filing of documents;
- (h) recording particulars of waste.

"**finisher by hand**" means an employee who performs one or more of the following operations by hand: Putting pads or wadding into shoulders of coats; fastening or serging sleeve-heads; felling silk facings already basted into position; making button-holes by hand, felling sleeve-head linings, holding such in position with the fingers; beader or embroiderer by hand.

"**fitter-up**" means an employee who takes the outside garments together with the cut out linings (called trimmings) and adjusts the outside and insides together accurately so that parts may go forward to the machine to be put together correctly;

"**folder**" means an employee engaged in the folding of garments by machine or by hand and buttoning up of garments;

"**foreperson (Clothing)**" means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to his/her care in a factory or a department;

"**General Worker Heavy Work**" means an employee who is engaged in one or more of the following occupations:

- (a) Binding, wiring or strapping boxes or bales or other containers;
- (b) loading or unloading vehicles, trailers or international standard containers;
- (c) carrying or stacking goods;
- (d) mixing rubber solution for rubberised garments;
- (e) general gardening work;
- (f) washing or polishing of floors and staircases by machine or by hand.

"**General Worker Light Work**" means an employee who is engaged in one or more of the following occupations:

- (a) sweeping with a broom and/or dusting and wiping down chairs and tables;
- (b) folding and/or inserting mail, affixing postage stamps or labels for posting;
- (c) making and serving tea or similar beverages and washing crockery, cutlery and kitchen utensils;

- (d) marking, stencilling or affixing labels on boxes, bales or other containers by hand;
- (e) delivering letters or messages or light parcels within the factory premises;
- (f) operating a duplicating and/or addressograph and/or franking machine;
- (g) mopping and/or washing of toilet facilities.

**"Grade I employee"** means an employee engaged in one or more of the following duties or capacities:

- (1) Baster;
- (2) clicker;
- (3) conveyor feeder;
- (4) examiner;
- (5) finisher by hand;
- (6) fitter-up;
- (7) folder;
- (8) lay copier;
- (9) machinist;
- (10) maker of bows for dresses;
- (11) operator of automatic lace, embroidery or monogramming machine;
- (12) presser;
- (13) seam welder;
- (14) setter of automatic pleating machines;
- (15) shaper;
- (16) sloper;
- (17) any other employee not elsewhere specified;
- (18) factory clerk.

**"Grade A Employee"** means an employee engaged in any one of the following duties or capacities:

- (1) General worker heavy work;
- (2) layer by machine;
- (3) underpresser.

**"Grade II employee"** means an employee engaged in any one or more of the following duties or capacities:

- (1) Assistant storeman;
- (2) automatic hydraulic hat presser;
- (3) belt man;
- (4) boiler attendant;
- (5) cardboard box maker;
- (6) cleaner;
- (7) coat turner;
- (8) covering buckles by hand or machine and/or trimming and cleaning belts after lining and belt having been machined together;

- (9) cutter of traveller's swatches;
- (10) despatch packer;
- (11) eyelet punching and letting;
- (12) guiding material with paper through automatic pleating machine;
- (13) hat sprayers, i.e. those spray painting hats;
- (14) ironer of fusible interlinings with hand iron positioning and spot fusing of fusible interlinings with special machine;
- (15) marker;
- (16) operator of hand/or machine-operated button-covering machine;
- (17) operator of a shrinking press;
- (18) operator of a semi-automatic or automatic fusing machine;
- (19) operator of a semi-automatic press stud-machine;
- (20) operator of zip machine;
- (21) packer;
- (22) patent turner (hand or machine);
- (23) pinner;
- (24) plain sewer;
- (25) putting fasteners on caps;
- (26) putting material between two paper looms (formers) and preparing for steambox in hand or loom pleating process;
- (27) putting prepared formers in steambox and taking them out again in hand or loom pleating;
- (28) rivetting buckles, bending belt buckles, punching holes for buckles and prongs, pressing prongs into buckles, stapling buckles onto belt;
- (29) rubberising, i.e. waterproofing processes on the work of smearing rubber solution upon seams or edges and rolling them over with a small wooden hand roller, cleaning off any rubber solution, painting seams or oilskins and waterproof hats;
- (30) sorter;
- (31) spreading of PVC (plastic solution) in waterproofing process and/or on raincoats and protective wear;
- (32) Stamper;
- (33) raking material out of looms in hand or loom pleating process;
- (34) waterproofing seams;
- (35) winder or unwinder of lace, embroidery, braids, ribbons, bindings and elastic;
- (36) layer by hand;
- (37) general worker light work.

**"hat sprayer"** means an employee engaged in spray painting hats,

**"head cutter"** means the person who actively supervises the cutting room and who designs, styles and fashions, makes patterns, grades patterns and who plans cutting jobs;

**"lay copier"** means an employee engaged in placing of numbered patterns on a lay to conform with a numbered photograph, diagram or plan;

**"layer by hand"** means an employee engaged in laying up materials by hand preparatory to cutting;

**"layer by machine"** means an employee engaged in laying materials by machine preparatory to cutting;

**"machinist"** means an employee who performs by sewing machine any operation in the making of clothing;

**"marker"** means an employee engaged in marking the position of pockets, buttons and/or button holes;

**"mechanic (Clothing)"** means an employee engaged in the installation, repair and maintenance of boilers and machinery;

**"motor vehicle driver" or "driver of a motor vehicle"** means an employee engaged in driving a motor vehicle and for the purposes of this definition "driving a motor vehicle" is deemed to include all periods of driving and any time spent by the driver on work connected with the vehicle or the load, and all periods during which he is obliged to remain on duty in readiness to drive;

**"packer"** means an employee engaged in packing garments into boxes or other suitable wrappings or tying them into bundles prior to their being sent to the despatch department;

**"patent turner"** means an employee engaged in turning out or over the edges of collars, facings, bands, cuffs, pockets and/or flaps whether by hand or machine;

**"pinner"** means an employee engaged in pinning unfinished and/or finished garments;

**"plain sewer (Clothing)"** means an employee engaged solely in performing by hand one or more of the following operations:

Tacking permanent turn-ups; tacking waistband linings; sewing on hooks and eyes, tickets and/or press studs; fastening catch in tops of trousers; sewing on buttons; making and sewing on hangers; felling crutch linings in trousers, felling bottoms and waist-band linings and various odds and ends of sewing; felling necks of vests; fastening edge stays and odds and ends of sewing; felling bottoms of linings or seams of same already basted into position; felling bindings; fastening facings inside already basted in position;

**"presser"** means an employee employed in pressing the finished garment by hand or machine;

**"seam welder"** means an employee who joins seams by any method other than by a thread-sewing machine;

**"setter of automatic pleating machines"** means an employee engaged on setting of pleats on automatic pleating machines;

**"shaper"** means an employee engaged in shaping the lapels and collars of coats preparatory to underbasting;

**"shop steward"** means an employee at any establishment who has been duly elected as a shop steward in terms of the constitution of the trade union and who has been recognised by the employer as a shop steward;

**"short-time"** means working time that is reduced below the usual number of working hours in the establishment when such reduction is due to slackness of work or the exigencies of the Industry;

**"sloper"** means an employee engaged in marking or trimming the shape of the necks in the shirt section, preparatory to other operations;

**"sorter"** means an employee engaged in sorting out garments or parts of garments for the various operations;

**"stamper"** means an employee engaged in stamping the size or identity work numbers on garments or parts of garments, or on any article connected with packaging or despatching of garments;

**"storeman (Clothing)"** means an employee in charge of the main stock room of an establishment;

"trimmer" means an employee engaged in marking in and/or cutting linings and interlinings;

"under-presser" means an employee other than a presser employed in pressing processes;

"watchman (Clothing)" means an employee engaged in guarding premises, buildings or other property;

"waterproofing seams" means waterproofing of a threadsewn seam by means of a hot press;

**C. Definitions of the occupations capacities and duties of employees in the Garment Kitting Sector only:**

"boiler attendant (Knitting)" means an employee who, under general supervision, maintains the water level and steam pressure of a boiler and who may make, maintain or draw the fire in such boiler, and who removes ashes;

"colouring mass-measurer" means an employee who, under the supervision of a dyer, is responsible for the mass-measuring of dyestuffs and chemical byproducts;

"cutter or shaper (Knitting)" means an employee who is engaged in cutting fronts, backs and/or sleeves of a fully-fashioned garment and/or trimmings, and marking and/or cutting attachments, points of necks and/or armholes and/or trimmings and who may use a template for this purpose;

"despatch clerk (Knitting)" means an employee who is responsible for the despatch or the packing of goods for transport or delivery and who may supervise the assembling, checking, mass-measuring, packing, marking, addressing or despatching of such goods or packages;

"despatch packer (Knitting)" means an employee who, under the supervision of a despatch clerk, is engaged in packing, assembling, marking, addressing and mass-measuring goods for despatch or delivery;

"driver of a motor vehicle (Knitting)" means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition, the expression driving a motor vehicle includes all periods of driving and any time spent by the driver on work connected with the vehicle or the load and all periods during which he is obliged to remain at his post in readiness to drive;

"dyer" means an employee who is responsible for and engaged in dyeing and/or other finishing processes and who decides on the nature, mass blending and application of the dyes or other chemicals to be used;

"dyer's assistant" means an employee who, under the supervision of a dyer, is responsible for the mixing of colours and/or formulae and who may attend or operate the machines used in the dyeing and finishing processes;

"factory clerk (Knitting)" means an employee who is engaged in any one or more of the following duties:

- (a) Checking attendance records or recording particulars of employees at work or absent from work, collating time cards and/or envelopes;
- (b) checking or recording production control; and
- (c) recording particulars of waste;

"floorwalker/runner" means an employee who is engaged in carrying garments or parts of garments from one place to another within the workplace;

"foreperson (Knitting)" means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to his care in the workplace or a department of the workplace;

**"general worker (Knitting)"** means an employee who is engaged in one or more of the following activities:

- (a) Carrying, moving, stacking or unpacking goods or other articles;
- (b) cleaning or washing premises;
- (c) cutting up or otherwise destroying rejected hosiery or fabrics;
- (d) gardening work;
- (e) lime-washing or colour-washing buildings, or other structures;
- (f) loading or unloading;
- (g) making or maintaining fires, or removing refuse or ashes; and
- (h) opening or closing or unpacking or strapping cartons, boxes, bags and other containers;

**"handyman"** means an employee, other than a knitting machine operator, mechanic or mechanic's assistant, who is engaged in making minor repairs and adjustments to machinery, plant, building and other equipment;

**"knitting machine operator"** means an employee who is engaged in changing needles, sliders and sinkers, straightening tricks, including chain and card control, and running on after press-offs, but excludes the resetting of the machine and pattern changing;

**"linker"** means an employee who is engaged in operating a linking machine used for the purpose of toe-closing in hosiery and/or joining parts of a fully-fashioned garment and/or attaching trimmings to a fully-fashioned garment or parts of a garment;

**"mechanic (Knitting)"** means an employee who is engaged in the operation, maintenance, rebuilding and refitting of knitting machines and other machines used in the Knitting Industry and who is also proficient in pattern designing and making;

**"mechanic's assistant"** means an employee who, in addition to performing the duties of a knitting machine operator, is engaged in the resetting of machines, including pattern drum, pattern wheel and jacquard set-outs, and, under the supervision of a mechanic, carrying out minor repairs and generally stripping and assembling machines;

**"mender"** means an employee who is engaged in repairing knitting faults in fabric, garments, blanks and/or hosiery; "night work" means work performed after 18:00 and before 06:00 the next day;

**"parcel maker"** means an employee who is engaged in closing and/or sealing parcels and cartons prior to despatch and delivery;

**"plain sewer (Knitting)"** means an employee who performs one or more of the following operations by hand:

Fastening edge-stays and odds and ends of sewing; sewing on buttons; hand knitting and/or hand crocheting; and all hand sewing not elsewhere specified;

**"pre- or post-boarder or former"** means an employee who is engaged in placing hosiery and/or garments on forms and subsequently removing them;

**"seamer"** means an employee who is engaged in joining seams in hosiery by means of a seaming machine;

**"security officer"** means an employee who is in charge of staff engaged in guarding the safety of premises and/or the property of the workplace, and who may be in charge of searching staff and who carries out such security work as may be assigned to him by the management;



**"sewing machinist (Knitting)"** means an employee who is engaged in operating a sewing machine using a needle and thread in a Garment Knitting establishment;

**"sorter and/or grader"** means an employee who is engaged in sorting and/or grading hosiery into pairs according to length and size and/or sorting trimmings, materials and/or parts of fully-fashioned garments;

**"store clerk"** means an employee who is employed in the store or warehouse of the workplace under the general supervision of a storeman and who is engaged in the general handling of goods in the workplace, but does not include a general worker;

**"storeman (Knitting)"** means an employee who is in general charge of stocks of incoming goods or finished products and who is responsible for receiving, storing, packing or unpacking goods in a store or warehouse or delivering goods from a store or warehouse to the consuming departments in the workplace or for despatch;

**"supervisor (Knitting)"** means an employee who, under the supervision of a foreman and/or manager, is in charge of a group of employees in a Garment Knitting establishment;

**"traveller's assistant"** means an employee who, under the supervision of a traveller, is engaged in such tasks as may facilitate the execution of the work of the traveller, but does not include the driving of a motor vehicle;

**"warp knitting machine operator"** means an employee who operates one or a set of warp knitting machines, and who is capable of correcting faults, changing and/or straightening needles, filling bars, and making minor adjustments, and includes a threader and needle fixer;

**"warper"** means an employee who prepares warps from cones or bobbins for a warp knitting or similar machine and who prepares the beam;

**"watchman(Knitting)"** means an employee who is engaged in guarding premises or other property;

**"winder"** means an employee who is engaged in operating a yarn-winding machine;"

In classifying an employee for the purpose of this part of the Agreement he shall be deemed to be in that class in which he is wholly or mainly engaged.

#### 4. WAGES

- (1) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the under-mentioned classes of employees employed at clothing establishments shall be as follows:

(a)

Description of Occupation		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%
<b>Part A - Cutting Department</b>		R	R	R	R
<b>GRADE 1</b>					
(a)	Qualified	835.35	668.30	839.20	671.35
(b)	Learner				
	0 - 6 months	551.35	441.10	553.95	443.15

Description of Occupation			GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%
		7 - 12 months	609.95	487.95	612.75	490.20
		13 - 18 months **	668.35	534.70	671.50	537.20
		Thereafter, the qualifying wage applies	835.35	668.30	839.20	671.35
<b>GRADE 2</b>						
	(a)	Qualified	726.05	580.85	729.40	583.50
	(b)	Learner				
		0 - 6 months	548.40	438.70	551.05	440.85
		Thereafter, the qualifying wage applies	726.05	580.85	729.40	583.50
<b>GRADE A</b>						
	(a)	Qualified	743.90	595.10	747.30	597.85
	(b)	Learner				
		0 - 6 months	577.80	462.25	580.55	464.45
		Thereafter, the qualifying wage applies	743.90	595.10	747.30	597.85
<b>HEAD CUTTER</b>			1332.75	1066.20	1338.90	1071.10
<b>ASSISTANT HEAD CUTTER</b>			1066.10	852.90	1071.05	856.85
<b>CUTTER/TRIMMER</b>						
	(a)	Qualified	837.40	669.90	841.25	673.00
	(b)	Learner				
		0 - 6 months	525.25	420.20	527.75	422.20
		7 - 12 months	586.85	469.50	589.50	471.60
		13 - 18 months	646.00	516.80	648.95	519.15
		19 - 22 months	716.25	573.00	719.50	575.60
		Thereafter, the qualifying wage applies	837.40	669.90	841.25	673.00
<b>BAND KNIFE CUTTER</b>						
	(a)	Qualified	881.25	705.00	885.35	708.30
	(b)	Learner				
		0 - 6 months	587.65	470.10	590.35	472.30
		7 - 12 months	652.60	522.10	655.60	524.50
		13 - 18 months	712.10	569.70	715.45	572.35
		19 - 22 months	779.85	623.90	783.45	626.75
		Thereafter, the qualifying wage applies	881.25	705.00	885.35	708.30
<b>MECHANIC</b>						
	(a)	Qualified	1432.25	1145.80	1438.90	1151.10
	(b)	Learner				

Description of Occupation			GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%
		0 - 6 months	660.85	528.70	663.85	531.10
		7 - 12 months	758.85	607.10	762.40	609.90
		13 - 18 months	870.90	696.70	875.05	700.05
		19 - 24 months	983.00	786.40	987.55	790.05
		25 - 30 months	1102.50	882.00	1107.65	886.10
		31 - 36 months	1212.35	969.90	1217.95	974.35
		37 - 40 months	1320.40	1056.30	1326.55	1061.25
		Thereafter, the qualifying wage applies	1432.25	1145.80	1438.90	1151.10
<b>CLERK *</b>						
	(a)	Qualified	895.20	716.15	899.35	719.50
	(b)	Learner				
		0 - 6 months	608.65	486.90	611.45	489.15
		7 - 12 months	687.25	549.80	690.40	552.30
		13 - 18 months	751.80	601.45	755.30	604.25
		Thereafter, the qualifying wage applies	895.20	716.15	899.35	719.50
<b>WATCHMAN</b>			750.30	600.25	753.75	603.00
<b>DRIVER 1</b>			704.70	563.75	708.05	566.45
<b>DRIVER 2</b>			770.10	616.10	773.65	618.90
<b>DRIVER 3</b>			897.90	718.30	902.10	721.70
<b>DRIVER 4</b>			1084.55	867.65	1089.60	871.70
<b>FOREPERSON</b>			1026.75	821.40	1031.50	825.20

\* Provided a registered productivity incentive scheme is in place.

