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AIDS HELPLINE: 0800-0123-22 Prevention is the cure

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GOVERNMENT NOTICES GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF HEALTH DEPARTEMENT VAN GESONDHEID

No. R. 500

30 April 2004

FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, 1972 (ACT NO. 54 OF 1972)

REGULATIONS RELATING TO MAXIMUM LEVELS FOR METALS IN FOODSTUFFS

The Minister of Health has, in terms of section 15(1) of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972), made the regulations in the Schedule.

SCHEDULE

Definitions

1. In these regulations any expression to which a meaning has been assigned in the Act shall bear such meaning and, unless the context indicates otherwise –

“**fish**” means all fish species except shellfish;

“**maximum level**” means the highest acceptable level of a substance, and shall be determined according to the edible content of the foodstuff, i.e. that part of the foodstuff that is normally consumed;

“**metal**” includes any chemical form of that metal;

“**shellfish**” means molluscan bivalves and includes mussels, gastropods and cephalopods; and

“**the Act**” means the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972)

2. For the purpose of section 2(1)(b)(i) of the Act, foodstuffs listed in column II of the Annexure are hereby deemed to be contaminated, impure, decayed, harmful or injurious to human health if they contain the metals in column I in amounts exceeding the corresponding levels in column III when measured using accredited analytical methods.

Repeal

3. The regulations published under Government Notice No. R. 1518 of 9 September 1994 are hereby repealed.

ANNEXURE

MAXIMUM LEVELS FOR METALS IN FOODSTUFFS

(mg/kg or mg/l)

Metal	Foodstuff	Maximum Limit (mg/kg or mg/l)
Antimony (Sb)	Natural mineral water	0.005
	All other liquid foodstuffs	0.15
Arsenic (As)	Chocolate	0.5
	Composite, filled and unsweetened chocolate	1.0
	Fruit juices and nectars	0.2
	Edible fats & oils	0.1
	Natural mineral water	0.01
	Fish and processed fish	3.0
	Meat and processed meat	1.0
Cadmium (Cd)	Cereals, pulses and legumes	0.1
	Fruit and other vegetables	0.05
	Shellfish and shellfish products	3.0
	Fish and processed fish	1.0
	Meat and processed meat	0.05 [†]
	Natural mineral water	0.003
Copper (Cu)	Chocolate	15
	Composite and filled chocolate	20
	Unsweetened chocolate	30
	Vegetable juices, fruit juices and nectars	5.0 [#]
	Natural mineral water	1.0
	Mayonnaise	2.0
	Margarine and minarine	0.1
	Vinegar	10 [^]
Lead (Pb)	Cereal, pulses and legumes	0.2
	Brassica and leafy vegetables except spinach	0.3
	Fruits and all other vegetables	0.1
	Small fruits and berries	0.2
	Vegetable juices, fruit juices and nectars	0.3
	Milk and milk products	0.02
	Meat and processed meat	0.1
	Fish and processed fish	0.5
	Infant formulae	0.02
	Vinegar	1.0
	Mayonnaise	0.3
	Chocolate, composite and filled chocolate	1.0
	Unsweetened chocolate	2.0
	Natural mineral water	0.01

Metal	Foodstuff	Maximum level (mg/kg or mg/l)
Mercury (Hg)	Shellfish and shellfish products	0,5
	Predatory fish, including swordfish	1,0*
	All other fish and processed fish	0,5*
	Natural mineral water	0,001
Tin (Sn)	Canned apple, grape, blackcurrant and small fruit juices and nectars	150
	All other canned fruit juices and nectars, and canned vegetable juices	200
	Canned fruits and vegetables	250
	Canned meat and meat products	200
	Soups and broths	150
	All uncanned meat and meat products	50
Zinc (Zn)	Vegetable juices, fruit juices and nectars	5,0 [#]
	Vinegar	10 [^]

* As methylmercury

Maximum level for the sum of copper and zinc: 20 mg/l

^ Sum of zinc and copper

† Levels do not apply to liver and kidneys


 MINISTER OF HEALTH

DATE: 2-4-2004

No. R. 500

30 April 2004

**WET OP VOEDINGSMIDDELS, SKOONHEIDSMIDDELS EN
ONTSMETTINGSMIDDELS, 1972 (WET NO. 54 VAN 1972)**

**REGULASIES BETREFFENDE DIE MAKSIMUMVLAKKE VIR METALE IN
VOEDINGSMIDDELS**

Die Minister van Gesondheid het ingevolge artikel 15(1) van die Wet op Voedingsmiddels, Skoonheidsmiddels en Ontsmettingsmiddels, 1972 (Wet No. 54 van 1972) die regulasies in die Bylae uitgevaardig.

BYLAE

Woordomskrywing

1. In hierdie regulasies beteken het enige uitdrukking waaraan die Wet 'n betekenis heg, daardie betekenis, en, tensy uit die samehang anders blyk, beteken –

“maksimum vlak” die hoogste aanvaarbare vlak van 'n stof en moet bepaal word volgens die eetbare inhoud van die voedingsmiddel, d.w.s. die deel van die voedingsmiddel wat normaalweg verbruik word;

“metal” ook enige chemiese vorm van daardie metaal;

“skulpvis” tweekleppige weekdiere en omvat mossels, buikpotiges en koppotiges;

“vis” alle vissoorte uitgesonderd skulpvis;

“die Wet” die Wet op Voedingsmiddels, Skoonheidsmiddels en Ontsmettingsmiddels, 1972 (Wet No. 54 van 1972).

2. Vir die doel van artikel 2(1)(b)(i) van die Wet word voedingsmiddels gelys in kolom II van die Aanhangsel hierby geag besmet, onsuiver, bederf, skadelik of nadelig vir menslike gesondheid te wees indien hulle die metale in kolom I bevat in hoeveelhede wat die ooreenstemmende vlakke in kolom III oorskry wanneer gemeet deur die gebruik van geakkrediteerde analitiese metodes.