\*\* Provided that a sewing machinist (grade 1) should be paid the qualified rate of pay after 18 months of experience.

**NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation, must with the coming into operation of this agreement, increase the Weekly Wage for those employees by 6.5% Across-the-Board.**

- (b) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the under-mentioned classes of employees employed at Garment Knitting establishments, shall be as follows:

DESCRIPTION OF OCCUPATION		GROUP A (I.E. EMPLOYEES ON THE 0.5% PRODUCTIVI TY INCENTIVE SCHEME)	NEW EMPLOYEES ON INCENTIVISE D SCHEME EFFECTIVE 1 SEPTEMBER 2012 = 80%	GROUP B (I.E. EMPLOYEES NOT ON THE 0.5% PRODUCTIVI TY INCENTIVE SCHEME)	NEW EMPLOYEES ON INCENTIVISED SCHEME EFFECTIVE 1 SEPTEMBER 2012 = 80%
(i)	<b>Foreman:</b>	1568.05	1254.45	1575.35	1260.30
(ii)	<b>Dyer: (See (iv) below)</b>				
(iii)	<b>Storeman:</b>				
	(i) Qualified:	1509.35	1207.50	1516.35	1213.10
	(ii) Learners:				
	first six months of experience	545.35	436.30	547.85	438.30
	second six months of experience	786.30	629.05	789.90	631.90
	third six months of experience	1027.45	821.95	1032.20	825.75
	next four months of experience	1268.40	1014.70	1274.20	1019.35
	Thereafter, the wage specified in (iii)(i) i.e.	1509.35	1207.50	1516.35	1213.10
(iv)	<b>Mechanic/Dyer:</b>				
	(i) Qualified:	1568.05	1254.45	1575.35	1260.30
	(ii) Learners:				
	first six months of experience	545.35	436.30	547.85	438.30
	second six months of experience	647.40	517.90	650.50	520.40
	third six months of experience	749.75	599.80	753.25	602.60
	fourth six months of experience	852.15	681.70	856.05	684.85
	fifth six months of experience	954.50	763.60	958.95	767.15
	sixth six months of experience	1056.45	845.15	1061.35	849.10
	seventh six months of experience	1159.00	927.20	1164.40	931.50
	eighth six months of experience	1261.25	1009.00	1267.10	1013.70
	ninth six months of experience	1363.40	1090.70	1369.75	1095.80
	next four months of experience	1465.95	1172.75	1472.75	1178.20
	Thereafter, the wage specified in (iv)(i) i.e.	1568.05	1254.45	1575.35	1260.30
(v)	<b>Mechanic's Assistant:</b>				
	(i) Qualified:	1027.15	821.70	1031.95	825.55
	(ii) Learners:				
	first six months of experience	545.35	436.30	547.85	438.30
	second six months of experience	593.00	474.40	595.75	476.60
	third six months of experience	641.90	513.50	644.80	515.85
	fourth six months of experience	689.50	551.60	692.70	554.15
	fifth six months of experience	738.00	590.40	741.45	593.15
	sixth six months of experience	786.40	629.10	790.05	632.05
	seventh six months of experience	834.30	667.45	838.20	670.55
	eighth six months of experience	882.75	706.20	886.75	709.40
	ninth six months of experience	930.70	744.55	935.00	748.00
	next four months of experience	979.00	783.20	983.45	786.75
	Thereafter, the wage specified in (v)(i) i.e.	1027.15	821.70	1031.95	825.55

DESCRIPTION OF OCCUPATION		GROUP A (I.E. EMPLOYEES ON THE 0.5% PRODUCTIVI TY INCENTIVE SCHEME)	NEW EMPLOYEES ON INCENTIVISE D SCHEME EFFECTIVE 1 SEPTEMBER 2012 = 80%	GROUP B (I.E. EMPLOYEES NOT ON THE 0.5% PRODUCTIVI TY INCENTIVE SCHEME)	NEW EMPLOYEES ON INCENTIVISED SCHEME EFFECTIVE 1 SEPTEMBER 2012 = 80%
(vi)	<b>Supervisor:</b>	1085.85	868.70	1090.90	872.70
(vii)	<b>Final Examiner of fully-fashioned garments:</b>	1008.40	806.70	1013.05	810.45
(viii)	<b>Factory Clerk, Despatch Clerk, Stores Clerk:</b>				
	(i) Qualified:	987.35	789.90	991.90	793.50
	(ii) Learners:				
	first six months of experience	545.35	436.30	547.85	438.30
	second six months of experience	655.70	524.55	658.80	527.05
	third six months of experience	766.25	613.00	769.80	615.85
	next four months of experience	876.95	701.55	881.00	704.80
	Thereafter, the wage specified in (viii)(i) i.e.	987.35	789.90	991.90	793.50
(ix)	<b>Knitting Machine Operator, Warp Knitting Machine Operator, Dyer's Assistant, Colouring Mass-Measurer and/or Cutter or Shaper (Knitting) of fully-fashioned garments, Handyman and Warper:</b>				
	(i) Qualified:	987.35	789.90	991.90	793.50
	(ii) Learners:				
	first six months of experience	545.35	436.30	547.85	438.30
	second six months of experience	618.80	495.05	621.70	497.35
	third six months of experience	692.35	553.90	695.55	556.45
	fourth six months of experience	766.25	613.00	769.90	615.90
	fifth six months of experience	839.90	671.90	843.75	675.00
	next four months of experience	913.75	731.00	918.00	734.40
	Thereafter, the wage specified in (ix)(i) i.e.	987.35	789.90	991.90	793.50
(x)	<b>Loader of magazine or comb, Linker, Overlocker other than an overlocker of seconds in socks, Sewing Machinist (Knitting) including a button, buttonhole and hemming machinist, Mender and Plain Sewer:</b>				
	(i) Qualified:	861.50	689.20	865.60	692.50
	(ii) Learners:				
	first six months of experience	545.35	436.30	547.85	438.30
	second six months of experience	624.10	499.30	627.00	501.60
	third six months of experience	703.15	562.50	706.40	565.10
	next four months of experience	661.70	529.35	786.10	628.90
	Thereafter, the wage specified in (x)(i) i.e.	861.50	689.20	865.60	692.50

DESCRIPTION OF OCCUPATION		GROUP A (I.E. EMPLOYEES ON THE 0.5% PRODUCTIVI TY INCENTIVE SCHEME)	NEW EMPLOYEES ON INCENTIVE D SCHEME EFFECTIVE 1 SEPTEMBER 2012 = 80%	GROUP B (I.E. EMPLOYEES NOT ON THE 0.5% PRODUCTIVI TY INCENTIVE SCHEME)	NEW EMPLOYEES ON INCENTIVISED SCHEME EFFECTIVE 1 SEPTEMBER 2012 = 80%
(xi)	<b>Driver of a Motor Vehicle, the unladen mass of which, together with the unladen mass of any trailer or trailers drawn by such vehicle—:</b>				
	(a) does not exceed 453,5 kg	823.60	658.90	827.40	661.90
	(b) exceeds 453,5 kg but not 2 721 kg	972.45	777.95	976.90	781.50
	(c) exceeds 2 721 kg but not 4 535 kg	1035.50	828.40	1040.30	832.25
	(d) exceeds 4 535 kg	1123.70	898.95	1128.90	903.10
(xii)	<b>Security Officer:</b>	1257.85	1006.30	1263.75	1011.00
(xiii)	<b>Watchman:</b>	970.75	776.60	975.25	780.20
(xiv)	<b>Employee not elsewhere specified:</b>				
	(i) Qualified:	1010.65	808.50	1015.30	812.25
	(ii) Learners:				
	first six months of experience	545.35	436.30	547.85	438.30
	second six months of experience	661.40	529.10	664.55	531.65
	third six months of experience	778.10	622.50	781.70	625.35
	next four months of experience	894.25	715.40	898.40	718.70
	thereafter, the wage specified in (xiv)(i) i.e.	1010.65	808.50	1015.30	812.25
(xv)	<b>Seamer, Mender of socks, Sorter, Cleaner (i.e. an employee engaged in cleaning garments and/or fabrics), Grader, Sampler (i.e. an employee engaged in the making up of sample cards), Winder, Overlocker for seconds in socks and/or Examiner of knitted fabrics and articles, Backwinder, Drawthreader, Pre- and Post-Boarder or Former, Precutter, Presser, Turner, Operator of calendar, slitting, setting or steaming machine, Operator of brushing, raising and/or cropping machine, Operator of dye machine, Operator of drying and/or hydro-extracting machine, employee engaged in Transferring and/or Labelling, Trimming of surplus threads, Folding, Carding and/or Packing, Waxring Maker, Boiler Attendant, Creeler, Despatch Packer, Parcel Maker and Floor Walker/Runner.</b>				
	(i) Qualified:	708.25	566.60	711.60	569.30
	(ii) Learners:				
	first six months of experience	545.35	436.30	547.85	438.30
	second six months of experience	599.45	479.55	602.25	481.80
	third six months of experience	654.25	523.40	657.20	525.75
	Thereafter, the wage specified in (xv) (i) i.e.	708.25	566.60	711.60	569.30

DESCRIPTION OF OCCUPATION		GROUP A (I.E. EMPLOYEES ON THE 0.5% PRODUCTIVITY INCENTIVE SCHEME)	NEW EMPLOYEES ON INCENTIVISE D SCHEME EFFECTIVE 1 SEPTEMBER 2012 = 80%	GROUP B (I.E. EMPLOYEES NOT ON THE 0.5% PRODUCTIVI TY INCENTIVE SCHEME)	NEW EMPLOYEES ON INCENTIVISED SCHEME EFFECTIVE 1 SEPTEMBER 2012 = 80%
(xvi)	Traveller's Assistant, Cloakroom Supervisor and/or Attendant, Teamaker	708.25	566.60	711.60	569.30
(xvii)	General Worker (Knitting)	822.70	658.15	826.55	661.25
<b>NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation, must with the coming into operation of this agreement, Increase the Weekly Wage for those employees by 6.5% Across-the-Board.</b>					

Whenever a qualified Grade 2 employee is transferred to another occupation classified as the work of a Grade 1 employee, he shall receive not less than his existing rate of pay for a period of six months and thereafter, on completion of that period, he shall received his next increment and thereafter the prescribed increments in his new occupation. An unqualified Grade 2 employee who is transferred to another occupation classified as the work of a Grade 1 employee, shall be paid not less than the wage he was receiving prior to his transfer, but shall be paid the prescribed increments in his new occupation.

(2) New Employees

2.1 New employees shall be paid a weekly wage of 70% of the rate in metro areas, subject to the following provisions:

2.1.1 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a period of 3 years.

2.1.2 The provision is only applicable to compliant companies.

2.1.3(a) The new entry-level wage provision will continue in force and effect as an industry-wide provision after the 31<sup>st</sup> August 2014 if there has been an increase in employee strength of compliant employers in the industry of at least 15% as at 31<sup>st</sup> March 2014, monitored on a bi-annual basis.

(b) The bi-annual benchmark monitoring shall be measured against the following schedule of new employment growth:

1 March 2012:	3% increase
1 September 2012:	6% increase
1 March 2013:	9% increase
1 September 2013:	12% increase
1 March 2014:	15% increase

2.1.4 It is only applicable to those compliant companies who were in existence and operational as at 1 June 2011.

- 2.1.5 All other provisions of the main agreement shall be applicable to new employees.
- 2.1.6 The closed shop shall be applicable to all new employees.
- 2.1.7(a) The employee strength to determine whether or not there has been an increase in employee strength will be measured by comparing the employee strength of compliant employers whose businesses are registered with the bargaining council on the *1<sup>st</sup> June 2011, as per clause 2.1.3, and* to that of the employee strength of compliant employers whose businesses are registered with the bargaining council on the *31<sup>st</sup> March 2014, i.e. a period of 30 months following the implementation of this Agreement.*
- (b) In the event that the employee strength does not increase as per the provisions of this *Agreement* and more specifically, the provisions of *Clause 2.1.3* above, the provisions of the new-entry wage provision will terminate.
- (c) Upon such termination of the application of the new entry level wage provision, the wages of all employees earning the new-entry wage will be increased to the full applicable gazetted wage for all job categories from the first pay week following the 31<sup>st</sup> August 2014, unless the parties during the 2014/2015 round of annual or other negotiations agree otherwise or agree to an alternative to address any further job losses or the absence of job growth in the industry.
- 2.1.8 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to employ employees at the rates specified in sub-clause 2.1.3 (a) above.
- 2.1.9 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 2.1.10 Qualified employees shall be employed at the qualified new entry rate, subject to sub-clause 2.1.1.
- 2.1.11 Effective 1<sup>st</sup> September 2011, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.

### (3) INCENTIVISED WAGE RATES

The "new entry wage rates" provisions as specified in clause 4(2), shall be abolished and be replaced with the following incentivised wage rate provisions, **applicable to new employees only:**

- 3.1 With the coming into operation of this agreement, new employees shall be paid a guaranteed wage of no less than 80% of the normal gazetted wage rate of ALL wage categories applicable to current employees, subject to the following provisions:



- 3.2 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a minimum period of 3 years, unless the applicant employee agrees otherwise with his/her prospective employer
- 3.3 The guaranteed wage rate as specified in sub-clause 3.1 above shall be supplemented with an incentivised wage component which shall allow new employees to earn up to 100% or more of the qualified rate, provided that the employee(s) meets the required performance standards as contained in the plant level incentive scheme. This incentive shall be applicable to all new employees engaged under the incentivised wage provisions and employed after 1 September 2012, once a national framework agreement governing the incentive portion has been agreed.
- 3.4 The incentivised wage rate provisions are only applicable to companies which are registered with the National Bargaining Council for the Clothing Manufacturing Industry of South Africa, subject further to sub-clause 3.5 below.
- 3.5 The provisions are only applicable to those current compliant companies which were in existence and operational as at 1 June 2011.

It is **NOT** applicable to those companies who:

- are members of an employer association which have not signed the wage agreement and/or
- have not implemented the wage increases envisaged in the agreement.

During the first year of operation of the incentivised wage provisions, the parties will engage to explore mechanisms which will protect current companies and current employees in the event of it being agreed that this provision be extended to new companies which enter the industry for the first time.

- 3.6 All other provisions of the Industry's Main Agreement shall be applicable to new employees.
- 3.7 The closed shop shall be applicable to all new employees.
- 3.8 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to re-employ employees at the rates specified in sub-clause 3.1 above.
- 3.9 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 3.10 Qualified employees shall be employed at the qualified rate, subject to sub-clause 3.2 above.
- 3.11 Current employees employed in terms of the new entry rate provision envisaged in the 2011/2012 party to party agreement and who were so employed prior to 1 September 2012 shall by exemption be ring-fenced on those rates plus the annual increases of 6.23%, and subject to the companies

at which they are employed meeting the compliant employment growth targets as set out in the 2011/2012 wage agreement.