Herroeping

3. Die regulasies afgekondig by Goewermentskennisgewings No. R. 1518 van 9 September 1994 word hierby herroep.

AANHANGSEL

MAKSIMUMVLAKKE VIR METALE IN VOEDINGSMIDDELS

Metaal	Voedingsmiddel	Maksimumvlak (mg/kg of mg/l)
Antimoon (Sb)	Natuurlike mineraalwater	0,005
	Alle ander vloeibare voedingsmiddels	0,15
Arseen (As)	Sjokolade	0,5
	Saamgestelde, gevulde en onversoete sjokolade	1,0
	Vrugtesappe en nektars	0,2
	Eetbare vette en olies	0,1
	Natuurlike mineraalwater	0,01
	Vis en geprosesseerde vis	3,0
	Vleis en geprosesseerde vleis	1,0
Kadmium (Cd)	Grane en peulgroente	0,1
	Vrugte en ander groente	0,05
	Skulpvis en skulpvisprodukte	3,0
	Vis en geprosesseerde vis	1,0
	Vleis en geprosesseerde vleis	0,05 [†]
	Natuurlike mineraalwater	0,003
Koper (Cu)	Sjokolade	15
	Saamgestelde en gevulde sjokolade	20
	Onversoete sjokolade	30
	Groentesappe, vrugtesappe en nektars	5,0 [#]
	Natuurlike mineraalwater	1,0
	Mayonnaise	2,0
	Margarien en minarien	0,1
	Asyn	10 [^]
Lood (Pb)	Graan en peulgroente	0,2
	Brassica en ander blaargroente uitgesonderd spinasie	0,3
	Vrugte en alle ander groente	0,1
	Vruggies en bessies	0,2
	Groentesappe, vrugtesappe en nektars	0,3
	Melk en melkprodukte	0,02
	Vleis en geprosesseerde vleis	0,1
	Vis en geprosesseerde vis	0,5
	Formulevoedsel vir babas	0,02

Metaal	Voedingsmiddel	Maksimumperk (mg/kg of mg/l)
Lood(Pb)	Asyn	1,0
	Mayonnaise	0,3
	Sjokolade, saamgestelde en gevulde sjokolade	1,0
	Onversoete sjokolade	2,0
	Natuurlike mineraal water	0,01
Kwik (Hg)	Skulpvis en skulpvisprodukte	0,5
	Roofvis insluitende swaardvis	1,0*
	Alle ander vis en geprosesseerde vis	0,5*
	Natuurlike mineraalwater	0,001
Tin (Sn)	Ingemaakte appel-, duiwe-, swartbessie- en vuggiesappe en nektars	150
	Alle ander ingemaakte vrugtesappe en nektars en ingemaakte groentesappe	200
	Ingemaakte vrugte en groente	250
	Ingemaakte vleis en vleisprodukte	200
	Soppe en kragstoppe	150
	Alle nie-ingemaakte vleis en vleisprodukte	50
	Groentesappe, vrugtesappe en nektars	5,0#
Sink (Zn)	Asyn	10^

- * As metielkwik
- # Maksimumvlak vir die som van koper en sink: 20 mg/l
- ^ Som van sink en koper
- † Vlakke is nie van toepassing op lewer en niertjies nie


MINISTER VAN GESONDHEID

DATE: 2-4-2004

No. R. 501

30 April 2004

FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, 1972 (ACT NO.54 OF 1972)

REGULATIONS RELATING TO MARINE BIOTOXINS

The Minister of Health intends, in terms of section 15(1) of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972), to make the regulations set out in the Schedule.

Interested persons are invited to submit any substantiated comments or representations on the proposed regulations to the Director-General of Health, Private Bag X828, Pretoria, 0001 (for the attention of the Director: Food Control), within three months of the date of publication of this notice.

SCHEDULE

Definitions

1. In these regulations **"the Act"** means the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972), and any expression to which a meaning has been assigned in the Act shall bear that meaning and, unless context indicates otherwise-

"biotoxins" means a harmful substance produced by the marine algal species on which some shellfish feed;

"contaminant" means any substance which, though not added intentionally to food, is present in such food as a result of the production (including operations carried out in crop husbandry and veterinary medicine), manufacture, processing, preparation, treatment, packing, transport, or holding of such food or as a result

of environmental contamination, and does not include insect fragments, rodent hairs and other extraneous matter.

“shellfish” means all bivalve molluscs including pectinidae and marine gastropods, but excluding octopus and squids;

General

2. For the purpose of section 2(1)(b)(i) of the Act, shellfish and shellfish products are hereby deemed to be contaminated, impure, or decayed if the following biotoxins exceed the corresponding limits when measured by the methods prescribed under the Annexure to these regulations or any equivalent accredited method.

(a) Paralytic shellfish poisons	0,8 µg/g*
(b) Amnesic shellfish poisons	20 mg/g**
(c) Diarrhetic shellfish poisons	Below detection level

*measured as saxitoxin equivalent per gram of edible shellfish flesh

**measured as domoic acid concentration per gram edible flesh

ANNEXURE

Test methods for biotoxins in shellfish

3. The table shows recommended analytical test methods (column II) for the biotoxins in column I

Biotoxin	Test method
Paralytic shellfish poisons	Mouse bioassay according to AOAC 1990

Amnesic shellfish poisons	HPLC coupled to a UV detector for domoic acid according to AOAC, 1991
Diarrhetic shellfish poisons	LC coupled to MS detector Mouse bioassay according to AOAC


AOAC: Association of Official Analytical Chemists

HPLC: High Performance Liquid Chromatography

UV: Ultraviolet

LC: Liquid Chromatography

MS: Mass Spectroscopy


DR M TSHABALALA-MSIMANG
MINISTER OF HEALTH

No. R. 501

30 April 2004

WET OP VOEDINGSMIDDELS, SKOONHEIDSMIDDELS EN
ONTSMETTINGSMIDDELS, 1972 (WET NO. 54 VAN 1972)

REGULASIES BETREFFENDE MARIENE BIOTOKSIENE

Die Minister van Gesondheid is voornemens om kragtens artikel 15(1) van die Wet op Voedingsmiddels, Skoonheidsmiddels en Ontsmettingsmiddels, 1972 (Wet No. 54 van 1972), die regulasies soos uiteengesit in die Bylae uit te vaardig.

Belanghebbendes word versoek om binne drie maande na die datum van publikasie van hierdie kennisgewing gemotiveerde kommentaar of verhoë oor die voorgestelde regulasies te rig aan die Direkteur-generaal van Gesondheid, Privaatsak X828, Pretoria, 0001 (vir die aandag van die Direkteur: Voedselbeheer),.