- 3.12 Effective 1<sup>st</sup> September 2012, all retrenched employees will, within a period of 12 months of having being retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.
  - 3.13 The parties shall negotiate a national framework agreement at National Bargaining Council level, to give enabling effects to the plant level incentivised wage component as contemplated in sub-clause 3.3 above. This shall be finalised within a period of 4 months with effect from 1 October 2012 (excluding the annual shutdown period). Thereafter, companies who qualify for the incentivised wage provisions and who wish to implement it shall have a 2 month period to conclude plant-level incentive arrangements in terms of the provisions of the national framework agreement.
  - 3.14 The deadlock breaking mechanism for the national framework agreement is either binding interest arbitration or, at the end of the prescribed period, the entire 80% dispensation falls away, unless other forms of deadlock breaking mechanisms are agreed between the parties.
  - 3.15 Should the 80% dispensation fall away in consequence of the provision in sub-clause 3.14 above, new employees employed on the incentive wage provisions should be paid 100% of the applicable agreed rate.
  - 3.16 The deadlock breaking mechanism for operationalising the incentive component at plant level shall consist firstly of a facilitation process by a panel of experts jointly appointed by the employer and trade union parties to this agreement and if not resolved, by an advisory award by the panel, unless other forms of deadlock breaking mechanisms are agreed to between the parties.
- (4) Nothing in this part of the Agreement shall operate to unilaterally reduce the wage which was being paid to any employee at any time prior to or at the date of commencement of this part of the Agreement.
  - (5) An employee employed as a conveyor feeder shall receive the wages prescribed for an employee of this class, plus 10 per cent.
  - (6)
    - (a) Any increase in the wage to which a learner becomes entitled as a result of previous experience shall become payable on the accruing date unless the employee has been absent from work of his own accord for a period longer than seven days in the aggregate in any of the six-monthly qualifying periods provided for in this clause. The accruing date, when an increase of wage falls due to him, may be advanced to the equivalent of the number of days in excess of seven days that he has been absent from work of his own accord in any of his six-monthly qualifying periods.
    - (b) In the case of an employee who has yearly qualifying periods, the accruing date when an increase of wages falls due to him, may be advanced to the equivalent of the number of days in excess of 14 days that he has been absent from work on his own accord in any of his yearly qualifying periods.

- (7) Unless otherwise stated in this part of the Agreement, the Council shall be the sole forum for the purposes of negotiating matters regulated in this part of the Agreement, inclusive of the Sick Benefit Fund Agreement and the Provident Fund Agreement, and the trade union shall not seek to improve the remuneration of employees in the Industry nor seek to re-negotiate any matters which are regulated in the aforementioned Agreements during the periods of operation of such Agreements: Provided that-
- (a) the trade union shall be entitled to submit demands to the employers' organisation for the sole purpose of commencing negotiations for any agreement if such agreement is intended to replace any of the aforementioned Agreements at the expiry of their respective periods of operation; and
  - (b) notwithstanding anything to the contrary contained herein, the remuneration of employees employed at a particular establishment may be negotiated between the employer of that establishment and his employees provided any improvement thereof is specifically linked to productivity improvement.
- (8) (i) This agreement shall come into operation with effect from 1 September 2011 for employers who are members of parties to the agreement, and with effect from the date of extension of the agreement in respect of non-parties.
- (ii) All employers covered by the registered scope of the NBC shall implement the wage increases agreed to at NBC level" and/or

All employers covered by the registered scope of the NBC who have not implemented the wage increases agreed to at NBC level shall implement a 10% wage increase for metro areas and the rand equivalent for non-metro areas with effect from 1 September each year

#### **5. SHIFT ALLOWANCE**

- (1) A twelve and a half percent (12½%) allowance shall be paid to all workers engaged in normal shift work calculated on the basic minimums.
- (2) normal shift work shall mean a regular pattern of rotating hours of work and/or a regular pattern of work which falls outside normal working hours and shall exclude work pertaining to a twilight shift.

#### **6. TASK-WORK**

Task-work is prohibited.

#### **7. SHORT-TIME**

- (1) Where short-time is being or has been introduced in any establishment, an employee who attends at the establishment on any day shall, unless he has prior to such date received notice that his services will not be required on such day, be employed for at least half a day or be paid half a day's wages *in lieu* thereof.
- (2) If, owing to slackness of trade, it is found impossible to work full-time, short-time shall be worked by distributing the work evenly, as far as practicable, in any section or department concerned.
- (3) When it is necessary to introduce short-time in any factory the clock cards shall be suitably endorsed in respect of each employee so affected.
- (4) The provisions of this clause shall not apply to watchmen.

## 8. PAYMENT OF WAGES AND OVERTIME

- (1) (a) An employer shall pay wages and other remuneration in sealed envelopes on which shall be reflected, or which shall be accompanied by a slip or statement showing-
- (i) the name and Council number of the employee;
  - (ii) weekly rate of pay;
  - (iii) total hours worked;
  - (iv) date up to which payment is made;
  - (v) total amount contained in the envelope;
  - (vi) details of all deductions [in terms of subclause (6)]; and
  - (vii) the amounts paid in respect of work done on Sundays.
- All such information shall be either machine-printed, or written in ink, or shall be clear carbon copy. Such payments shall be made in cash weekly on Fridays, during working hours, at the establishment of the employer within half an hour before the closing time of the establishment: provided that, where an employee's services do not terminate on the ordinary payday of the establishment concerned, any amounts due to him shall be paid immediately upon such termination. [This clause shall not apply to monthly-paid employees who are in receipt of at least R650 per month and clerical employees, who are provided for in paragraph (b) hereof].
- (b) An employer shall pay wages to monthly paid employees who are in receipt of at least R650 per month and clerical employees who are engaged on a monthly basis, not later than the last day of each calendar month, or upon termination of their employment, if this should take place before the ordinary payday of the employee.
- (c) In the case of a twilight shift worker, the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during a twilight shift, but not later than twenty-four hours after the usual pay day.
- (2) On every day on which wages or other remuneration are payable in terms of subclause (1) (a)-
- (a) every employer shall by 14:00 have available in cash in the establishment the full amount to be paid;
  - (b) the envelopes referred to in subclause (1) (a) shall be duly completed and sealed at least one hour before the closing time of the establishment.
- (3) Where work is performed by employees organised in sets or teams, every employee shall be paid his earnings by the employer in whose establishment the work is performed or by his representative.
- (4) An employer shall pay to an employee who, during any part of any week, is employed on more than one class of work for which different weekly wages are hereby prescribed, the highest of such different weekly wages for the whole of such week.
- (5) An employee other than a watchman, engaged on night shift, shall be paid not less than the remuneration prescribed for his class of work in clause 4 of this part of the Agreement, plus 12½ per cent.
- (6) No employer shall make a deduction of any description from amounts due to an employee in respect of wages or overtime, except in the following circumstances:
- (a) Whenever an employee is absent from work otherwise than on the instructions or at the request of his employer, a deduction proportionate to the period of his absence and calculated on the basis of the wage which such employee was receiving in respect of his ordinary hours of work at the time thereof may be made unless otherwise provided in this

part of the Agreement;

- (b) in any establishment where the regular weekly hours of work are less than 42½, the employee may be paid for the actual number of hours worked at the hourly rate: Provided that an employee shall be paid an amount not less than 40 times the hourly wage in respect of any week's work;
- (c) deductions may be made by an employer for insurance or pension funds with the written consent of the employee;
- (d) contributions to Council funds shall be deducted in terms of clause 25 of this part of the Agreement;
- (e) deductions shall be made by the employer in terms of the Provident Fund Agreement of the Clothing Industry (Natal);
- (f) the costs of scissors supplied to employees may be deducted;
- (g) if, owing to the accidental stoppage of machinery, no work is available for an employee, deductions may be made by the employer from the wage of such employee only for the time lost which is in excess of one hour in respect of each stoppage;
- (h) any amount which an employer is legally compelled or permitted to pay on behalf of any employee may be deducted;
- (i) contributions to the Sick Benefit Fund shall be deducted in terms of clause 35 (3) of this part of the Agreement;
- (j) deductions for trade union subscriptions shall be made in terms of clause 27 (2) of this part of the Agreement;
- (k) where short-time has been introduced, the employee shall, subject to the provisions of clause 7 of this part of the Agreement, be paid for the actual time worked.

## 9. HOURS OF WORK AND OVERTIME

- (1) Hours of Work: A five day week shall be observed from Monday to Friday inclusive and the ordinary hours of work of an employee shall not exceed-
  - (a) 42½ hours, excluding meal intervals in any week from Monday to Friday, inclusive;
  - (b) 8½ hours on any day between the hours of 07:00 and 18:00;
  - (c) except that, in the case of an employee wholly engaged as a boiler attendant, the weekly hours may be 45 and the daily hours may be 9.
- (2)
  - (a) All hours of work in any day shall, except for meal intervals, be consecutive.
  - (b) An employer shall not require or permit an employee to work more than five consecutive hours continuously without a meal interval of at least half an hour, provided that if such interval be for longer than half an hour, the period in excess of half an hour shall be deemed to be hours of work.
- (3) An employee shall be deemed to be working in addition to any period during which he is actually working-
  - (a) during the whole of any interval in his work if he is not free to leave the workroom of his employer for the whole of such interval;
  - (b) during any other period during which he is in the workroom of his employer:

Provided that if it is proved that any such employee was not working and was free to leave the workroom during any part of any such period, the presumption provided for in

this sub-clause shall not apply in respect of such employee with reference to that part of such period.

- (4) (a) All time worked-
- (i) in excess of the ordinary hours set out in clause 8 (1); or
  - (ii) before 07:00 and after 18:00 on Monday to Friday, except in the case of boiler attendants, shall be deemed to be overtime.
- (b) No employer shall require or permit an employee to work overtime for more than-
- (i) 10 hours in any week;
  - (ii) two hours on any day (Monday to Friday).
- (c) No overtime in excess of one and a half hours, from Monday to Friday, may be required or permitted of an employee unless the employer-
- (i) has given notice thereof to such employee the previous day;
  - (ii) provides such employee with an adequate meal before he/she has to commence overtime or pays such employee an allowance of R5,00 in sufficient time to enable him to obtain a meal before the overtime is due to commence.
- (d) An employee shall not be required to work overtime without his consent and an employee shall not be dismissed by reason of his refusal to work overtime.
- (5) No overtime in excess of that stated in terms of clause 9 (4) (b) shall be allowed unless permission has been obtained, in writing, from the Council prior to the performance of such work. In cases of urgency, the Secretary may issue provisional authority, which shall be valid until the next meeting of the Council.
- (6) In respect of overtime worked an employer shall pay to-
- (a) an employee wholly or mainly engaged as a boiler attendant at a rate which is not less than one and a half times the weekly wage prescribed for an employee of his respective class of work divided by 45;
  - (b) an employee who is employed as a piece-worker at a rate which is not less than 1½, times the piece-work rates or 1½ times his weekly wage divided by 42½, whichever is the greater;
  - (c) all other employees, at a rate which is not less than one and a half times the weekly wage divided by 42½, provided that if overtime calculated on a daily basis differs from that calculated on a weekly basis, the basis more favourable to the employee shall be adopted;
  - (d) an employee in respect of overtime worked on a Saturday which is in excess of 4¼ hours or after 12h00 at double the ordinary hourly rate.
- (7) Sunday work. Whenever an employee works on Sunday with the written permission of the Council, his employer shall either-
- (a) pay to the employee-
    - (i) if he so works for a period not exceeding four hours, not less than the ordinary remuneration payable in respect of the period ordinarily worked by him on a week-day; or
    - (ii) if he so works for a period exceeding four hours, remuneration at a rate not less than double his ordinary rate of remuneration, in respect of the total period worked on such Sunday, or remuneration which is not less than double the ordinary remuneration payable in respect of the period ordinarily worked by him on a week-day, whichever is the greater; or
  - (b) pay the employee remuneration at a rate not less than one and one-third times his ordinary rate of remuneration in respect of the total period worked on such Sunday and

grant him within seven days of such Sunday one day's holiday and pay him in respect thereof remuneration at a rate not less than his ordinary rate of remuneration as if he had on such holiday worked his average ordinary working hours for that day of the week.

- (8) (a) There shall be installed and maintained in working order in every establishment-
- (i) one or more bells, or other audible signals, which shall operate automatically and indicate all times for starting and for stopping work;
  - (ii) one or more time clocks for the clocking in and out of employees: Provided that an employee shall be paid for the time which the employee has worked notwithstanding that the employee has not clocked in or clocked out.
- (b) Unless written exemption is obtained from the Council or Exemptions Board in terms of clause 23, every employee shall, unless prevented by sickness or other unavoidable circumstances at the establishment, clock in and clock out every working day, and no employee may clock in for any other employee in such establishment.
- (9) (a) The employer shall grant to each employee rest intervals of not less than 15 minutes during the morning work periods and 10 minutes during the afternoon work periods. Rest intervals shall be granted as nearly as practicable to the middle of each morning and afternoon and such intervals shall be reckoned as part of the usual working hours, but no employer shall require an employee to perform work during such interval.
- (b) For the purposes of this sub-clause the first half of any normal shift of more than five hours shall be deemed to be a morning work period, and the second half of any such normal shift, an afternoon work period.
- (10) No employer shall allow an employee to work a night shift unless permission has been obtained in writing, from the Council, prior to the performance of such work.
- (11) An employer may, in order to make up time lost through not working on any day which is a normal working day, permit his employees to work overtime on any day except Sunday prior or subsequent to the day not worked at ordinary rates of pay, provided such working-in takes place within a twelve (12) calendar month period of the original day not worked.
- (12) The provisions of this clause shall not apply to watchmen, except as provided below:
- (a) (i) An employer shall grant to each of his watchmen one full day of rest during every seven consecutive days, but, if an employer requires or permits such an employee to work on his day of rest, the hours worked shall be deemed not to be part of the ordinary hours of work, and the employee shall be paid for such work an amount of not less than double his daily wage;
  - (ii) an employer shall grant his watchmen, other than a daily employee, not less than six days of rest in every six consecutive weeks of employment.
- (b) Provided that-
- (i) an employer shall make no deduction from the watchman's wage in respect of days of rest;
  - (ii) an employer may, *in lieu* of granting his watchman any such day of rest, pay him double his daily wage in respect of each such day of rest not granted;
  - (iii) where a watchman's contract of employment terminates before he has been granted all the days of rest to which he has become entitled by virtue of this sub-clause, his employer shall pay him in respect of each such day of rest not granted an amount of not less than his daily wage;
  - (iv) for the purposes of this sub clause the expression "day of rest" means a period of 24 consecutive hours calculated from the time the watchman normally commences duty, and "daily wage" means the employee's weekly wage divided by six.

## (13) Twilight Shift

- (a) **General provisions:** Subject to the provisions contained in this part of the Agreement an employer may establish a twilight shift, the establishment and operation of which shall be subject to the following conditions:
- (i) Only unemployed people may be recruited for working this shift.
  - (ii) Notwithstanding the provisions of sub-clause 1 (a) above, supervisory and management staff from the existing staff complement of the employer's business may be employed on a twilight shift.
  - (iii) A twilight shift may only operate between the hours 16h30 to 23h00 daily from Monday to Friday.
- (b) **Employment conditions:** Staff employed on the twilight shift shall be subject to the following employment conditions:
- (i) All provisions contained in this part of the Agreement, unless specifically excluded, shall be applicable to employees employed on a twilight shift.
  - (ii) The remuneration payable to a twilight shift worker shall accrue at an hourly rate.
  - (iii) A twilight shift worker shall not be entitled to the payment of a shift allowance.
- (c) **Transport arrangements:** The following conditions will apply to the transportation of employees working on a twilight shift:
- (i) The cost of transport from the work place to the home of employees will be funded by the employer; and/or
  - (ii) The employer will be responsible for the arrangements and expenses of transport from the work place to the homes of the employees at the conclusion of a twilight shift; Provided that where an employer and employee agree that the employee shall make the practical arrangements for transport home, this shall be permissible provided the employer shall still be responsible for the costs of such transport.

## (14) Aggregation of Overtime

For the purposes of determining the number of hours, or part thereof, which an employee should be paid at overtime rates, the hours worked outside the employee's normal working hours in terms of clause 9(1) of this part of the Agreement may be reduced by the number of hours or part thereof, in that pay week that the employee was absent.

Provided that no reduction of the overtime worked by an employee shall be made should the absence result from any of the following:

- (i) time not worked as a result of protected industrial/protest action;
  - (ii) time not worked as a result of a public holiday as declared in terms of the Public Holidays Act;
  - (iii) time not worked as a result of the employer having declared short time;
  - (iv) time not worked as a result of the employee being on authorised shop steward stewards time off; and
  - (v) time not worked as a result of any authorised absenteeism.
- (15) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.



## 10. PUBLIC HOLIDAYS

- (1) For the purposes of this clause, "public holiday" shall mean a public holiday as defined in the Public Holidays Act, 1994, and includes the remainder of the day following the first 4½, hours after starting time on the Thursday before Good Friday.
- (2) If an employee does not work on a public holiday [as defined in subclause (1) above]-
  - (a) which falls on a day which otherwise is an ordinary working day for him, his employer shall pay to him in respect of that public holiday an amount not less than the remuneration payable to him in respect of the time (excluding overtime) which is ordinarily worked by him on that day of the week;
  - (b) which falls on a Saturday or during the period of annual leave referred to in clause 14, his employer shall pay to him in respect of that public holiday an amount not less than one fifth of his ordinary weekly wage.
- (3) Whenever an employee works on a public holiday which otherwise is an ordinary working day for him, his employer shall pay him remuneration at a rate not less than his ordinary hourly wage in respect of the total period worked on that public holiday in addition to the remuneration he would ordinarily have received [as set out in subclause (2) (a) above].
- (4) Whenever an employee works on a public holiday which otherwise is not an ordinary working day for him, his employer shall pay him-
  - (a) either an amount at least equal to the remuneration payable to him in respect of the time (excluding overtime) ordinarily worked by him on a working day; or
  - (b) remuneration at a rate not less than his ordinary hourly wage in respect of the total period worked on that public holiday, whichever is the greater, in addition to an amount not less than one fifth of his ordinary weekly wage.
- (5) Remuneration payable to an employee in terms of subclauses (2), (3) or (4) shall be paid out to him no later than the payday next succeeding the day in respect of which such remuneration is payable.

## 11. RECORDS

- (1) All records with regard to wages required to be kept in terms of Section 32 of the Unemployment Insurance Act, 1966, or in terms of this part of the Agreement, shall be completed by 12:00 on each Friday.
- (2) Every employer shall keep as part of his records a clock card to be used in connection with the time clocks referred to in clause 9 (8) in respect of each employee for each week or part of a week for which wages are due and payable, such clock card to form the basic document for the computation of remuneration.
- (3) All clock cards, or other types of records, shall, in accordance with the requirements of section 31 of the Basic Conditions of Employment Act, 1997 be kept for a period of three years subsequent to the date of the record and, on request, shall be available for the inspection by an agent of the Council.
- (4) In addition to the powers of the agents of the Council as set out in clause 30 of this part of the Agreement and section 33 (3) read with section 142 of the Act, the agent(s) may at any time, for the purpose of ensuring that the provisions of the Act and this part of the Agreement are being complied with-

- (a) cause to be investigated any books, records or documents of any employer, whether or not the same are required to be kept in terms of any law and whether or not the same are at any establishment;
- (b) take and retain copies of any such books, records or documents.

## **12. WORK IN THE CLOTHING INDUSTRY**

- (1) No employer shall require his employees to work and no employee shall work in premises other than an establishment provided, equipped, maintained and controlled by such employer, and which shall be registered with the Council in terms of Clause 19 of this part of the Agreement.
- (2) An employer shall not allow any work in the Clothing Industry to be performed in a dwelling-house.
- (3) No employee engaged in the employ of one establishment may perform work in another establishment without first having been discharged by the first establishment and re-registered by the second establishment.

## **13. PROPORTION OR RATIO OF EMPLOYEES**

- (1) Cutters: Every employer shall employ a head cutter before employing any cutters: Provided that in a factory where 30 machines or less are operated and where the employer performs the duties of a head cutter in his establishment he need not employ an employee of the said class. Any such employer shall, however, employ an assistant head cutter before employing any cutters.
- (2) No employee who has been absent from work for a continuous period of four weeks for any reason except illness, shall be taken into account when calculating ratio.

## **14. ANNUAL LEAVE**

- (1) (a) Every employer shall grant to each of his employees, whether employed on piece-work or on time-work, who has been in his employ for a continuous period of not less than 12 months, not less than three consecutive weeks' annual leave, between 15 December and 15 January annually, at 15 days' wages. For the purposes of this sub clause a "day's wage" shall mean the weekly wage divided by five. No such employees shall be paid less than three weeks' wages as annual leave pay.
- (b) Every employer shall prior to 30 November of each year advise the Council of the dates during which his factory will be closed for annual leave.
- (2) (a) Save as provided for in subclause (3) (d) every employer shall lodge with the Council a guarantee acceptable to the Council to cover the payment of holiday pay due to his employees, alternatively forwarded monthly to the Secretary of the Council, P.O. Box 18354, Dalbridge, 4014, holiday pay due to each of his employees, at the rate of one and one-quarter of a day's pay for each completed 30 days of service, such payments to be made not later than 10 days after the end of each calendar month to which it refers: Provided that the holiday pay for the months November and December shall be forwarded to the Secretary of the Council not later than 7 December of each year and the total of such holiday pay shall be distributed by the Council to the employees concerned not later than 24 December of that year.
- (b) An employee whose service are terminated before the date on which leave is to granted in terms of subclause (1) (a) shall be paid holiday pay amounting to one and a quarter of a day's pay for each completed 30 days' service. Such holiday pay shall, in the case of an employer who has put up an approved guarantee in terms of subclause (2) (a) be paid by the employer upon the date the employee's services are terminated. Where the

employee's holiday pay has been paid to the Council as provided for in subclause (2) (a) the holiday pay shall be paid to the employee by the Council within a period of three weeks from the date on which application for payment is made to Council. Holiday pay shall not be due or payable to a person who has deserted from service.

- (c) An employer shall grant to an employee who at the date of granting leave has not completed 12 months' continuous employment with him, leave for a similar period to that referred to in subclause (1) (a): Provided that in the case of an employer who has put up an approved guarantee in terms of subclause (2) (a), he shall only pay the employee holiday pay at the rate of one and a quarter of a days' pay for each completed 30 days' service.
  - (d) For the purposes of subclause (2) "days of service" shall mean calendar days.
- (3) (a) All holiday pay received by the Council shall be held in trust. The difference between holiday pay paid by the Council to employees in terms of subclause 2(a) and (b), and the amount of holiday pay paid by the employer to the Council in terms of subclause 2 (a) shall be refunded to the employer not later than 31 January of the following year.
- (b) A list of employees who are to be paid holiday pay by the employer as provided for in subclause (1) (a) hereof, showing Council number, name, rate of pay, period of employment for which holiday pay is due and amount of holiday pay due to each such employee shall be forwarded by the employer to the Council not later than 7 December of each year.
- (c) Whenever a guarantor advises the Council that a guarantee for holiday pay is to be withdrawn, the Council shall notify the employer, in writing, of such withdrawal and the employer shall within the notice period give by the guarantor lodge a fresh guarantee with the Council in terms of subclause (2) (a).
- (d) All guarantees furnished to the Council in terms of a previous published agreement shall be deemed to have been furnished in terms of this part of the Agreement.
- (4) An employer who closes his factory for any period between 15 December and 15 January in order to grant his employees their annual holiday plus statutory holidays, may close for a period not exceeding four weeks without being liable for the payment to any employee of any wages in excess of the amounts due in terms of subclause (1) hereof, in respect of such period.
- (5) An employer, having reached agreement with his employees and having notified the Council accordingly, may close his factory for less than the three-week annual holiday period; provided that he closes his factory for not less than two weeks: Provided further that the additional one week's holiday is taken by employees before 30 June of the following year. Employees shall be paid for leave when it is taken.
- (6) Any period during which an employee-
- (a) is on leave in terms of this clause; or
  - (b) is absent from work on the instructions or at the request of the employer; or
  - (c) is absent from work owing to illness, shall be deemed to be a period of employment for the purposes of subclause (1) and (2) hereof, provided that-
    - (i) the provisions of paragraph (c) shall not apply in respect of any period of absence owing to illness of more than three consecutive days if the employee, not being an employee referred to in subparagraph (iii) and fails, after a request for such certificate by the employer, to submit to the employer a certificate issued by a Sick Benefit Fund medical officer appointed in terms of clause 35 stating that the employee was prevented by illness from doing his work (although clerical employees may produce such certificate from any practitioner); and
    - (ii) the provisions of paragraph (c) above shall not apply in respect of the part of any total period of absence exceeding 30 days during any 12 months of employment; and

- (iii) an employee whose employer is required in terms of any Act of Parliament to provide for the care and treatment of such employee when sick or injured shall not be required to submit a certificate by a medical practitioner in respect of any period of absence referred to in subparagraph (i).
- (7) An employer may make mutual arrangements with: his employees in receipt of R650 per month or more, clerical employees, drivers of motor vehicles, foremen, mechanics, watchmen, or employees solely engaged in cleaning premises or in the delivery of goods or messages, to take their annual leave at a period other than between 15 December and 15 January: Provided that such leave shall be granted within two months of the completion of the year of employment to which it relates.
- (8) Where the Council holds holiday pay on behalf of an employee, who ceased to be employed in the Clothing Industry during the course of that calendar year, for a period of six months from the date on which it became due to such employee or to the end of that calendar year, whichever is the later, such holiday pay shall be refunded to the employer if unclaimed within the said period: provided that an employee may make application to the Council for payment of his holiday pay after expiry of the said period and such application shall be considered by the Council on its merits.
- (9) All payments for leave to which an employee is entitled under subclauses (1) to (10) shall be made at the employees actual rate of pay.
- (10) Holiday pay due to employees at the end of each year in terms of this clause, shall be calculated at the rate of pay an employee was earning when his leave commenced in December each year.
- (11) An employer shall give not less than 30 days' provisional notice and not less than 15 days' definite notice of the date of which annual leave will commence by exhibiting such notice(s) in a prominent place in the factory readily accessible to the employees.
- (12) The period of leave specified above shall not run concurrently with any period during which an employee is under notice of termination of employment.
- (13) Notwithstanding anything to the contrary contained in this clause, an employer may, in terms of an agreement between himself and his employees, set off against the period of annual leave any days of occasional leave granted on full pay to employees during the period of 12 months employment prior to which the period of annual leave relates, provided that the occasional leave so granted shall not exceed two days.

#### **15. HOLIDAY LEAVE BENEFIT (ANNUAL BONUS) FUND ACCOUNT**

- (1) The Fund known as the Holiday Leave Benefit Fund Account for the Clothing Industry (Natal), originally established on 13 November 1992 in terms of Government Notice No. R. 310 is hereby continued, the purpose of which is to provide for an annual bonus to employees. The Fund Account is administered by the Council.
- (2) The Fund Account shall maintain individual employer accounts which shall consist of-
  - (a) contributions paid into the Fund Account in accordance with the provisions of this part of the Agreement;
  - (b) interest derived from the investment of any moneys of the Fund Account.
  - (c) any other moneys to which the Fund Account may become entitled.
- (3) (a) For the purposes of the Fund every employer shall contribute 3,47% of an employee's weekly wage, which shall be forwarded monthly, no later than the 10th day of each month, to the Secretary of the Council.
- (b) Such total sum must be accompanied by a list showing the Council registration numbers of the employees and the amounts contributed.

- (4) (a) An employee is entitled to a benefit of 3,47% of the actual annual basic wages earned with the employer by whom he is employed on the day of factory closure: Provided that he is still in that employer's service. This benefit is payable to him in December of each year on the day of factory closure.
- (b) A pro rata share of the bonus set out in paragraph (a) above shall be paid to an employee who leaves employment before the day of factory closure.
- (c) This benefit is inclusive of and not additional to any annual bonus paid by an employer.
- (5) Notwithstanding the provisions of subclause (4), an employee shall not suffer a reduction in the amount of the annual holiday leave benefit as a result of periods of authorised absence from work.

## 16. MATERNITY LEAVE

- (1) Every employer shall acknowledge the right of an eligible employee to reasonable security of employment prior to, during and following confinement and notwithstanding anything to the contrary contained in this part of the Agreement, the following special provisions shall apply to such employee.
- (2) For the purposes of this clause unless a different meaning appears from the context-
  - (a) **"Continuous Service"** shall mean the period of employment during which an employee's name has remained continuously on the employers employment register.
  - (b) **"Eligible Employee"** means a permanent employee, who is or was pregnant and who has been in the continuous service of the same employer for a minimum period of twelve (12) months at the commencement of that employee's maternity leave, subject to the provisions of subclause (4) (b) below.
  - (c) **"Maternity Leave"** shall mean the period of leave to which an eligible employee is entitled by virtue of the provisions of this clause.
  - (d) **"Permanent Employee"** means an employee, other than a temporary employee, who is in continuous employment with an employer and whose conditions of employment are regulated by the provisions of the Main Collective Agreement.
  - (e) **"Provident Fund"** shall mean The Clothing Industry (Natal) Provident Fund.
  - (f) **"Sick Benefit Fund"** shall mean the Sick Benefit Fund as provided for in clause 35 of this part of the Agreement.
  - (g) **"Temporary Employee"** means an employee other than a permanent employee whose employment contract is for a fixed predetermined period of time.
- (3) An employee shall not be permitted to work during the period commencing four (4) weeks prior to the expected date of confinement and ending eight (8) weeks after the date of confinement.
- (4) (a) Subject to compliance with the provisions of this clause, an eligible employee proceeding on maternity leave shall be entitled to a maternity benefit payment equal to 3¼ weeks of such employee's wage rate; or where the employee's wage has been varied in accordance with clause 4 (8) (a), such wage rate as was applicable immediately prior to such variation (notwithstanding that the employee's Sick Benefit Fund contributions may have been calculated after such variation had been implemented). Such maternity benefit payment shall be paid by the Sick Benefit Fund: Provided that such payment is not made earlier than four (4) weeks prior to the expected date of confinement, as certified by a current medical certificate issued by the Sick Benefit Fund.
- (b) Maternity leave shall be for a maximum period of six (6) months in respect of the period before, during and after confinement.
- (c) For the purpose of calculating length of service, maternity leave shall not be deemed to constitute a break in service other than as specified in this clause.

- (d) Benefits which accrue to eligible employees arising from service e.g. annual leave and sick leave shall not accumulate during the period of maternity leave.
- (5) (a) If an eligible employee elects to continue contributing to the Provident Fund and /or Sick Benefit Fund during maternity leave, the employer must continue his reciprocal contributions.
- (b) Any benefits in terms of the Provident Fund and/or Sick Benefit Fund shall, subject to the rules of these funds, continue to accrue to a member.
- (6) (a) An employer shall upon the expiry of maternity leave continue to employ an eligible employee in the same job grade and at the same rate of pay that was applicable immediately prior to the commencement of maternity leave, or at the new appropriate wage for the applicable job grade whichever is the greater, provided that-
  - (i) at the time of granting maternity leave, the employee indicates the intention to return to work by completing and returning to the employer a form published for the purpose by the Council;
  - (ii) such employee returns to work within a period of six (6) months calculated from the date of commencement of maternity leave;
  - (iii) where suitable vacancy does not exist for a similar position within the same grade, such employee shall be employed on a temporary basis at a lower job grade, but without affecting pay, until a suitable vacancy arises;
  - (iv) employment shall not be guaranteed where such employee has been selected for retrenchment on the basis of the criteria agreed between an employer and the union.
- (b) An eligible employee who intends to return to work shall-
  - (i) provide to an employer a medical certificate from a registered medical practitioner indicating that such employee is fit for work;
  - (ii) advise the employer in writing on a form published for the purpose by the Council, of the intention to return to work at least one (1) month before returning to work confirming the date on which such employee will resume employment.
- (c) A temporary employee engaged to fill the position of an eligible employee on maternity leave shall cease to be employed when the eligible employee returns to work, unless a suitable vacancy exists in which event the temporary employee may be employed to fill that vacancy on a permanent basis.
- (d) An employee temporarily promoted and paid at the higher rate to fill a vacancy while an eligible employee is absent on maternity leave shall be demoted with consequent reduction in pay, when such employee returns to work, unless a suitable alternative vacancy exists.
- (e) The union agrees that it shall not challenge the termination of service of a temporary employee or the demotion of a temporarily promoted employee in terms of the above paragraphs (c) and (d), provided that the temporary or temporarily promoted has signed a temporary contract of employment or promotion, in keeping with the pro-forma contract drafted by the Council.

## 17. PATERNITY LEAVE

Male employees, regardless of marital status, shall be entitled, subject to prior arrangement, to a maximum of three days' unpaid paternity leave per annum. The employer is entitled to require proof of paternity.

## 18. PREMIUMS FOR TRAINING

No premium shall be charged or accepted by an employer for training of an employee: Provided that this clause shall not apply in respect of a training scheme to which the employer is legally required to contribute.

## 19. REGISTRATION OF EMPLOYERS

- (1) Every employer who has not already done so in pursuance of a previous agreement at the date of coming into operation of this part of the Agreement and every employer who enters the Industry after that date shall within seven days of such date or on the date on which such employer commenced operations as the case may be forward to the Secretary of the Council, P.O. Box 18354, Dalbridge, 4014, by registered post, the following particulars which shall be in writing and signed by the employer or a person duly authorised to sign on behalf of the employer:
  - (a) The trading name, business address and registered address of the establishment;
  - (b) the full names and residential addresses of all partners and/or directors and/or members;
  - (c) the full name and residential address of the responsible manager;
  - (d) the section or sections of the Industry in which the establishment is engaged;
  - (e) date of commencing operations.
- (2) Written notification shall be sent by registered post to the Council by every employer of any alteration in respect of any details supplied in terms of subclauses (1) (a) to (e) of this clause, and such notification shall be given within 7 days of such alteration.
- (3) Save as provided in subclause (6), every employer in the Industry at the date of coming into operation of this part of the Agreement and every employer who enters the Industry after that date shall within seven days of such date or on the date on which such employer commenced operations, as the case may be, lodge with the Council, and at all times thereafter have with the Council, a guarantee acceptable to the Council to cover payment of one week's wages as prescribed in clause 4 of this part of the Agreement for his employees and also to cover 12 weeks' levies; due in terms of clauses 25 and 35 of this part of the Agreement and clause 6 of the Provident Fund Agreement of the Council.
- (4) Whenever cash is deposited with the Council in terms of subclause (3) above, such money shall be invested in a savings account, permanent shares or fixed deposits in any registered bank or financial institution. Any interest accruing thereon shall be paid to the employer by the Council not later than 31 January of each year.
- (5) Whenever a guarantor advises the Council that a guarantee in terms of subclause (3) is to be withdrawn, the Council shall notify the employer, in writing, of such withdrawal and the employer shall within the notice period given by the guarantor lodge a fresh guarantee with the Council in terms of subclause (3).
- (6) All guarantees furnished to the Council in terms of a previous published agreement shall be deemed to have been furnished in terms of this part of the Agreement: Provided that the Council may at any time give the employer 14 days notice to the effect that any such guarantee is no longer acceptable and the employer shall within such period of 14 days lodge a fresh guarantee acceptable to the Council.