BYLAE

Woordomskrywing

1. In hierdie regulasies beteken “die Wet” die Wet op Voedingsmiddels, Skoonheidsmiddels en Ontsmettingsmiddels,

1972 (Wet No. 54 van 1972), en het 'n uitdrukking waaraan in die Wet 'n betekenis geheg is daardie betekenis en, tensy uit die samehang anders blyk, beteken –

“biotoksien” 'n skadelike stof geproduseer deur die mariene algspesies waarop sommige skulpvis voed;

“kontaminant” enige stof wat, alhoewel dit nie doelbewus by voedsel gevoeg is nie, aanwesig is in sodanige voedsel as gevolg van die produksie (insluitende bedrywighede uitgevoer in oesverbouing en veterinêre geneeskunde), vervaardiging, prosessering, voorbereiding, behandeling, verpakking, vervoer, of die hou van sodanige voedsel of as gevolg van omgewingskontaminasie, en omvat nie insekfragmente, knaagdierhare en ander vreemde stowwe nie;

“skulpvis” alle tweekleppige molluske insluitende pectinidae en mariene buikpotiges, maar uitgesonderd seekat en inkvis.

Algemeen

2. Vir die doel van artikel 2(1)(b)(i) van die Wet word skulpvis en skulpvisprodukte hierby geag besmet, onsuiver, of bederf te wees indien die volgende biotoksiene die ooreenstemmende perke oorskry wanneer gemeet volgens die metodes voorgeskryf ingevolge die Aanhangsel van hierdie regulasies of enige ekwivalente geakkrediteerde metode.

- (a) Paralitiese skulpvisgiwwe 0,8 $\mu\text{g/g}^*$
- (b) Amnesiese skulpvisgiwwe 20 mg/g^{**}
- (c) Diarretiese skulpvisgiwwe Onder opspoorvlak

* gemeet as saksitoksien-ekwivalent per gram eetbare skulpvisvleis

** gemeet as konsentrasie domoïe-suur per gram eetbare vleis

AANHANGSEL

Toetsmetodes vir biotoksiene in skulpvis

3. Die tabel toon aanbevole analitiese toetsmetodes (kolom II) vir die biotoksiene in kolom 1

Biotoksien	Toetsmetode
Paralitiese skulpvisgiwwe	Muis-bio-essaiëring volgens AAAC, 1990
Amnesiese skulpvisgiwwe	HVVC gepaard met 'n UV-detektor vir domoïese suur volgens AAAC, 1991
Diarretiese skulpvisgiwwe	VC gepaard met MS-detektor Muis-bio-essaiëring volgens AAAC

¹ Domoï is die Japannees vir 'n bepaalde alg, *Chondria armata*.

AAAC:	Assosiasie van Amptelike Analitiese Chemici
HVVC:	Hoëverrigtingvloeistofchromatografie
UV	Ultraviolet
VC:	Vloeistofchromatografie
MS:	Massaspektografie



DR M TSHABALALA-MSIMANG

MINISTER VAN GESONDHEID

No. R. 502

30 April 2004

FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, 1972

(ACT NO. 54 OF 1972)

**REGULATIONS GOVERNING BOTTLED WATER INCLUDING NATURAL
MINERAL WATER: DRAFT REGULATION**

The Minister of Health intends, in terms of section 15(1) of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 1972), to make the regulations in the Schedule.

Interested persons are invited to submit any substantiated comments or representations on the proposed regulations to the Director-General of Health, Private Bag X828, Pretoria, 0001 (for the attention of the Director: Food Control), within three months of the date of publication of this notice.

SCHEDULE**Definitions**

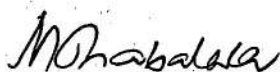
1. In these regulations any expression to which a meaning has been assigned in the Act shall bear that meaning and, unless the context otherwise indicates -

- 2.

"bottled water" means any bottled waters offered for sale as a foodstuff for human consumption;

"bulk" means non-bottled water in direct contact with the surface of a transportation vessel and/or the atmosphere;

6. The total dissolved solutes for all bottled waters should be declared on the label.
7. Notwithstanding the provisions of items 2 and 5, if the bottled water contains more than 1 mg/l of fluoride, the expression "contains fluoride" shall be affixed in close proximity to the name of the water or in a prominent place on the label. If the product contains more than 2 mg/l of fluoride, the expression "this product is not suitable for infants and children under the age of seven years" shall be affixed in close proximity to the name of the water or in a prominent place on the label.
8. No claims of preventative, therapeutic or curative medical effects shall be made in respect of the properties of the bottled waters covered in these regulations.
9. Notwithstanding the provisions of item 5, these regulations prohibit the use of any statement or any pictorial device that may create confusion in the minds of the public about the nature, origin, composition and/or properties of bottled waters put on sale in South Africa.



DR M TSHABALALA-MSIMANG

MINISTER OF HEALTH

No. R. 502

30 April 2004

WET OP VOEDINGSMIDDELS, SKOONHEIDSMIDDELS EN
ONTSMETTINGSMIDDELS, 1972 (WET NO. 54 VAN 1972)

**REGULASIES BETREFFENDE GEBOTTTELDE WATER INSLUITENDE
NATUURLIKE MINERAALWATER: KONSEPREGULASIE**

Die Minister van Gesondheid is voornemens om kragtens artikel 15(1) van die Wet op Voedingstowwe, Skoonheidsmiddels en Ontsmettingsmiddels, 1972 (Wet No. 54 van 1972), om die regulasies uit te vaardig.

Belanghebbendes word versoek om binne drie maande na die publikasie van hierdie kennisgewing gemotiveerde kommentaar of verhoë oor die voorgestelde regulasies te rig aan die Direkteur-generaal, Privaatsak X828, Pretoria, 0001 (vir die aandag van die Direkteur: Voedselbeheer).

BYLAE

Woordomskrywing

1. In hierdie regulasies het 'n uitdrukking waaraan in die Wet 'n betekenis geheg is, daardie betekenis en, tensy die konteks anders aandui, beteken -

“bereide water” gebottelde water wat nie voldoen aan enige van die bepalings gestel vir die waters wat deur oorsprong omskryf word nie en kan ontstaan uit enige tipe watervoorraad;

“die Wet” die Wet op Voedingsmiddels, Skoonheidsmiddels en Ontsmettingsmiddels, 1972 (Wet No. 54 van 1972);

“fonteinwater” gebottelde water verkry uit ‘n ondergrondse formasie waarvandaan water natuurlik vloei na die oppervlak van die aarde, en wat versamel word van die fontein of ‘n boorgat wat tap uit die ondergrondse formasie;

“gebottelde water” enige gebottelde water wat te koop aangebied word as voedingsmiddel vir menslike gebruik;

“gedekarbonateerde natuurlike mineraalwater” ‘n natuurlike mineraalwater wat, na behandeling en verpakking, ‘n laer koolstofdioksiedinhoud het as dié by die verskyning daarvan en gee nie sigbaar en spontaan koolstofdioksied af onder normale toestande van temperatuur en druk nie;