## 20. REGISTRATION OF EMPLOYEES

- (1) An employer shall, before engaging an applicant for work, require the applicant to produce a service card issued by the Council. If the applicant is a new entrant into the Clothing Industry or cannot produce a Council service card, the provisions of subclause (2) (c) below shall apply.

- (2) Upon engagement, the employer shall-
- (a) enter in the relevant columns of the service card: the name of his factory, the date of engagement, occupation, wage on engagement and total previous experience and shall retain the card in safekeeping so that it can be dealt with in terms of subclause (4) of this clause upon termination of service of the employee; and
  - (b) complete a "Registration of Employee" form in triplicate, forward the original to the Council not later than Friday of that week, hand the duplicate copy to the employee and retain the triplicate copy for his records; and
  - (c) in the case of an employee who is a new entrant into the Industry or an employee who cannot produce a Council service card-
    - (i) complete the "Registration of Employee" form in triplicate and send the applicant with the original and duplicate copy to the Council offices where he will be allocated a Council registration number, issued with a Council service card and be registered in the employ of the employer. The triplicate copy shall be retained by the employer for his records;
    - (ii) the employer shall acquire the service card of the employee before he commences work and the employer shall retain same until the employee's services are terminated and the service card is dealt with in terms of subclause (4).
- (3) An employer shall forward to the Council for amendment the service card of any employee who is transferred from one category to another, the latter of which requires a higher rate of remuneration, within seven (7) days of such transfer.
- (4) The service card shall be retained by the employer until the employee leaves his employer, whereupon the employer shall enter on the card the date of termination of employment, the occupation and the rate of pay on termination, and return the card to the employee after signing it.
- (5) On the Friday of the week during which an employee's services are terminated, the employer shall forward to the Council a report of termination of service.
- (6) The Council shall have the power to withdraw any record of service card which is subsequently found to contain incorrect information. The Council shall upon being furnished with the correct information, issue a fresh record card *in lieu* thereof.

## 21. TERMINATION OF SERVICE

- (1) An employer or an employee shall give, in writing-
- (a) in the case of a weekly-paid employee, not less than one week's notice of the intention to terminate the contract of employment, such notice to commence on the employee's ordinary pay-day;
  - (b) in the case of a monthly-paid employee, not less than two week's notice of the intention to terminate the contract of employment, such notice to commence on the first or 15th day of the calendar month.
- (2) (a) An employer may terminate the contract of employment without notice by paying to the employee, *in lieu* of notice, an amount equal to not less than-
- (i) in the case of a weekly paid employee, one full week's wages; and
  - (ii) in the case of a monthly paid employee, two weeks' wages.



- (b) An employee may terminate the contract of employment without notice by forfeiting wages and/or holiday pay due to him by the employer.
- (3) The provisions of subclauses (1) and (2) hereof shall not affect-
- (a) the right of an employee or employer to terminate the contract of service without notice for any good cause recognised by law as sufficient;
  - (b) any agreement between an employer and employee which provides for a period of notice longer than one week, in which event wages *in lieu* of notice shall be correspondingly increased.
  - (c) the right of an employee who is working short-time in any week on the instruction of the employer to terminate his contract of service at any time after such instruction has been given, without giving notice: Provided further that, in the case of an establishment in which short time is being worked in terms of clause 7, an employee who has been given notice by his employer in terms of this subclause shall be paid a full day's pay, in respect of every day during the period of such notice upon which he attends a such establishment and is available for work the whole day, or in respect of which he has been notified by the employer that his services will not be required;
  - (d) the operation of any forfeitures or penalties which, by law, may be applicable in respect of desertion by an employee;
  - (e) the right of an employee to withdraw such notice of his intention to terminate his contract of employment provided it is done in writing within two (2) working days of having been tendered.
- (4) An employer may terminate the contract of employment on grounds of incapacity where the employee has been absent from work due to ill-health or injuries for a period of time. In these circumstances-
- (a) the employer shall consider the following factors before terminating the contract of employment:
    - (i) Whether the employee is capable of performing the work; and
    - (ii) if the employee is not capable-
      - (a) the availability of any suitable alternative work;
      - (b) the extent to which the employee's duties and/or work circumstances might be adapted to accommodate disability;
    - (iii) alternatives to dismissal.
  - (b) An employee shall be allowed an opportunity to state his case and to be assisted by a trade union representative in the process of investigations referred to in paragraph (b) above.
  - (c) Provided that the provisions of this sub-clause shall not limit the employee's right to challenge his dismissal in terms of the Act.
- (5) The period of notice shall not run concurrently with nor shall notice be given during, an employee's absence on leave granted in terms of clause 14.
- (6) This clause shall not apply to an employee during his first week of employment. Such an employee shall be paid for at least four hours, notwithstanding that such employee has worked for a lesser period during his first week of employment.

- (7) (a) Notwithstanding anything to the contrary contained in this part of the Agreement the first fifteen (15) working days of the period of employment of any employee shall be deemed to be a probationary period.
- (b) The dismissal of an employee during the probationary period shall be preceded by an opportunity for the employee to state his case in response and to be assisted by a trade union representative.

## 22. DISCIPLINARY AND GRIEVANCE PROCEDURES

- (1) Every employer shall permit the trade union to negotiate with it a disciplinary procedure and grievance procedure appropriate to its individual circumstances.
- (2) The provisions of this clause in terms of the implementation thereof may be read with the document headed "guidelines for the Implementation of Disciplinary and Grievance Procedures", which documents is available to employers and employees from the offices of the Council.

## 23. EXEMPTIONS

### **A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this part of the Agreement**

- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this part of the Agreement may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.
- (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation, and in addition, shall set out the following information:
- (a) The period for which the exemption is sought;
- (b) the number of employees affected and how many of such employees are members of a registered trade union;
- (c) the clauses and subclauses of this part of the Agreement from which the exemption is requested.
- (d) Satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultations shall include a registered party trade union, where such union has members employed at the workplace and shall include the response resulting from such consultations.
- (e) The demonstrable commercial need of the applicant for the exemption sought.
- (4) (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.
- (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in sub-clause (7) below, within 45 days from the date of

lodgement of the application with the General Secretary, failing which the application shall be deemed to have been rejected.

- (c) The Exemptions Committee may call for any further information or submissions it deems relevant from the applicant, prior to making a decision. The period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.
  - (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been refused.
  - (e) Subject to the time period for considering the application as provided in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been refused and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
  - (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
  - (g) If the application has been granted or partially granted, the Exemptions Committee shall specify the following in its notification to the applicant:
    - (i) The conditions, if any, of its approval of the application;
    - (ii) the period for which the exemption(s) will be valid;
    - (iii) the clauses or subclauses of this part of the Agreement in respect of which exemption was granted or partially granted; and
    - (iv) the full name of the exempt employer or employee(s).
  - (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.
  - (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application may be referred to appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.
- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the amount thereof: Provided that such a fee shall be consistent with-

- (i) the cost incurred for the hearing of the appeal; and
  - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
- (c) The Exemptions Board shall also have the power to raise a cost order on the applicant in respect of costs incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.
- (6)
  - (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose.
  - (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
  - (c) The provisions of subclause (4) above shall, read with the changes required by the context, apply equally to the appeal process.
  - (d) The Exemptions Board's decision shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee, and where applicable, the Exemptions Board of the following:
  - (a) There is a demonstrable commercial need for the exemption.
  - (b) Competitors covered by the Council that are in compliance with the applicable Council Agreements will not be materially prejudiced by the exemption.
  - (c) The applicant is not in arrears with respect to payment of Bargaining Council levies or employer or employee contributions and/or trade union/employer subscriptions and/or levy, or, if so, an agreed payment plan exists in respect of any such outstanding monies. Arrears, for this purpose, shall mean any payment of Bargaining Council levies or employer or employee or trade union subscriptions that remain unpaid as at the last day of the month following the month in respect of which the payment is due.
  - (d) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor does the application if granted, result in a conflict with the primary objectives of the Act.
  - (e) The exemption will not undermine collective bargaining and labour peace in the Industry.
  - (f) There has been compliance with subclause (3) above.
  - (g) The majority of employees affected at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer or the trade union may request that a ballot be conducted.
- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:
  - (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has put up a compelling case for the exemption.
  - (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.

- (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transfer-ability, administration, management, costs, growth and stability. Sufficiency for the purposes of this sub-clause, means that in all material respects the alternative proposed is a least equal to, or better than, the relevant Council benefit fund.
  - (d) The terms of the exemption sought, including the period for which exemption is sought
  - (e) Any existing or projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.
  - (f) The history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
  - (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.
  - (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
  - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.
  - (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour.
  - (k) What hardship may eventuate to employees in the event of the exemption being granted.
  - (l) Any relevant time limits contained in the Council's constitution and the Act, and in particular that any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
  - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above read with the changes required by the context.
- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this part of the Agreement.

**B. For any employer that is a party or a member of a party to the Council and its employees represented by a trade union representative**

- (1) Exemption from the provisions of this part of the Agreement will be granted in the following circumstances:
- (a) Where an employer that is a party or a member of a party to the Council and its employees, represented by a trade union representative, as defined in the Act, have concluded a collective agreement in accordance with the procedure set out in subclause (2) below to vary such provisions: Provided that-
    - (i) the collective agreement does not contravene the minimum employment standards in this part of the Agreement and in any law or the provisions of the Agreement dated 25 May 1993 between the Cape Clothing Manufacturers' Association, the Cape Knitting Industry Association, the Garment Manufacturers' Association of the Western Cape, the Eastern Province Clothing Manufacturers' Association, the Natal Clothing Manufacturers' Association, the Orange Free State and Northern Cape Clothing Manufacturers' Association, the Transvaal Clothing Manufacturers' Association (incorporating the Transvaal Knitters' Association) and the Southern African Clothing and Textile Workers' Union; and
    - (ii) wage rates and contributions to social funds, including the Council's fund, may not be amended without the Council's approval.
- (2) An employer that is a party or a member of a party to the Council shall implement the following procedure in order to conclude a collective agreement as set out in subclause (1) (a) (i) above:
- (a) The employer shall place on the notice board of the establishment a notice to employees specifying the proposed variation to this part of the Agreement. At the same time a copy of the notice shall be sent to the trade union.
  - (b) A meeting shall take place at the establishment in order to reach agreement on the proposed variation, which agreement shall then be reduced to writing. In the absence of agreement the employer shall undertake not to refer an application for exemption to the Exemptions Board established by the Council.
  - (c) The agreement shall be referred to the Council or Regional Chamber for registration and any agreement concluded in terms of subclause (1) (a) (i) that is in contravention of any law or the minimum employment standards set out in this part of the Agreement shall be null and void ab initio.

#### **24. PERSONS UNDER THE AGE OF 15 YEARS**

No employer shall employ any person under the age of 15 years.

#### **25. COUNCIL FUNDS**

The employer and the employee NBC Levy contribution shall be converted to a percentage-based contribution.

- (1) Every employer shall deduct an amount equal to 0.2585% of each employee's wages per week, calculated at the qualified machinists rate of pay, (other than employees exempted from the provisions this clause by the Council, in writing, in terms of clause 23) for whom minimum wages are prescribed in the Agreement. This equates to R2,15 per week payable by means of deduction from the employee's wages.
- (2) An employer shall, in respect of each contributor from whose wages deduction are made in terms of subclause (1) above, contribute an amount equal to 0.35% of each employee's wages per week payable by the employer. This equates to R2,94 per week employers contribution.

- (3) The total amount deducted in terms of subclause (1) above together with employers contribution in terms of subclause (2) above, shall be forwarded by the employer to the Regional Secretary of the Regional Chamber of the Council, not later than ten days after the end of each calendar month, together with a list showing registration numbers of employees detailing particulars of contributions to P O Box 18354, Dalbridge, 4014.

## **26. SACTWU FUNDS**

- (1) Every employer shall, in respect of each trade union member employed by him, contribute an amount of 27 cents per week towards the Trade Union Bursary Fund which is administered by SACTWU for the benefit of employees in the Industry.
- (2) Every employer shall also, in respect of each of his employees for whom Bargaining Council contributions are paid in terms of clause 25 of this part of the Agreement, contribute towards the trade union's HIV/AIDS Project at the rate of 39 cents per week.
- (3) The total contribution by the employer in respect of subclauses (1) and (2) shall be forwarded to the Council not later than the 10<sup>th</sup> day of the month following that in respect of which the contributions were made, together with a list detailing employee Council numbers and particulars of contributions.
- (4) Whenever proceedings are instituted against an employer for failure to pay outstanding contributions to the SACTWU bursary fund and HIV/AIDS Project, the employer shall pay interest on such amounts outstanding, calculated from the date or dates when such amounts became due and payable, at the bank prime rate prevailing on that date.

## **27. CLOSED SHOP AND TRADE UNION MEMBERSHIP/SUBSCRIPTIONS**

- (1) No employer who is a member of an employers' organisation (which is a party to the Council), shall continue to employ an employee -
- (a) who, while being eligible for membership of the union, is not a member of the union as at the date of coming into operation of this part of the Agreement; or
  - (b) who does not become a member of the trade union within a period of 90 days from such date.
  - (c) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the union or employers' organisation or who have been refused membership of or expelled from the union or employers' organisation.
- (2) Every employer shall forward all deductions made from the remuneration of employees in respect of union membership fees to the Secretary of the KwaZulu-Natal Regional Chamber of the Council not later than the 10<sup>th</sup> day of the month following that in respect of which the contributions were made, together with a list detailing employee Council numbers and particulars of contributions. The Regional Chamber shall forward the amounts to the Secretary of the union, together with such analyses of the amounts as are received from employers by not later than the end of the month in which the fees were received.
- (3) For this part of the Agreement no union membership subscriptions may be -
- (a) paid to a political party as an affiliation fee;
  - (b) contributed in cash or kind to a political party or a person standing for election to any

political office; or

- (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.
- (4) Provided further that the provisions of section 26(3)(c) of the Act shall be observed by the parties to the Council and to whom this clause is applicable.
- (5) The production of a membership card issued by the trade union shall be proof of membership of the trade union.

## **28. ACCESS TO AND ORGANISING FACILITIES ON AN EMPLOYERS' PREMISES BY THE TRADE UNION**

- (1) Every employer shall permit duly accredited trade union officials who are so authorised in writing by the Council, to enter its premises in order to undertake *bona fide* union business provided that-
  - (a) the employer reserves the right of admission to its premises as proprietor or occupier thereof;
  - (b) such access shall be by prior arrangement with the employer;
  - (c) union officials comply with the employer's prevailing security, safety and health rules;
  - (d) meetings with employees are held outside their working hours.
- (2) (a) Every employer shall allow the distribution of the Union newspaper on its premises and shall provide the trade union with notice board facilities for the display of union notices, subject to the prior approval of the employer of every notice displayed.
  - (b) Should the employer not approve a notice or document which it is proposed to display or distribute, which approval shall not be unreasonably withheld, it shall be withdrawn from the employer's premises by the union immediately.
- (3) Where available and commensurate with the individual circumstances and the size of an establishment, every employer shall provide to the union shop stewards reasonable facilities to enable them to discharge their *bona fide* trade union duties in respect of such employer, including the use of a telephone and a meeting venue, provided that the use of such facility shall be subject to prior permission being sought and obtained from the employer and that during normal working hours there shall not be unnecessary disruption to an employers operations.
- (4) A document entitled: Guidelines for the Implementation of the Provisions of clause 28 of the Main Agreement, is available to employers and employees from the offices of the Council.
- (5) In order to promote orderly industrial relations, the union party to the Council shall be entitled to on-site balloting facilities in order to conduct any ballot in terms of the Act.

## **29. RIGHTS OF TRADE UNION REPRESENTATIVES**

- (1) Every employer shall permit the election of shop stewards by union members in terms of section 14 (1) of the Act.
- (2) The nomination, election, terms of office and removal from office of a shop steward shall be governed by the trade union constitution, as lodged with the Registrar of Labour Relations in terms of section 96 of the Act.



- (3) Every employer shall recognise the right of shop stewards to assist and represent employees who are union members in grievance and disciplinary proceedings.
- (4) Duly elected shop stewards are each entitled to ten working days paid leave per calendar year pooled per establishment to be used at the discretion of the trade union for *bona fide* trade union activities, provided that the employer is given at least ten (10) working days prior notice thereof. (For the purpose of this clause a "working day" shall mean any day excluding a Saturday and Sunday, a public holiday in terms of this part of the Agreement and the period of annual shut-down).
- (5) A document entitled: "Guidelines for the election and rights of shop stewards" is available to employers and employees from the office of the Council.
- (6) Access to email and internet facilities for shop stewards will be encouraged, provided that such access shall be during shop stewards' own time and dealt with in a manner that is not disruptive to production.

### 30. AGENTS

- (1) The Council may request the Minister of Labour to appoint one or more specified persons as designated agents to assist in enforcing the terms of this part of the Agreement.
- (2) Any such designated agent shall have the right to-
  - (a) subpoena for questioning any person who may be able to give information relevant to the enforcement of this part of the Agreement;
  - (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the enforcement of this part of the Agreement, to appear before the agent to be questioned or to produce that book, document or object;
  - (c) enter and inspect any premises or place in which the Clothing Industry is carried on at any time when he has reasonable cause to believe that any person is employed therein, or that a book, document or object relevant to the enforcement of this part of the Agreement may be found on or in the premises;
  - (d) examine and demand the production of and seize of any notice, book, list or document which is by this part of the Agreement required to be kept, exhibited or made or which is relevant to the enforcement of this part of the Agreement;
  - (e) require the production of, inspect, examine and copy all records of time worked, clock cards, books or documents wherein an account is kept of time worked or actual wages, or rates whether payable for piece-work or not, paid to any employee whose wages are fixed by this part of the Agreement;
  - (f) take a statement in respect of any matter relevant to the enforcement of this Agreement from any person on the premises who is willing to make a statement.
- (3) A subpoena issued for any purpose in terms of subclause (2) shall be signed by the Secretary of the Council and shall-
  - (a) specifically require the person named in it to appear before the agent;
  - (b) sufficiently identify the book, document or object to be produced; and
  - (c) state the date, time and place at which the person is to appear.
- (4) A designated agent shall obtain written authorisation from the Secretary of the Council before exercising the powers referred to in paragraphs (c), (d) and (f) and subclause 2.

- (5) Such designated agent when entering, inspecting or examining any such place, may take with him an interpreter.
- (6) Every employer and employee upon whom the provisions of this part of the Agreement are binding shall grant to such designated agent all the facilities referred to above.

### **31. EXHIBITION OF AGREEMENT, WAGE RATES AND HOURS OF WORK**

- (1) Every employer shall keep a legible copy of this part of the Agreement exhibited in his establishment in a place readily accessible to his employees.
- (2) Every employer shall give a copy of this part of the Agreement-
  - (a) to an employee who has paid the prescribed fee; and
  - (b) free of charge, on request, to an employee who is a trade union representative.
- (3) One or more notices, provided by the Council, showing wage rates payable in the Clothing Industry in Natal shall be prominently displayed by every employer in such place or places as may be indicated by the agent.
- (4) Every employer shall display in his establishment in a place readily accessible to his employees a notice specifying the starting and finishing time of work for each day of the week and the meal intervals.

### **32. ADMINISTRATION OF AGREEMENT**

The Council shall be the body responsible for the administration of the Agreement, and may issue expressions of opinion not inconsistent with its provisions for the guidance of employers and employees.

### **33. TRADE UNION'S REPRESENTATIVES OF THE COUNCIL**

Every employer shall give to any of his employees who are representatives on the Council every reasonable facility to attend to their duties in connection with the work of the Council: Provided that in establishment employing five or fewer employees the trade union shall give the employer five working days written days notice of its request for time off in terms of this clause, for its representative.

### **34. WORKING PROPRIETORS AND / OR WORKING PARTNERS**

Working proprietors and/or working partners engaged in manufacturing operations in the Clothing Industry and who are employers shall observe the working hours laid down in clause 9 of this part of the Agreement.

### **35. SICK BENEFIT FUND**

- (1) The Sick Benefit Fund (hereinafter referred to as the "Fund") established under Government Notice No. 1845 of 11 November 1938, is hereby continued. The Fund shall be maintained from levies in terms of subclause (3) hereof.
- (2) Within two weeks of an employee entering the Industry he may, at the discretion of the Management Committee, be required to present himself to one of the Fund's medical officers for a medical examination and shall complete forms giving his past medical history. The Management Committee referred to in subclause (6) (a) may thereafter exclude such employee from receiving benefits for any illness due to chronic ailment: Provided that an employee may appeal against such exclusion to the Council whose decision shall be final.

- (3) Subject to subclause (14), an employer shall deduct 1,5% per week of the wage of each employee who has worked during that week, irrespective of the time worked.
- (4) (a) In addition to the amounts so deducted, the employer shall contribute 1,75% per week of the employee's wage in respect of each employee who has worked during that week, irrespective of the time so worked.
- (b) The employer shall add his contribution to that deducted from each employee's weekly earnings and shall forward this total to the Secretary of the Fund, P.O.Box 18354, Dalbridge, 4014, so as to reach the said Secretary not later than 10 days after the end of each calendar month, together with a list showing the Council registration numbers of the employees and the amounts.
- (5) (a) The fund shall be applied to provide employees with medical treatment, medicine and sick pay in case of illness.
- (b) The Council shall contribute R150 000,00 from the Fund to HIV/AIDS education and treatment programmes during the period of operation of this Amending Agreement.
- (6) (a) The Fund shall be administered by a Management Committee consisting of one representative each from the employers and employees appointed by the Council, together with the Chairman and Vice-Chairman of the Council, who shall be *ex officio* members of the Management Committee, who may make regulations not inconsistent with the provisions of this clause.
- (b) For each representative an alternative shall be appointed.
- (c) All the decisions of the Management Committee shall be subject to ratification by the Council.
- (7) For the purpose of benefits, sickness shall mean any illness, affliction or disease including pregnancy of employees who are eligible for maternity benefits in terms of the Unemployment Insurance Act, 1966, but excluding-
- (a) venereal disease and illness, affliction or disease which is attributable to misconduct or excessive indulgence in intoxicating liquors or drugs; and
- (b) any accident, illness or disease in respect of which compensation is payable in terms of the Compensation for Occupational Injuries and Diseases, 1993.
- (8) (a) Payment of benefits shall be subject to the production of a certificate of absence from work to which shall be attached a medical certificate signed by one of the Funds medical officers.
- (b) The Management Committee has the right to require the claimant for benefits to submit himself to such of the fund's medical officers as it may direct.
- (c) Every employer shall complete a certificate of absence from work for each employee who has been off from work through illness and who has produced a medical certificate from a hospital, or a medical officer of the Fund. The employer shall forward such absence from work certificate together with the medical certificate to the Secretary of the Council, P.O. Box 18354, Dalbridge, 4014.
- (9) An employee who has contributed to the Fund for 13 weeks shall, subject to the provisions of subclause (7) and (8) hereof, be entitled to the following benefits during the currency of this part of the Agreement: Provided that the amount standing to the credit of the fund is not less than R200:
- (a) Free medical attention (excluding surgical treatment and maternity cases, save where these are approved in whole or in part by the Management Committee, and venereal diseases) by the medical officer(s) appointed by the Management Committee.
- (b) Free medicine when prescribed by the Fund's medical officer(s): Provided that such are

made up by a chemist(s) specified by the Management Committee, or the Sick Benefit Fund Clinic.

- (c) In any one calendar year, sick pay equal to half a day's wage prescribed in clause 4 for each day of absence from work through illness to a maximum of forty (40) days' absence. Provided that a member shall not be entitled to any sick pay whatsoever in respect of a period of absence of two days or less unless they constitute the first two days of a period of not less than three continuous days' absence, in which case such members shall receive for a period of absence which is limited to three days, one day sick pay. No claim for sick pay shall be recognised if lodged after the expiry of six calendar months, calculated from the date of fitness for work indicated on the medical certificate. In cases of permanent unfitness, the period of six months shall be calculated from the last day in respect of which sick pay is due.
- (d) Contributors become unemployed shall remain eligible for membership of the fund, and, while unemployed, shall be entitled to the benefits prescribed in paragraph (a) and (b) for the following periods:

	Weeks
Those with one year but not exceeding two years' service	6
Those with more than two years but not exceeding five years' service	12
Those with more than five years but not exceeding ten years' service	18
Those with more than ten years' service in each cycle of one year	24

- (e) Should a contributor's period of unemployment exceed that specified in paragraph (d) he shall be required to be employed in the Clothing Industry and contribute to the Fund for a further period of 13 weeks after restarting in the Industry before again becoming eligible for benefits.
- (10) An member who was employed within the Clothing Industry, Natal, for at least 20 years and whose employment was terminated due to ill health or old age shall be entitled to receive medical service upon payment of a R5,00 user charge due to the fund, until the member reaches the age of 65 years.
- (11) In the event of the expiry of this part of the Agreement by effluxion of time or cession or any other cause, the Fund shall continue to be administered by the Management Committee until it be either liquidated or transferred by the Council to any other Fund constituted for the same purpose as that for which the original Fund was created: Provided that the fund shall be liquidated unless an agreement providing for the continuation of the Fund or for the transfer of its moneys as aforesaid, is entered into within 12 months of the date of expiry of this part of the Agreement.
- (12) In the event of the dissolution of the Council or in the event of its ceasing to function during any period in which this part of the Agreement is binding, the Management Committee shall continue to administer the Fund and the members of the Committee existing at the date on which the Council ceases to function or is dissolved shall be deemed to be members thereof for such purposes: Provided, however, that any vacancy occurring on the Committee may be filled by the Registrar of Labour Relations from employers or employees in the Industry, as the case may be, so as to ensure an equality of employer and employee representatives and of alternatives in the membership of the Committee. In the event of such Committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar, he may appoint a trustee or trustees to carry out the duties of the Committee and who shall possess all the powers of the Committee for such purpose. In the event of no Council being in existence the Fund shall upon the expiry of this part of the Agreement be liquidated by the Committee or the trustee, as the case may be, in the manner set forth in subclause (11) of this clause, and if upon such expiry the affairs of the Council have already been wound up and its assets distributed, the balance of the Fund as if it formed part of the general funds of the Council.

- (13) Upon liquidation of the Fund in terms of subclause (11) the moneys remaining to the credit of the Fund after the payment of all claims against the Fund, including administration and liquidation expenses, shall be paid into the general funds of the Council.
- (14) The Management Committee shall have the right to exclude from all the provisions of this clause any employee who, in its opinion, has abused the privileges of the Fund: Provided that an employee may appeal against such exclusion to the Council whose decision shall be final.

### **36. RETRENCHMENT**

- (1) For the purposes of this clause "retrenchment" shall mean the dismissal of an employee for reasons based on the employer's operational requirements.
- (2) The employer shall endeavour to avoid retrenchments by transferring workers to other departments, by training or retraining, by limiting and/or eliminating overtime, working short-time, allowing voluntary retirement and such other suitable alternatives.
- (3) The employer shall furnish Council and the Union with the following information:
  - (a) The reasons for the proposed retrenchments;
  - (b) approximate number of employees to be retrenched and the job categories in which they are employed;
  - (c) the proposed method for selecting which employees to dismiss;
  - (d) the date when the dismissals are likely to take effect;
  - (e) the severance pay proposed.
- (4) The employer shall consult with the Union on the need and extent of the proposed retrenchment and the fairness of selection of employees to be retrenched:
  - (a) An employer must pay an employee who is retrenched severance pay equal to one weeks wage for each completed year of continuous service with that employer, unless the employer has been exempted from the provisions of subclause.
  - (b) An employee who unreasonably refused to accept the employer's offer of alternative employment with that employer or any other employer is not entitled to severance pay in terms of paragraph (a) above.
- (5)
  - (a) The employer shall give the Council and the Union at least 21 days written notice provided that the Union and the employer may reduce the period of notice by mutual agreement which agreement shall not be unreasonably withheld.
  - (b) The notice shall not run concurrently with the Annual Shutdown period of the employer's establishment.
- (6) Where an employer has retrenched employees he shall, if he subsequently engages additional employees, as far as is possible, give preference to the reengagement of those employees who were retrenched from his establishment within the previous 6 (six) months.

### **37. FINANCIAL MATTERS**

- (1) The Council shall, in accordance with the standards of generally accepted accounting practice, principles and procedures-
  - (a) keep books and records of the income, expenditure, assets and liabilities of the Funds referred to in clauses 14 (3) (a), 15 and 35 and of the Council;

- (b) within six (6) months after the end of each financial year, prepare financial statements including-
  - (i) a statement of income and expenditure for the previous financial year; and
  - (ii) a balance sheet showing it's assets, liabilities and financial positions as at the end of the previous financial year.
- (2) (a) The Council shall arrange for an annual audit of the books and records of account and the financial statements of the funds referred to in clauses 14 (3) (a), 15 and 35 and of the Council;
- (b) the auditor appointed by the Council shall--
  - (i) be registered to practice in the Republic of South Africa as a public accountant and auditor;
  - (ii) conduct the audit in accordance with generally accepted auditing standards; and
  - (iii) report in writing to the Council: Which report shall include the auditor's opinion as to whether or not the Council has complied with those provisions of it's constitution related to financial matters.
- (3) The financial statements and auditor's reports shall be-
  - (a) available to the parties to the Council or their representatives for inspection;
  - (b) submitted to a meeting of the Council;
  - (c) provided to the Registrar of labour relations within thirty (30) days of receipt of the auditor's report.
- (4) All monies referred by the funds referred to in clause 14 (3) (a), 15 and 35 shall be deposited into a banking account opened in the name of the Fund. Withdrawals from the Fund shall be by cheque signed by a person duly authorised by the Council.
- (5) The money of any Fund referred to in clauses 14 (3) (a), 15 and 35 that is surplus to that Fund's requirements or the expenses of the Fund may be invested in-
  - (a) savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
  - (b) a registered unit trust;
  - (c) internal registered stock as contemplated in section 21 of the Exchequer Act, 1975; and
  - (d) any other manner approved by the Registrar of labour relations.
- (6) All expenses of administration, banking and auditing shall be a charge against that Fund.

### **38. DISPUTE PROCEDURE**

- (1) Unless otherwise provided in the Council's Constitution or in this Collective Agreement, any dispute within the registered scope of the Council shall be resolved as set out below:
  - (a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.
  - (b) The Council shall, from time to time, adopt by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.

- (c) When any dispute is allocated to a Regional Chamber in terms of this clause, then such Regional Chamber shall have the same rights, powers and obligations as the Council.

**(2) Accreditation:**

- (a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by decision apply to the governing body of the CCMA for accreditation to perform these functions, as appropriate.
- (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of section 51 (3) of the Act.

**(3) Panel of conciliators, arbitrators and senior arbitrators:**

- (a) The Council shall appoint
  - (i) a panel of conciliators, for the purpose of conciliating disputes;
  - (ii) a panel of arbitrators, for the purpose of determining disputes;
  - (iii) a panel of senior arbitrators, for the purpose of determining disputes where:
    - (aa) the nature of the questions of law raised by the dispute;
    - (bb) the complexity of the dispute;
    - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
    - (dd) the public interest requires the appointment of a senior arbitrator and a party to the dispute requests that the Council refer the dispute for determination by a senior arbitrator.
- (b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
- (c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and arbitrators, the following process shall be followed:
  - (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council shall do likewise.
  - (ii) The lists prepared by the parties shall be exchanged, and the union parties shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the union parties.
  - (iii) In the event of the number of remaining vacancies being an even number, half of the vacancies shall be filled by appointing the nominees most preferred by the union parties from the employer parties' list, and the remaining half by appointing the nominees most preferred by the employer parties from the union parties' list.
  - (iv) In the event that the number of remaining vacancies is an odd number, then the appointments from the parties' lists shall make up the number of vacancies less one, and the final vacancy shall be filled by inserting the names of the next most

preferred nominee from each list into a hat, from which the General Secretary of the Council shall draw the name of the remaining appointee.