“gekarboneerde natuurlike mineraalwater” ‘n natuurlike mineraalwater wat, na behandeling en verpakking, opbruiseend gemaak is deur die byvoeging van koolstofdioksied van ‘n ander oorsprong as dié van natuurlike mineraalwater;

“grootmaat” nie-gebottelde water wat in direkte kontak met die oppervlak van ‘n vervoerhouer en/of die atmosfeer is;

“natuurlike mineraalwater” gebottelde water wat mineraalsoute in verskeie proporsies bevat en wat gekarakteriseer word deur die teenwoordigheid van spoorelemente en ander stowwe soos kalsium, magnesium, natrium en kalium;

natuurlike mineraalwater versterk met koolstofdioksied van die bron ‘n natuurlike mineraalwater wat, na behandeling en verpakking, meer koolstofdioksiedinhoud het as wat sodanige natuurlike mineraalwater by sy bron het;

“niegekarboneerde natuurlike mineraalwater” ‘n natuurlike mineraalwater wat, van nature en na behandeling en verpakking en, met inagneming van die normale tegniese toleransie, nie vrye koolstofdioksied bevat in hoeveelhede groter as wat nodig is om die

waterstofkarbonaatsoute wat in die water aanwesig is, in oplossing te hou nie;

“normale tegniese toleransie” die natuurlike variasie in die koolstofdioksiedinhoud van natuurlike mineraalwater;

“perimeter” die buitenste grens van die bron van natuurlike water;

“vry koolstofdioksied” koolstofdioksied wat nie chemies met ander elemente en/of samestellings verbind is nie;

“water gedefinieer deur oorsprong” gebottelde water gedefinieer as afkomstig van 'n ondergrondse of oppervlakwaterstelsel, bv. gletserwater, artesiëse water of fonteinwater.

DEEL 1 Natuurlike mineraalwaters

Algemene vereistes

2. Natuurlike mineraalwater moet

- (1) verkry word direk uit natuurlike of geboorde bronne uit ondergrondse waterdraende strata ten opsigte waarvan alle voorsorgmaatsreëls getref moet word binne die beskermde perimeters om enige besoedeling van of enige ekstere effek op

die chemiese en fisiese kwaliteite van die natuurlike mineraalwater te voorkom;

- (2) konstant wees in sy samestelling en 'n stabiele uitstroomtempo en temperatuur hê, met inagneming van siklusse van geringe natuurlike fluktuasies, terwyl dit stil is by die bron;
- (3) versamel word onder toestande wat die oorspronklike bakteriologiese suiwerheid en chemiese samestelling van essensiële komponente waarborg;
- (4) verpak wees by of in nabyheid van die verskyningspunt van die bron met besonder higiëniese voorsorgmaatreëls;
- (5) onderwerpe wees aan behandeling slegs soos voorgeskryf in regulasie 3 hieronder. Met dien verstande dat die mineraalinhoud van die natuurlike mineraalwater in sy essensiële samestelling nie gemodifiseer word nie;
- (6) voldoen aan alle voorwaardes gestipuleer vir gebottelde water in die Aanhangel van hierdie regulasies.

Behandeling

3. Natuurlike mineraalwater mag slegs aan die volgende behandelings onderwerp word:

- (1) Die skeiding van onstabiele samestellings deur afgieting en/of filtrering, wat versnel kan word deur vooraf belugting;

TABEL

I Stof	II Maksimumperk (mg/l)	III Toetsmetode	IV Beginsel wat gebruik word vir isolering en/of meting
Antimoon	0,005	ISO 11885	Emissiespektroskopie
Arseen	0,01 (bereken as totale arseen)	ISO 6595: 1982 AOAC 986.15	- Spektrofotometrie - Atoomabsorpsie= spektrofotometrie
Barium	0,7	<i>Examination of Water Pollution Control. WHO Pergamom Press (1982) Vol. 2, pp 67-68</i>	

I Stof	II Maksimumperk (mg/l)	III Toetsmetode	IV Beginsel wat gebruik word vir isolering en/of meting
Boraat	0,5 (bereken as totale boor)	ISO 9390: 1990	Spektrofotometrie
Chroom	0,05	<i>Examination of Water Pollution Control</i> WHO Pergamom Press (1982) Vol. 2, pp 86- 87	
Fluoried	1,5 (sien ook item 7)	AOAC 939.11 <i>Examination of Water Pollution Control</i> WHO Pergamom Press (1982) Vol. 2, pp 245 – 247 en 247-250	-Kolorimetrie -Ysterselektiewe elektrode
Kadmium	0,003	ISO 9390: 1986 AOAC 986.15 AOAC 974.27	-Vlam-atoomabsorpsie= spektrofotometrie -Atoomabsorpsie= spektrofotometrie -Atoomabsorpsie= spektrofotometrie

I Stof	II Maksimumperk (mg/l)	III Toetsmetode	IV Beginnel wat gebruik word vir isolering en/of meting
Koper	1	AOAC 960.40 ISO 8288:1986	-Kolorimetrie -Spektrofotometrie
Kwik	0,001	ISO 5666-3:1984 AA977.22AC	Vlamlose atoomabsorpsie= spektrofotometrie -Vlamlose atoomabsorpsie= spektrofotometrie
Lood	0,01	ISO 8288:1986 AOAC 974.27	-Vlamlose atoomabsorpsie= spektrofotometrie -Atoomabsorpsie= spektrofotometrie
Mangaan	0,5	AOAC 974.27 <i>Examination of Water Pollution Control</i> WHO Pergamom Press (1982) Vol. 2, pp 121-122 ISO 6333:1986	Atoomabsorpsie= spektrofotometrie
Molibdeen	0,07		
Nikkel	0,02	SABS ISO 11885	Atoomabsorpsie= Spektrofotometrie

I Stof	II Maksimumperk (mg/l)	III Toetsmetode	IV Beginsel wat gebruik word vir isolering en/of meting
Nitraat	50 (bereken as nitraat)	ISO 7890-2:11986 Handbuch Lebensmittel Chemie Examination of Water Pollution Control.. WHO Pergamon Press Vol. 2, pp.280-283	Spektrofotometrie
Nitriet	0,2 (bereken as nitriet)	SABS ISO 6777 SABS ISO 10304-1	Spektrofotometrie
Oppervlakaktiewe agense	Onder kwantifikasie= limiet	ISO 7875 1:1984	Spektrofotometrie/ Metileenblou
Organochloor- plaagdoders en polichloorbifeniele	Onder kwantifikasie= limiet	APHA-metode 6630(b)	
Organofosfaat= Plaagdoders	Onder kwantifikasie= limiet	AOAC 990.06 AOAC-metode 991.07	Gaschromatografie

I Stof	II Maksimumperk (mg/l)	III Toetsmetode	IV Beginsel wat gebruik word vir isolering en/of meting
Selenium	0,01	AOAC 986.15 SABS-metode 1058 <i>Examination of Water Pollution Control.</i> WHO Pergamon Press (1982) Vol.2. pp. 320-322	Atoomabsorpsie= spektrofotometrie -Atoomabsorpsie= spektrofotometrie
Sianied	0,07	SABS-metode 204	Kolorimetrie
Uraan	0,002		

AOAC Assosiasie van Amptelike Analitiese Chemici [vertaling]

APHA Amerikaanse Openbare Gesondheidsassosiasie [vertaling]

ISO: Internasionale Standaardorganisasie

SABS: Suid-Afrikaanse Buro vir Standaarde

3. In alle stadiums van produksie, vanaf die bron tot by bemarking, moet drinkwater aan die mikrobiologiese vereistes vir gebottelde water voldoen soos uiteengesit in die Regulasies Betreffende Mikrobiologiese

Standaard vir Voedingsmiddels, en Verwante Aangeleenthede,
Gepubliseer in *Staatskoerant* No. R. 692 van Mei 1997.

4. Voordat gebottelde water gebruik word, moet dit verpak word in hermeties verseëelde, gesteriliseerde houers geskik vir die voorkoming van vermenging of besmetting van sodanige water.
5. Ondanks die bepalings van items 5, 8 en 10 moet gebottelde water geëtiketteer word in ooreenstemming met die bepalings van die Regulasies Betreffende die Etikettering en Advertering van Voedingsmiddels gepubliseer in *Staatskoerant* No. R.908 van Mei 1997.
6. Die totale hoeveelheid opgeloste stowwe vir alle gebottelde waters moet op die etiket verklaar word.
7. Ondanks die bepalings van items 2 en 5, indien die gebottelde water meer as a mg/l fluoried bevat, moet die uitdrukking "bevat fluoried" in nabyheid van die naam van die water of in 'n opsigtelike plek op die etiket vasgeheg word . Indien die produk meer as 2 mg/l fluoried bevat, moet die uitdrukking "hierdie produk is nie geskik vir babas en kinders onder die ouderdom van sewe jaar nie." in die nabyheid van die naam van die water of op 'n prominente plek op die etiket aangebring word.

8. Geen aansprake van voorkomende, terapeutiese of genesende medisinale uitwerking mag gemaak word ten opsigte van die eienskappe van die gebottelde waters wat in hierdie regulasies gedek is nie.

9. Ondanks die bepalings van item 5 verbied hierdie regulasies die gebruik van enige verklaring of enige illustratiewe middel wat verwarring skep in die gedagtes van die publiek oor die aard, oorsprong, samestelling en/of eienskappe van gebottelde waters wat in Suid-Afrika te koop aangebied word.

**DR M TSHABALALA-MSIMANG****MINISTER VAN GESONDHEID**

**DEPARTMENT OF LABOUR
DEPARTEMENT VAN ARBEID****No. R. 503****30 April 2004**

LABOUR RELATIONS ACT, 1995

**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF PERIOD OF
OPERATION OF PROVIDENT FUND COLLECTIVE AGREEMENT FOR THE WESTERN CAPE REGION**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby, in terms of section 32 (6) (a) (i) of the Labour Relations Act, 1995, extend the period fixed in Government Notice No. R. 1293 of 19 September 2003 by a further period ending 30 June 2005.

M. M. S. MDLADLANA**Minister of Labour****No. R. 503****30 April 2004**

WET OP ARBEIDSVERHOUDINGE, 1995

**NASIONALE BEDINGINGSRAAD VIR DIE KLERASIE VERVAARDIGINGSNYWERHEID: VERLENGING VAN TYDPERK
VAN KOLLEKTIEWE VOORSORGFONDSOORENKOMS VIR DIE WES-KAAP STREEK**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verleng hierby, kragtens artikel 32 (6) (a) (i) van die Wet op Arbeidsverhoudinge, 1995, die tydperk vasgestel in Goewermenskennisgewing No. R. 1293 van 19 September 2003, met 'n verdere tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA**Minister van Arbeid****No. R. 504****30 April 2004**

LABOUR RELATIONS ACT, 1995

**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF PROVIDENT
FUND COLLECTIVE AMENDING AGREEMENT FOR THE WESTERN CAPE REGION TO NON-PARTIES**

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 3 May 2004, and for the period ending 30 June 2005.

M. M. S. MDLADLANA**Minister of Labour****No. R. 504****30 April 2004**

WET OP ARBEIDSVERHOUDINGE, 1995

**NASIONALE BEDINGINGSRAAD VIR DIE KLERASIEVERVAARDIGINGSNYWERHEID: UITBREIDING VAN VOORSORG-
FONDS KOLLEKTIEWE WYSIGINGSOORENKOMS VIR DIE WES-KAAP STREEK NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Nasionale Bedingingsraad vir die Klerasievervaardigingsnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 3 Mei 2004, en vir die tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA**Minister van Arbeid**

SCHEDULE**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY
PROVIDEND FUND COLLECTIVE AGREEMENT FOR THE WESTERN CAPE REGION**

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

Cape Clothing Association

(hereinafter referred to as the "employers" or the "employers' organisation"), 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, to amend the Agreement published under Government Notice No. R. 1293 of 19 September 2003.