- (d) The arbitrators and senior arbitrators are to be appointed to the relevant panel for a period of two years, after which period they may be re-appointed by agreement between all the parties to the Council. Should any or all of the arbitrators and senior arbitrators not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies shall be filled in accordance with the method described in subclause (3) (c) above.
- (e) Notwithstanding subclause (3) (d) above, the Council may remove a member of the panel of conciliators or arbitrators from office:
  - (i) for serious misconduct; or
  - (ii) owing to incapacity; or
  - (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal of that member from the panel.
- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance with the method described in subclause (3) (c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to subclause (3) (1), a person may be appointed to one or more of the panel of conciliators or arbitrators or senior arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators: Provided that, should the Council have an interest in the dispute to be arbitrated, employees of the Council shall not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a procedure to allocate disputes to the panel, the General Secretary of the Council or another designated official shall appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

**(4) *Disputes involving non-parties to the Council:***

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the Council, shall be resolved by the Council in accordance with the following procedure:

**(a) *Referral and conciliation of disputes***

- (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the outcome sought.
- (ii) The party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute.



- (iii) The General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council's receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute.
- (iv) The conciliator may, during conciliation proceedings
  - (aa) mediate the dispute;
  - (bb) conduct a fact-finding exercise; and
  - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
- (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.
- (vi) At the end of the thirty (30) day period, referred to in subclause (4) (a) (iii) above or any further period agreed to in writing by the parties to the dispute, the General Secretary or other designated official of the Council shall issue a certificate stating whether or not the dispute has been resolved.
- (vii) Nothing in this part of the Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.

**(b) *Adjudication of disputes referred to the Council for arbitration:***

- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if-
  - (aa) the Act requires that the dispute be arbitrated; or
  - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether such dispute may be subject to the jurisdiction of the CCMA or Labour Court in terms of the Act.
- (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitrator may permit a late request for arbitration on good cause shown.
- (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (v) Any party who has a legal interest in the arbitration may apply to the arbitrator to be allowed to intervene in the arbitration. Such intervention may be allowed by the arbitrator, who shall have the power to grant an adverse costs order against that party if such intervention is found by the arbitrator to be frivolous or vexatious.
- (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (4) (b) (v) above has been granted by the

arbitrator, shall have the right to-

- (aa) give evidence;
- (bb) call witnesses;
- (cc) question the witnesses of any other party;
- (dd) address arguments to the arbitrator;
- (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.
- (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for conciliators and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable, sections 139, 140 and 141 of the Act, read with the changes required by the context.
- (viii) Representation at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
- (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of sections 138 and 142 of the Act.
- (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final and binding on the parties to the dispute. The arbitrator shall, however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord; and without limiting the generality thereof, the arbitrator shall have this power if-
  - (aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
  - (bb) the award is ambiguous or contains an obvious error or omission;
  - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.
- (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.
- (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council shall apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

**(5) Disputes involving parties to the Council-**

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official shall appoint a member of the panel of conciliators, who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by the parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.

- (c) Any other dispute between parties to the Council which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, shall be resolved by the Council in accordance with the procedure set out in subclause (4) above, subject to subclause (5) (d) below.
- (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the panel of senior arbitrators to arbitrate the dispute.

**(6) Compliance procedure and enforcement of collective agreements by Council-**

- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to promote, monitor and enforce compliance with this Collective Agreement concluded in the Council.
- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such designated agent shall have the power to issue a compliance order.
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:
  - (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber.
  - (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent may endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by, the Council, where these exist, by-
    - (aa) publicising the contents of the agreement;
    - (bb) conducting inspections;
    - (cc) investigating complaints;
    - (dd) endeavouring to secure compliance with the agreement through conciliation; or
    - (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.
  - (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to the General Secretary of the Council and a designated official of the Regional Chamber.
  - (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the

unresolved dispute to arbitration.

- (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber shall request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.
- (viii) The provisions of subclause (4) (b) (v) to (4) (b) (xii) above shall apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including-
  - (aa) ordering any person to pay any amount owing in terms of a collective agreement;
  - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and section 33A (13) of the Act;
  - (cc) charging a party to the arbitration an arbitration fee;
  - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
  - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
  - (ff) any award contemplated in section 138 (9) of the Act;
  - (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of subclause (6) shall be final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.
- (xii) The provisions of this procedure shall stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

**(7) Non-Compliance**

- (a) Outsourcing to non-compliant companies shall not be permitted in the industry.
- (b) The parties shall enter into agreements with all Provincial and Local governments which shall have the effect that their sourcing from the

Industry shall include a requirement to only source from companies which hold a valid Certificate of Compliance from the bargaining council.

**(8) Compliance Promotion**

- 8.1 All current non-compliant companies which meet a minimum of 80% of the party-to-party *negotiated wage rate* for current employees, shall be regarded as level B compliant, subject to sub-clause 8.2 below.
- 8.2 All companies described in 8.1 above shall achieve 100% wage compliance within a period of 18 months from 1 September 2012, in 6 monthly equal increments, failing which full compliance enforcement including the execution of writs shall apply to them.
- 8.3 The arrears of non-compliant companies shall be ring-fenced in a 'suspense account' at 100% of the verified arrears value and a written time-bound repayment plan agreed with the bargaining council. They should also sign a legally enforceable acknowledgement of debt.
- 8.4 The current policy that allows for a maximum of 6-months as a repayment period for arrears shall be amended, to allow for a maximum eighteen (18) months repayment period with effect from 1 November 2012.
- 8.5 The arrears will become payable in full should the employer become non-compliant, or default on the repayment plan at any time in future, unless otherwise agreed by the parties.
- 8.6 At every future meeting of the National Bargaining Council, each party shall make one practical concrete suggestion on how to further promote compliance in the industry.
- 8.7 The National Bargaining Council General Secretary shall have unfettered authority to serve any writ of execution upon any employer who fails to become compliant in terms of the new compliance provisions envisaged in this agreement, unless the parties agree otherwise.
- 8.8 Nothing in this agreement shall have the effect of downward migration of conditions of employment for any current employee.
- 8.9 The Trade Union shall have the unfettered right to embark on industrial action against any company which fails to implement the terms of this agreement."

**39. ATYPICAL WORK AND SUBCONTRACTING**

- (1) The same terms and conditions of employment applicable to a permanent employee shall apply to a contract worker in that job grade, unless otherwise specified in this part of the Agreement.
- (2) The Council shall conduct a biannual survey amongst employers to analyse trends relating to contract work, outsourcing, subcontracting and the use of homeworkers.
- (3)
  - (a) The Council shall conduct a survey on the extent and type of contract work in the clothing industry.
  - (b) Every employer shall complete a questionnaire as approved by the Council.
  - (c) All employers are required to co-operate with the survey.

#### 40. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

- (1) This part of the Agreement shall remain in force until 31 August 2013: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this part of the Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 September 2012.
- (2) The parties to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.
- (3) The reference to negotiations in subclause (2) above shall mean negotiations as contemplated in subclause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

#### 41. PRODUCTIVITY

The Productivity Scheme which was agreed to is:

Contained in Annexure B.

- (1) The bargaining council shall establish a dedicated productivity unit to promote productivity issues in the industry, as part of the NBC's value-added services.
- (2) The bargaining council shall commission a feasibility study for the establishment of a training institute similar to the previous Clothing Industry Training Board (CITB), to be operated under the auspices of the bargaining council as part of the NBC's value-added services.
- (3) Absenteeism
  - (i) The memorandum of Understanding as conclude between the parties on 14 June 2007 and implemented shall remain in effect for the duration of the Agreement only.
  - (ii) Where companies' have introduced the productivity scheme as per the provisions of the absenteeism MOU, such schemes are extended for the duration of this agreement, subject to plant level agreements entered into and signed off.

#### 42. AGENCY SHOP

Those employees, who are not bound by the closed shop, shall pay an agency fee to the trade union, equal to the amount of the union subscriptions.

- (1) No union agency fee subscriptions collected in terms of this agreement may be:
  - (a) paid to a political party as an affiliation fee;

- (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
- (c) used for any expenditure that does not advance collective bargaining or protect the socio-economic interest of employees.

This agency fee shall be deducted from the wages of the employees who are not members of SACTWU and paid over to the Bargaining Council's KZN Chamber who shall pay these funds over to SACTWU.

#### **43. INDUSTRY PROTECTION FUND**

Contained in Annexure C.

#### **44. HIV/AIDS**

The Code of Good Practice on Key Aspects of HIV/AIDS and Employment as set out in Annexure A to this agreement shall be policy in the industry.

##### **World International HIV/AIDS Day**

The industry acknowledges the importance of creating awareness of the HIV/AIDS pandemic. To this end, employers are encouraged to grant employees on World International HIV/AIDS Day thirty minutes paid time off to participate in awareness activities agreed to at industry level.

#### **45. CONTRACT EMPLOYEES**

Contained in Annexure D.

#### **46. WORKING IN ARRANGEMENTS**

Employees shall be permitted to work in the time lost due to strike action incurred during the September / October 2009 protected wage strike at normal rates of pay, provided that this is agreed to at plant level and further provided that where agreed, such employees shall be offered a loan equal to between one week and two weeks' wages, deductible from their wages in equal weekly amounts over a 10 week period.

**ANNEXURE A****CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV/AIDS  
AND EMPLOYMENT WITHIN THE CLOTHING MANUFACTURING  
INDUSTRY OF SOUTH AFRICA****1. INTRODUCTION**

- 1.1. The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems, which have socio economic, employment and human rights implications.
- 1.2. It is recognised that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale.
- 1.3. HIV knows no social, gender, age or racial boundaries, but it is accepted that socio-economic circumstances do influence disease patterns. HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women, particularly are more vulnerable to infection in cultures and economic circumstances where they have little control over their lives.
- 1.4. Furthermore HIV/AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.
- 1.5. One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and programme. Addressing aspects of HIV/AIDS in the workplace will enable employers, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. In light of this, the Code has been developed as a guide to employers, trade unions and employees.
- 1.6. Furthermore the Code seeks to assist with the attainment of the broader goals of:
- eliminating unfair discrimination in the workplace based on HIV status;
  - promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection;
  - promoting appropriate and effective ways of managing HIV in the workplace;
  - creating a balance between the rights and responsibilities of all parties.

**2. OBJECTIVES**

- 2.1. The Code's primary objective is to set out a policy for employers and the trade union within the clothing manufacturing industry to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:
- (i) creating a non-discriminatory work environment;
  - (ii) dealing with HIV testing, confidentiality and disclosure;
  - (iii) providing equitable employee benefits;



- (iv) dealing with dismissals; and
  - (v) managing grievance procedures.
- 2.2. The Code's secondary objective is to provide a policy for employers, employees and the trade union within the clothing manufacturing industry on how to manage HIV/AIDS within the workplace. Since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed in item 5.1., on the following:
- (i) creating a safe working environment for all employers and employees;
  - (ii) developing procedures to manage occupational incidents and claims for compensation;
  - (iii) introducing measures to prevent the spread of HIV;
  - (iv) developing strategies to assess and reduce the impact of the epidemic upon the workplace; and
  - (v) supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.
- 2.3 In addition, the Code promotes the establishment of mechanisms to foster co-operation at the following levels:
- (i) between employers, employees and the trade union in the workplace; and
  - (ii) between the workplace and other stakeholders at a sectoral, local, provincial and national level.

### **3. POLICY PRINCIPLES**

- 3.1. The promotion of equality and non-discrimination between individuals with HIV infection and those without, and between HIV/AIDS and other comparable health/medical conditions.
- 3.2. The creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.
- 3.3. The protection of human rights and dignity of people living with HIV or AIDS is essential to the prevention and control of HIV/AIDS.
- 3.4. HIV/AIDS impacts disproportionately on women and this should be taken into account in the development of workplace policies and programmes.
- 3.5 Consultation, inclusivity and encouraging full participation of all stakeholders are key principles which should underpin every HIV/AIDS policy and programme.

### **4. APPLICATION AND SCOPE**

- 4.1. All employers and employees within the clothing manufacturing industry, and their respective organisations are encouraged to use this Code to develop, implement and refine their HIV/AIDS policies and programmes to suit the needs of their workplaces.
- 4.2. For the purposes of this code, the term "workplace" should be interpreted more broadly than the definition given in the Labour Relations Act, Act 66 of 1995, Section 213, to include the working environment of, amongst others, persons not necessarily in an employer-employee relationship, those working in the informal sector and the self-employed.

- 4.3. This Code, however, does not impose any legal obligation in addition to those in the Employment Equity Act, the Labour Relations Act and this code, or in any other legislation referred to in the Code.
- 4.4. The Code should be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

## 5. LEGAL FRAMEWORK

- 5.1. The Code should be read in conjunction with the Constitution of South Africa Act, No. 108 of 1996, and all relevant Legislation which includes the following:
- (i) Employment Equity Act, No. 55 of 1998;
  - (ii) Labour Relations Act, No. 66 of 1995;
  - (iii) Occupational Health and Safety Act, No. 85 of 1993;
  - (iv) Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
  - (v) Basic Conditions of Employment Act, No. 75 of 1997; and
  - (vi) Medical Schemes Act, No. 131 of 1998.
  - (vii) Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000.
- 5.2. The contents of this code should be taken into account when developing, implementing or reviewing any workplace policies or programmes in terms of the statutes listed above.
- 5.3. The following are selected, relevant sections contained in certain of the above-mentioned legislation. These should be read in conjunction with other legislative provisions.
- 5.3.1. The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, No 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist employers and employees to apply this principle consistently in the workplace, the Code makes reference to other pieces of legislation.
- 5.3.2. Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.
- 5.3.3. No employee, or applicant for employment, may be required by their employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of an employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.
- 5.3.4. In accordance with Section 187(1)(f) of the Labour Relations Act, No. 66 of 1995, an employee with HIV/AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188(1)(a)(i).
- 5.3.5. In terms of Section 8(1) of the Occupational Health and Safety Act, No. 85 of 1993; an employer is obliged to provide, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.

- 5.3.6. An employee who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, may apply for benefits in terms of Section 22(1) of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.
- 5.3.7. In accordance with the Basic Conditions of Employment Act, No. 75 of 1997, every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick leave [Section 22(2)].
- 5.3.8. In accordance with Section 24(2)(e) of the Medical Schemes Act, No 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their "state of health". Further in terms of s 67(1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefits to their members.
- 5.3.9. In accordance with both the common law and Section 14 of the Constitution of South Africa Act, No. 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

## **6. PROMOTING A NON-DISCRIMINATORY WORK ENVIRONMENT**

- 6.1. No person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, including with regard to:
- (i) recruitment procedures, advertising and selection criteria;
  - (ii) appointments, and the appointment process, including job placement;
  - (iii) job classification or grading;
  - (iv) remuneration, employment benefits and terms and conditions of employment;
  - (v) employee assistance programmes;
  - (vi) job assignments;
  - (ix) training and development;
  - (x) performance evaluation systems;
  - (xi) promotion, transfer and demotion;
  - (xiii) termination of services.
- 6.2. To promote a non-discriminatory work environment based on the principle of equality, employers and the trade union should adopt appropriate measures to ensure that employees with HIV and AIDS are not unfairly discriminated against and are protected from victimisation through positive measures such as:
- (i) preventing unfair discrimination and stigmatisation of people living with HIV or AIDS through the development of HIV/AIDS policies and programmes for the workplace;
  - (ii) awareness, education and training on the rights of all persons with regard to HIV and AIDS;
  - (iii) mechanisms to promote acceptance and openness around HIV/AIDS in the workplace;
  - (iv) providing support for all employees infected or affected by HIV and AIDS; and
  - (v) grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

## **7. HIV TESTING, CONFIDENTIALITY AND DISCLOSURE**

### **7.1. HIV Testing**

7.1.1. No employer may require an employee, or an applicant for employment, to undertake an HIV test in order to ascertain that employee's HIV status. As provided for in the Employment Equity Act, employers may approach the Labour Court to obtain authorisation for testing.

7.1.2. Whether s 7(2) of the Employment Equity Act prevents an employer-provided health service supplying a test to an employee who requests a test, depends on whether the Labour Courts would accept that an employee can knowingly agree to waive the protection in the section. This issue has not yet been decided by the courts. <sup>1[1]</sup>

7.1.3. In implementing the sections below, it is recommended that parties take note of the position set out in item

7.1.4. Authorised testing

Employers must approach the Labour Court for authorisation in, amongst others, the following circumstances:

- (i) during an application for employment;
- (ii) as a condition of employment;
- (iii) during procedures related to termination of employment;
- (iv) as an eligibility requirement for training or staff development programmes; and
- (v) as an access requirement to obtain employee benefits.

7.1.5. Permissible testing

(a) An employer may provide testing to an employee who has requested a test in the following circumstances:

- (i) As part of a health care service provided in the workplace;
- (ii) In the event of an occupational accident carrying a risk of exposure to blood or other body fluids;
- (iii) For the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.

(b) Furthermore, such testing may only take place within the following defined conditions:

- (i) At the initiative of an employee;
- (ii) Within a health care worker and employee-patient relationship;
- (iii) With informed consent and pre- and post-test counselling, as defined by the Department of Health's National Policy on Testing for HIV; and
- (iv) With strict procedures relating to confidentiality of an employee's HIV status as described in clause 7.2 of this Code.

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<sup>1[1]</sup> The Employment Equity Act does not make it a criminal offence for an employer to conduct a test in violation of s 7(2). However an employee who alleges that his or her right not to be tested has been violated may refer a dispute to the National Bargaining Council for conciliation, and if this does not resolve the dispute, to the Labour Court for determination.

- 7.1.6 All testing, including both authorised and permissible testing, should be conducted in accordance with the Department of Health's National Policy on Testing for HIV issued in terms of the National Policy for Health Act, No. 116 of 1990.
- 7.1.7. Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.
- 7.1.8. Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research.<sup>2[2]</sup> Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.

## **7.2. Confidentiality and Disclosure**

- 7.2.1. All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.
- 7.2.2. Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.
- 7.2.3. Mechanisms should be created to encourage openness, acceptance and support for those employers and employees who voluntarily disclose their HIV status within the workplace, including:
- (i) encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes;
  - (ii) encouraging the development of support groups for employees living with HIV or AIDS; and
  - (iii) ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

## **8. PROMOTING A SAFE WORKPLACE**

- 8.1 An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.
- 8.2 The risk of HIV transmission in the workplace is minimal. However occupational accidents involving bodily fluids may occur, particularly in the health care professions. Every workplace should ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents, and that its policy deals with, amongst others:
- (i) the risk, if any, of occupational transmission within the particular workplace;

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<sup>2[2]</sup> See amongst others the Department of Health's National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.

- (ii) appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace;
- (iii) providing appropriate equipment and materials to protect employees from the risk of exposure to HIV;
- (iv) the steps that must be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis;
- (v) the procedures to be followed in applying for compensation for occupational infection;
- (vi) the reporting of all occupational accidents; and
- (vii) adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

## **9. COMPENSATION FOR OCCUPATIONALLY ACQUIRED HIV**

- 9.1. An employee may be compensated if he or she becomes infected with HIV as a result of an occupational accident, in terms of the Compensation for Occupational Injuries and Diseases Act.

Employers should take reasonable steps to assist employees with the application for benefits including:

- (i) providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and
- (ii) assisting with the collection of information which will assist with proving that the employees were occupationally exposed to HIV infected blood.

- 9.2. Occupational exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act. Employers should ensure that they comply with the provisions of this Act and any procedure or guideline issued in terms thereof.

## **10. EMPLOYEE BENEFITS**

- 10.1. Employees with HIV or AIDS may not be unfairly discriminated against in the allocation of employee benefits
- 10.2. Employees who become ill with AIDS should be treated like any other employee with a comparable life threatening illness with regard to access to employee benefits.
- 10.3. Information from benefit schemes on the medical status of an employee should be kept confidential and should not be used to unfairly discriminate.
- 10.4. Where an employer offers a medical scheme as part of the employee benefit package it must ensure that this scheme does not unfairly discriminate, directly or indirectly, against any person on the basis of his or her HIV status.

## **11. DISMISSAL**

- 11.1. Employees with HIV/AIDS may not be dismissed solely on the basis of their HIV/AIDS status.
- 11.2. Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before

terminating an employee's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.

- 11.3. The employer should ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorised such a test.

## **12. GRIEVANCE PROCEDURES**

- 12.1. Employers should ensure that the rights of employees with regard to HIV/AIDS, and the remedies available to them in the event of a breach of such rights, become integrated into existing grievance procedures.
- 12.2. Employers should create an awareness and understanding of the grievance procedures and how employees can utilise them.
- 12.3. Employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

## **13. MANAGEMENT OF HIV IN THE WORKPLACE**

- 13.1. The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst others, the following elements:

13.1.1. An understanding and assessment of the impact of HIV/AIDS on the workplace; and

13.1.2. Long and short term measures to deal with and reduce this impact, including:

- (i) An HIV/AIDS Policy for the workplace
- (ii) HIV/AIDS Programmes, which would incorporate:
  - (a) Ongoing sustained prevention of the spread of HIV among employees and their communities;
  - (b) Management of employees with HIV so that they are able to work productively for as long as possible; and
  - (c) Strategies to deal with the direct and indirect costs of HIV/AIDS in the workplace.

## **14. ASSESSING THE IMPACT OF HIV/AIDS ON THE WORKPLACE**

- 14.1. Employers and the trade union should develop appropriate strategies to understand, assess and respond to the impact of HIV/AIDS in their particular workplace and sector. This should be done in cooperation with sectoral, local, provincial and national initiatives by government, civil society and non-governmental organisations.

14.2. Broadly, impact assessments should include:

- (i) Risk profiles; and
- (ii) Assessment of the direct and indirect costs of HIV/AIDS;

14.3. Risk profiles may include an assessment of the following:

- (i) The vulnerability of individual employees or categories of employees to HIV infection;
  - (ii) The nature and operations of the organisation and how these may increase susceptibility to HIV infection (e.g. migrancy or hostel dwellings);
  - (iii) A profile of the communities from which the organisation draws its employees;
  - (iv) A profile of the communities surrounding the organisation's place of operation; and
  - (v) An assessment of the impact of HIV/AIDS upon their target markets and client base.
- 14.4. The assessments should also consider the impact that the HIV/AIDS epidemic may have on:
- (i) Direct costs such as costs to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment costs and the costs of implementing an HIV/AIDS programme;
  - (ii) Indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption;
- 14.5. The cost effectiveness of any HIV/AIDS interventions should also be measured as part of an impact assessment

## **15. MEASURES TO DEAL WITH HIV/AIDS WITHIN THE WORKPLACE**

### **15.1. A Workplace HIV/AIDS Policy**

15.1.1. Every workplace should develop an HIV/AIDS policy<sup>3[3]</sup>, in order to ensure that employees affected by HIV/AIDS are not unfairly discriminated against in employment policies and practices. This policy should cover:

- (i) the organisation's position on HIV/AIDS;
- (ii) an outline of the HIV/AIDS programme;
- (iii) details on employment policies (e.g. position regarding HIV testing, employee benefits, performance management and procedures to be followed to determine medical incapacity and dismissal);
- (iv) express standards of behaviour expected of employers and employees and appropriate measures to deal with deviations from these standards;
- (v) grievance procedures in line with item 12 of this Code;
- (vi) set out the means of communication within the organisation on HIV/AIDS issues;
- (vii) details of employee assistance available to persons affected by HIV/AIDS;
- (viii) details of implementation and coordination responsibilities; and
- (ix) monitoring and evaluation mechanisms.

15.1.2. All policies should be developed in consultation with key stakeholders within the workplace including the trade union, employee representatives, occupational health staff and the human resources department.

15.1.3. The policy should reflect the nature and needs of the particular workplace.

15.1.4. Policy development and implementation is a dynamic process, so the workplace policy should be:

- (i) communicated to all concerned;

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<sup>3[3]</sup> This policy could either be a specific policy on HIV/AIDS, or could be incorporated in a policy on life threatening illness.



- (ii) routinely reviewed in light of epidemiological and scientific information; and
- (iii) monitored for its successful implementation and evaluated for its effectiveness.

## **15.2. Developing Workplace HIV/AIDS Programmes**

15.2.1. It is recommended that every workplace works towards developing and implementing a workplace HIV/AIDS programme aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of the epidemic in the organisation.

15.2.2. The nature and extent of a workplace programme should be guided by the needs and capacity of each individual workplace. However, it is recommended that every workplace programme should attempt to address the following in cooperation with the sectoral, local, provincial and national initiatives:

- (i) hold regular HIV/AIDS awareness programmes;
- (ii) encourage voluntary testing;
- (iii) conduct education and training on HIV/AIDS;
- (iv) promote condom distribution and use;
- (v) encourage health seeking behaviour for STD's;
- (vi) enforce the use of universal infection control measures;
- (vii) create an environment that is conducive to openness, disclosure and acceptance amongst all staff;
- (viii) endeavour to establish a wellness programme for employees affected by HIV/AIDS;
- (ix) provide access to counselling and other forms of social support for people affected by HIV/AIDS;
- (x) maximise the performance of affected employees through reasonable accommodation, such as investigations into alternative sick leave allocation;
- (xi) develop strategies to address direct and indirect costs associated with HIV/AIDS in the workplace, as outlined under item 14.4
- (xii) regularly monitor, evaluate and review the programme.

15.2.3. Employers should take all reasonable steps to assist employees with referrals to appropriate health, welfare and psycho-social facilities within the community, if such services are not provided at the workplace

## **16. INFORMATION AND EDUCATION**

16.1. The National Bargaining Council should ensure that copies of this code are available and accessible.

16.2. Employers and employer organisations should include the Code in their orientation, education and training programmes of employees.

16.3. The trade union should include the Code in their education and training programmes of shop stewards and employees.

**GLOSSARY**

<b><i>Affected employee</i></b>	an employee who is affected in any way by HIV/AIDS e.g. if they have a partner or a family member who is HIV positive
<b><i>AIDS</i></b>	AIDS is the acronym for “acquired immune deficiency syndrome”. AIDS is the clinical definition given to the onset of certain life-threatening infections in persons whose immune systems have ceased to function properly as a result of infection with HIV.
<b><i>Epidemiological</i></b>	The study of disease patterns, causes, distribution and mechanisms of control in society.
<b><i>HIV</i></b>	HIV is the acronym for “human immuno deficiency virus”. HIV is a virus which attacks and may ultimately destroy the body’s natural immune system.
<b><i>HIV testing</i></b>	taking a medical test to determine a person’s HIV status. This may include written or verbal questions inquiring about previous HIV tests; questions related to the assessment of ‘risk behaviour’ (for example questions regarding sexual practices, the number of sexual partners or sexual orientation); and any other indirect methods designed to ascertain an employee’s or job applicant’s HIV status.
<b><i>HIV positive</i></b>	having tested positive for HIV infection.
<b><i>Infected employee</i></b>	an employee who has tested positive for HIV or who has been diagnosed as having HIV/AIDS.
<b><i>Informed consent</i></b>	a process of obtaining consent from a patient which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it.
<b><i>Policy</i></b>	a document setting out an organisation’s position on a particular issue.
<b><i>Pre and post test counselling</i></b>	a process of counselling which facilitates an understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence the result, positive or negative, will have on them.
<b><i>Reasonable Accommodation</i></b>	means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with HIV or AIDS to have access to or participate or advance in employment.
<b><i>STDs</i></b>	acronym for “sexually transmitted diseases”. These are infections passed from one person to another during sexual intercourse, including syphilis, gonorrhoea and HIV.
<b><i>Surveillance Testing</i></b>	This is anonymous, unlinked testing which is done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease.

**ANNEXURE B****PRODUCTIVITY**

**The following provisions shall be applicable to the plant level productivity incentive schemes:**

- (1) Employers shall pay an amount of 0.5% of the weekly wage into a dedicated productivity incentive bank account. This must be done on a weekly basis or on the date that wages is normally paid, if it is paid at a time other than weekly.
- (2) The money in this productivity incentive bank account is ringfenced for the introduction of plant level productivity incentive schemes only.
- (3) This productivity incentive scheme bank account shall be opened and authorised on the basis of co-signatures, as follows: a person nominated by management plus a SACTWU shop steward (where there are no shop stewards at a workplace, a representative nominated by the workers shall be the second signatory).
- (4) With effect from 1 September 2008, each workplace shall have a period of 2 months within which they must reach agreement between management and the union about how the productivity incentive scheme at that workplace will function and how the incentives are to be paid.
- (5) If there is no productivity incentive scheme agreement reached by 1 November 2008, all the monies in the productivity bank account must be paid out to the workers as part of their wages, until an agreement on an appropriate productivity incentive scheme is reached.
- (6) The productivity incentive scheme agreements reached must ensure that all workers covered by the terms of this agreement, not just some, shall benefit from the incentive scheme.
- (7) All productivity scheme agreements reached must be registered with the National Bargaining Council for the Clothing Manufacturing Industry, within 1 month after agreement has been reached.
- (8) Productivity incentive scheme agreements shall not contain any provisions, which have the effect of downward variation of any term or condition of employment.
- (9) The productivity incentive scheme envisaged in this agreement shall be in addition to and not in place of any existing productivity incentive scheme, which may currently exist.
- (10) If the workplace closes or is liquidated, all the money left in the productivity incentive bank account must be paid out to the employees at that workplace and who are covered by the terms of this agreement.

**ANNEXURE C****INDUSTRY PROTECTION FUND**

- (1) In terms of section 28 (1) (g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.
- (2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the parties to the Bargaining Council, where such programmes are aimed at protecting the Industry in the respective Region.
- (3) The Fund shall commence on such date as decided by the parties to the Regional Council and shall continue to operate until such date as the Regional Chamber and the parties thereto may decide.
- (4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this part of the Agreement, an amount of 10 cents.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of sub-clause (4) above, contribute an amount of 10 cents per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the payment date specified in the relevant part of the Agreement and in the form and manner specified in relevant clause of each part of the Agreement.
- (7) The moneys collected by the Regional Chamber shall be paid monthly by the Regional Chamber into a bank account styled "Fashion Industry Protection Fund" opened by the Regional Chamber of the Bargaining Council for the purpose of receiving these funds and for disbursing them for the purpose for which they are intended.
- (8) The moneys collected shall be used by the Regional Chamber to finance the following bona fide strategies in pursuit of the objects of the Fund as set out in sub-clause (2), and including
  - (a) "Buy Local" campaigns;
  - (b) Combating customs fraud and illegal imports; or
  - (c) for such other strategies as meet the objectives of the Fund.
- (9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Regional Employers' Associations who are members of the Bargaining Council become or wish to become engaged in additional strategies or bona fide activities in pursuit of the objectives of the Fund other than those specified in sub-clause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber and shall be recorded as a resolution of the Regional Chamber.

- (10) The Fund's moneys shall be used to meet all reasonable expenses incurred in pursuit of the authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.
- (11) If SACTWU or the Regional Employers' Association is in doubt about whether contemplated expenditure of the Fund's moneys qualifies as expenditure on an authorised activity, SACTWU or the Regional Employers' Association, as the case may be, may request confirmation in advance from the Regional Chamber in this regard.
- (12) No moneys of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this part of the Agreement and SACTWU, the Regional Employers' Association and the Regional Chamber have signed a written agreement.
- (13) Any interest that is earned on Fund moneys at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.
- (14) SACTWU and the Regional Employers' Association shall, as the need arises, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan shall be submitted to the Regional Chamber for approval.
- (15) Expenditure incurred by the parties shall be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber, provided he or she is satisfied that the expenditure-
  - (a) is in terms of the approved plan;
  - (b) is clearly classified by strategy, activity and the nature of the expense; and
  - (c) has been authorised by the Regional Secretary or National Secretary of SACTWU, or the Executive Director of the Regional Employers' Association.

Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure shall be presented to the Regional Chamber for approval prior to payment.

- (16) Any expenses that have been incurred by SACTWU or the Regional Employers' Association for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the Regional Employers' Association, may be recovered by the Regional Chamber from SACTWU or the Regional Employers' Association, as the case may be.
- (17) The Regional Secretary of the Regional Chamber shall be obliged to account to the Regional Chamber every two months in relation to income and expenditure of the Fund. This accounting to the Regional Chamber shall include, but not be limited to, providing a schedule summarising the expenses incurred on authorised activities in pursuance of the objects of the Fund and in respect of which payment is claimed.
- (18) SACTWU and the Regional Employers' Association shall be obliged to report back to the Regional Chamber every two months after the establishment of the Fund on the activities undertaken by their organisation in pursuance of the objects of the Fund and for which funds have been disbursed.
- (19) In the event that there is a disagreement between the parties as to whether any activity or expenditure or proposed activity or expenditure falls within the objects of the Fund, either

party may refer a dispute in this regard for conciliation in terms of clause 15.5 of the Council's Constitution and, if it remains unresolved after conciliation, the proposing party may request the Regional Chamber in writing that the dispute be resolved through arbitration in accordance with clause 15.4.2.1.2 of the Council's Constitution.

- (20) Each party to this part of the Agreement has a pre-emptive right to require all undertakings or commitments between the parties, not only those referred to in this resolution, to be reduced to writing.

**ANNEXURE D**

**CONTRACT EMPLOYEES**

- (1) Those contract employees with 12 months' or more employment with the same employer shall be converted into permanent employees.
- (2) All contract employees shall be entitled to receive a pro-rata share of all statutory payments due to permanent employees.
- (3) All contract employees who are in employ as at the end of November each year shall be entitled to full payment for all public holidays which fall during the annual shutdown period.
- (4) Employees who have completed a learnership shall not be placed on a further contract period after the completion of such a learnership, but shall be employed as a permanent fulltime employee.
- (5) Where there are more beneficial arrangements (other than those set out in sub-clauses (1) to (4) above) governing the employment of contract workers, such provisions shall remain effective.