1. SCOPE OF APPLICATION

- (1) The terms of this Agreement shall be observed in the Clothing Industry—
 - (a) by employers and employees who are members of the employers' organisation and the trade union, respectively, and who are engaged and employed in the Industry;
 - (b) in the Magisterial Districts of—
 - (i) The Cape, Simonstown, Bellville, Goodwood, including those portions of the Magisterial Districts of Goodwood, Simonstown and Bellville from which the Magisterial District of Mitchells Plain was constituted on 2 March 1992, Somerset West, Strand, George and Worcester, on the operations set forth in paragraphs (a) and (b) of the definition of "Clothing Industry" in clause 3 of the Collective Agreement published under Government Notice No. R. 629 of 28 May 1999;
 - (ii) Malmesbury, including that portion from which the Magisterial District of Moorreesburg was constituted on 29 November 1985 by Government Notice No. 2649, in respect of that part of the Industry in which employers and their employees are associated for the making of all classes of womens' and girls' wear, including parts of such garments and cloth belts;
 - (iii) Wynberg, including that portion of the Magisterial District of Wynberg included when the Magisterial District of Mitchells Plain was constituted on 2 March 1992, on the operations set forth in paragraphs (a), (b) and (c) of the definition of "Clothing Industry" in clause 3 of the Collective Agreement published under Government Notice No. R. 629 of 28 May 1999.
- (2) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall—
 - (a) apply in respect of employees for whom wages are prescribed in the Main Collective Agreement, the Knitting Division Collective Agreement and the Country Areas Collective Agreement for the Western Cape Region of the Council;
 - (b) not apply to employees and working directors whose wages are more than the amount referred to in clause 1 (2) (b) of the Main Collective Agreement of the Regional Council.
- (3) Notwithstanding the provisions of subclauses (1) and (2), the terms of this Agreement shall apply in respect of employees and working directors who were contributors as at the date of coming into operation of the Agreement published under Government Notice No. R. 231 of 28 February 2003.
- (4) Clauses 1 (1) (a), 2 and 16 B of this Agreement shall not apply to employers who are not members of the employers' organisation and trade union, respectively.

2. PERIOD OF OPERATION OF 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 30 June 2005.

3. CLAUSE 7: FINANCE

Substitute the following new subclause for subclause (5):

- "(5) The accounts shall be audited annually for the 12 months ending 31 December each year from the year commencing 1 January 2003. A copy of the audited annual financial statements, approved by the Management Committee, shall be signed by the Chairperson of the Management Committee and the Regional Secretary of the Regional Chamber and a copy shall be provided to the General Secretary of the Council who shall transmit a copy to the Registrar: Labour."

4. CLAUSE 8: HOUSING LOANS

In subclause (2), substitute the expression "R50 000" for the expression "R35 000".

5. CLAUSE 16: EXEMPTIONS

Substitute the following for clause 16:

"16. 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 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 Agreement may apply to the Council for exemption from any or all of the provisions of this 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 contain 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 Agreement from which the exemption is sought;
 - (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; and
 - (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 subclause (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 refused.
 - (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time 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 rejected.
 - (e) Subject to the time period for considering the application, referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected 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 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 on 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 quantum thereof: Provided that such fee shall be consistent with—
- (i) the cost incurred for the hearing of the appeal;
 - (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, in addition, 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 decision of the Exemptions Board 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 who 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 levies or, if so, an agreed payment plan exists in respect of any such outstanding moneys. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions which 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 will 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 affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. Either the employer or the trade union may request a ballot.
- (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 made 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, transferability, administration, management, costs, growth and stability. "Sufficiency" for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.
 - (d) The terms of the exemption sought, including the period thereof.
 - (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 and required 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 Agreement.

B. For any employer who 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 Agreement shall be granted in the following circumstances:
 - (a) Where the employer, who 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 set out in this Agreement or 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, not be amended without the Council's approval.
- (2) An employer who 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 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) above that is in contravention of any law or the minimum employment standards set out in this Agreement shall be null and void ab initio."

Signed at Cape Town on behalf of the parties this 17th day of February 2004 and 1 March 2004, respectively.

C. O. JEFTHA

Chairperson

M. W. SIDDONS

Vice-Chairperson

W. A. ROBERTS

Acting General Secretary

No. R. 505**30 April 2004**

LABOUR RELATIONS ACT, 1995

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF PERIOD OF OPERATION OF COLLECTIVE AGREEMENT FOR THE KNITTING DIVISION OF THE WESTERN CAPE REGION

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby, in terms of section 32 (6) (a) (i) of the Labour Relations Act, 1995, extend the period fixed in Government Notice No. R. 1297 of 19 September 2003 by a further period ending 30 June 2004.

M. M. S. MDLADLANA

Minister of Labour

No. R. 505**30 April 2004**

WET OP ARBEIDSVERHOUDINGE, 1995

NASIONALE BEDINGINGSRAAD VIR DIE KLERASIE VERVAARDIGINGSNYWERHEID: VERLENGING VAN TYDPERK VAN KOLLEKTIEWE OOREENKOMS VIR DIE BREI-AFDELING VAN DIE WES-KAAP STREEK

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verleng hierby, kragtens artikel 32 (6) (a) (i) van die Wet op Arbeidsverhoudinge, 1995, die tydperk vasgestel in Goewermentskennisgewing No. R. 1297 van 19 September 2003, met 'n verdere tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

No. R. 506**30 April 2004**

LABOUR RELATIONS ACT, 1995

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF KNITTING DIVISION COLLECTIVE AMENDING AGREEMENT FOR THE WESTERN CAPE REGION TO NON-PARTIES

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 3 May 2004, and for the period ending 30 June 2005.

M. M. S. MDLADLANA

Minister of Labour

No. R. 506**30 April 2004**

WET OP ARBEIDSVERHOUDINGE, 1995

NASIONALE BEDINGINGSRAAD VIR DIE KLERASIEVERVAARDIGINGSNYWERHEID: UITBREIDING VAN KOLLEKTIEWE WYSIGINGSOOREENKOMS VIR DIE BREI-AFDELING VAN DIE WES-KAAP STREEK NA NIE-PARTYE

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Nasionale Bedingingsraad vir die Klerasievervaardigingsnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 3 Mei 2004, en vir die tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

SCHEDULE**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY
KNITTING DIVISION COLLECTIVE AGREEMENT FOR THE WESTERN CAPE REGION**

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

Cape Clothing Association

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

South 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, to amend the Agreement published under Government Notice No. R. 1297 of 19 September 2003.

1. SCOPE OF APPLICATION

(1) The terms of this Agreement shall be observed in the Knitting Division of the Clothing Industry—

- (a) by the employers and the employees who are members of the employers' organisation and the trade union, respectively;
- (b) in the Magisterial District of The Cape, Wynberg, Simonstown, Goodwood and Bellville, including those portions of the Magisterial Districts of Wynberg, Simonstown, Goodwood and Bellville that were used to create the Magisterial Districts of Mitchells Plain on 2 March 1992, Somerset West, Strand, Malmesbury and George.

(2) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall—

- (a) apply only in respect of employees for whom wages are prescribed in this Agreement;
- (b) not apply to employees and working directors whose wages are more than the amount referred to in clause 1 (2) (b) of the Main Collective Agreement of the Council.

(3) Clauses 1 (1) (a), 2 and 19B of this Agreement of the shall not apply to employers and employees who are not members of the employers' organisation and trade union, respectively.

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on a date to be fixed by the Minister of Labour in terms of section 32 (2) of the Act, and shall remain in force until 30 June 2005.

3. CLAUSE 19: EXEMPTIONS

Substitute the following for clause 19:

"19. 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 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 Agreement may apply to the Council for exemption from any or all of the provisions of this 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 contain 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 Agreement from which the exemption is sought;
 - (d) satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultation 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; and
 - (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 subclause (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 refused.

- (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time 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 rejected.
 - (e) Subject to the time period for considering the application, referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected 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 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 7 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 on 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 quantum thereof: Provided that such fee shall be consistent with—
- (i) the cost incurred for the hearing of the appeal;
 - (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, in addition, have the power to raise a cost order on the applicant in respect of cost 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 decision of the Exemptions Board 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 who 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 levies, or, if so, an agreed payment plan exists in respect of any such outstanding moneys. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions which 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 will the application, if granted, result in a conflict with the primary objectives of the Act.
 - (e) The exemptions will not undermine collective bargaining and labour peace in the industry.
 - (f) There has been compliance with subclause (3) above.
 - (g) The majority of affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. Either the employer, or the trade union may request a ballot.
- (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 made 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, transferability, administration, management, costs, growth and stability. "Sufficiency", for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.
 - (d) The terms of the exemption sought, including the period thereof.
 - (e) Any existing 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, variable 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 the 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 Exemption Board. An application for extension shall contain such additional information as may be necessary and required to substantiate the request with reference to the criteria set out in sub-clause (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 Agreement.

B. For any employer who 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 Agreement shall be granted in the following circumstances:
 - (a) Where the employer, who 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 set out in this Agreement or 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 not be amended without the Council's approval.
- (2) An employer who 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 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) above that is in contravention of any law or the minimum employment standards set out in this Agreement shall be null and void ab initio."

4. CLAUSE 26: CLOTHING INDUSTRY HEALTH CARE FUND

- (1) Substitute the following new subclause for subclause (4) (f):

"(f) The Management Committee shall appoint an auditor for the Fund, who shall be a registered accountant, and determine his remuneration, which shall be paid out of the Fund. The accounts of the Fund shall be audited annually for the 12 months ending 31 December each year from the year commencing 1 January 2003. A copy of the audited financial statements, approved by the Management Committee, shall be signed by the Chairperson of the Management Committee and the Regional Secretary of the Regional Chamber, and a copy provided to the General Secretary of the Council who shall transmit a copy to the Registrar: Labour."
- (2) Substitute the following new subclause for subclause (5) (c):

"(c) Maternity benefits:

 - (i) Subject to the provisions of this Agreement a female contributor who—
 - (aa) has continuously contributed to the Health Care Fund for no less than one year; and
 - (ab) has continuously been employed in the Industry for no less than one year;
 as at the date of ceasing employment because of her pregnancy shall be entitled to the maternity benefits set out in (iii) below. Female contributors entitled to maternity benefits shall include the following:
 - (A) A female contributor who becomes unemployed through no fault of her own because of retrenchment or closure or liquidation of her employer's establishment, regardless of the stage of her pregnancy at the time of becoming unemployed; and
 - (B) a female contributor who resigns, subject to her pregnancy, at date of resignation, being 22 weeks or more.
 - (ii) For the purpose of this subclause, non-contributing periods owing to illness and/or short time shall be deemed to be periods of contribution.
 - (iii) Any employee who is entitled to maternity benefits shall receive a lump sum payment equal to 25 per cent of such employee's weekly wage earned at the time of ceasing employment because of her pregnancy, multiplied by 13: Provided that no such payment shall be made to the employee—
 - (aa) earlier than four weeks prior to the expected date of her confinement; which expected date shall be determined by a recent medical certificate signed by a medical practitioner indicating the number of weeks' pregnancy and the expected date of confinement; or

- (ab) in the event of a prematurely born child which is alive at birth, unless she produces a birth certificate; or
- (ac) in respect of a miscarriage, abortion or still-born child that occurs during the first 35 weeks of pregnancy; or
- (ad) if the employee dies prior to claiming the benefit due to her in terms of this subclause, until such time as the Master of the High Court has decided to whom such benefit should be paid."

5. CLAUSE 42: A TYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

Insert the following new clause 42:

"42. A TYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

- (1) A survey shall be conducted under the auspices of the Council into the incidence of contract work in the Industry with the intention of making any agreement reached as a result of the survey effective from 1 July 2004.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to cooperate with the survey."

Signed at Cape Town on behalf of the parties this 17th day of February 2004.

C. O. JEFTHA

Chairperson

M. W. SIDDONS

Vice-Chairperson

W. A. ROBERTS

Acting General Secretary

No. R. 507

30 April 2004

LABOUR RELATIONS ACT, 1995

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

I, Membathisi Mphumzi Shepherd and 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 3 May 2004, and for the period ending 30 June 2005.

M. M. S. MDLADLANA

Minister of Labour

No. R. 507

30 April 2004

WET OP ARBEIDSVERHOUDINGE, 1995

NASIONALE BEDINGINGSRAAD VIR DIE KLERASIEVERVAARDIGINGSNYWERHEID: UITBREIDING VAN HOOF KOLLEKTIEWE WYSIGINGSOOREENKOMS VIR DIE NIE-METRO STREKE NA NIE-PARTYE

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in Bylae hiervan verskyn en wat in die Nasionale Bedingingsraad vir die Klerasievervaardigingsnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 3 Mei 2004, en vir die tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

SCHEDULE

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY MAIN COLLECTIVE AGREEMENT FOR THE NON-METRO AREAS

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

Cape Clothing Association

Eastern Province Clothing Manufacturers' Association

Free State and Northern Cape Clothing Manufacturers' Association**Lower South Coast Clothing Manufacturers' Association****Natal Clothing Manufacturers' Association****Northern Decentralised Clothing Manufacturers' Association****Northern KwaZulu-Natal Clothing Manufacturers' Association****QwaQwa 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, to amend the Agreement published under Government Notices Nos. R. 1001 of 25 July 2003 and R. 214 of 20 February 2004.

1. SCOPE OF APPLICATION

(1) The terms of this Agreement shall be observed in the Clothing Industry—

(a) by all employers who are members of the employers' organisations and by all employees who are members of the trade union and who are engaged and employed in the said Industry, and by any employers' organisation and its members which may be admitted to membership of the Bargaining Council during the currency of this Agreement;

(b) in all areas of the Republic of South Africa excluding those areas or Magisterial Districts covered by the scopes of the bargaining councils which amalgamated on 23 May 2002 to establish the current National Bargaining Council for the Clothing Manufacturing Industry, including those referred to below, and excluding those garment knitting establishments which fall within the scope of the Main Collective Agreement for the Northern Region (Knitting) as set out below and also those clothing establishments which fall within the scope of the Main collective Agreement for the Northern Region (Clothing) and the Fund Collective Agreement for the Northern Region, as detailed below. The exclusions referred to are as follows:

(i) In the Province of the Eastern Cape—

(aa) Port Elizabeth, including that portion of Hankey which, prior to the publication of Government Notice No. R. 1515 of 4 October 1963, fell within the Magisterial District of Port Elizabeth, and that portion which was transferred by the publication of Government Notice No. R. 1687 of 5 September 1975 to Uitenhage, and excluding that portion of Hankey which was transferred by Government Notice No. R. 1974 of 26 September 1980 to Port Elizabeth; and

(bb) East London, including that portion which was transferred to Mdantsane by Government Notice No. R. 1481 of 27 August 1971, excluding those portions of the Ciskei that were transferred to East London by Government Notice No. R. 1877 of 4 September 1981 and Government Notice No. R. 1079 of 10 June 1988 and including that portion that was transferred to Ciskei by Government Notice No. 2354 of 5 October 1990.

(ii) in the Province of KwaZulu-Natal—

the Magisterial Districts of Chatsworth, Durban, Inanda, Lower Tugela, Pietermaritzburg and Pinetown;

(iii) in the Province of the Free State—

the Magisterial Districts of Bloemfontein, Frankfort, Kroonstad, Parys and Vredefort;

(iv) in the Province of the Northern Cape—

the Magisterial District of Kimberley;

(v) in the Province of Gauteng—

the Municipal Area of Pretoria and the Magisterial Districts of Albertyn, Benoni, Germiston, Johannesburg and Roodepoort, but only in respect of garment knitting establishments which fall within the scope of application of the Main Collective Agreement for the Northern Region (Knitting);

(vi) as far as the scope of application of the Main Collective Agreement for the Northern Region (Clothing) and the Fund Collective Agreement for the Northern Region is concerned—

the Province of the Transvaal, as it existed prior to the coming into operation of the Constitution of the Republic of South Africa, 1993 (Act No. 2000 of 1993), but only in respect of clothing establishments which fall within the scope of application of the Main Collective Agreement for the Northern Region (Clothing) and the Fund Collective Agreement for the Northern Region;

(vii) in the Province of the Western Cape—

the Magisterial Districts of Bellville, George, Goodwood, Malmesbury (including that portion from which the Magisterial District of Moorreesburg was constituted on 29 November 1985 by Government Notice No. 2649), Simonstown, Somerset West, Strand, The Cape, Worcester and Wynberg, including those portions of the Magisterial Districts of Bellville, Goodwood, Simonstown and Wynberg that were used to create the Magisterial District of Mitchells Plain on 2 March 1992.

(c) insofar as those areas or Magisterial Districts covered by the scopes of the bargaining councils which amalgamated on 23 May 2002 to establish the current National Bargaining Council for the Clothing Manufacturing Industry are concerned, should one or more Magisterial Districts have been inadvertently omitted from subclause (b) (i)–(vii) above, the overriding test as to whether a particular Magisterial District is excluded from the provisions of this Agreement or not, is whether such Magisterial District was covered by the geographical scope of the bargaining councils which amalgamated to form the National Bargaining Council for the Clothing Manufacturing Industry on 23 May 2002.

(2) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall—

(a) apply in respect of employees for whom wages are prescribed in this Agreement; and

(b) apply to every employer in the Clothing and Garment Knitting sectors as defined herein and to all employees in these sectors: Provided that the terms of this Agreement shall not apply to employees whose basic wages exceed two and a half times the wage rate for a qualified Category B employee or whose occupation is paid monthly and of a managerial, specialist technical or non-production related nature.

(3) (a) The purpose of this 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 or fewer employees shall upon application to the Council in terms of clause 31, be exempted from the provisions of this Agreement.

(c) Where an employer or an employee can satisfy the Council that any of the provisions of this Agreement unduly restrict 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 31 of this Agreement.

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

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on a date to be fixed by the Minister of Labour in terms of section 32 (2) of the Labour Relations Act, 1995, and shall remain in force for the period ending 30 June 2005.

3. CLAUSE 3: DEFINITIONS

Under the definition of "Category D Employee" in subparagraph "(ii)" of paragraph "(b)", delete the definition of "mender".

4. CLAUSE 41: A TYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

Insert the following new clause 41:

"41. A TYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

(1) A survey shall be conducted under the auspices of the Council into the incidence of contract work in the Industry with the intention of making any agreement reached as a result of the survey effective from 1 July 2004.

(2) Every employer shall complete a questionnaire as approved by the Council.

(3) All employers shall be required to co-operate with the survey."

Signed at Cape Town on behalf of the parties this 17th day of February 2004.

C.O. JEFTHA

Chairperson

M.W. SIDDONS

Vice-Chairperson

W.A. ROBERTS

Acting General Secretary

No. R. 508**30 April 2004****LABOUR RELATIONS ACT, 1995****NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF PERIOD OF OPERATION OF COUNTRY AREAS COLLECTIVE AGREEMENT FOR THE WESTERN CAPE REGION**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby, in terms of section 32 (6) (a) (i) of the Labour Relations Act, 1995, extend the period fixed in Government Notice No. R. 1287 of 19 September 2003 by a further period ending 30 June 2005.

M.M.S. MDLADLANA**Minister of Labour****No. R. 508****30 April 2004****WET OP ARBEIDSVERHOUDINGE, 1995****NASIONALE BEDINGINGSRAAD VIR DIE KLERASIE VERVAARDIGINGSNYWERHEID: VERLENGING VAN TYDPERK VAN KOLLEKTIEWE OOREENKOMS VIR DIE PLATTELANDSE GEBIEDE VAN DIE WES-KAAP STREEK**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verleng hierby, kragtens artikel 32 (6) (a) (i) van die Wet op Arbeidsverhoudinge, 1995, die tydperk vasgestel in Goewermentskennisgewing No. R. 1287 van 19 September 2003, met 'n verdere tydperk wat op 30 Junie 2005 eindig.

M.M.S. MDLADLANA**Minister van Arbeid****No. R. 509****30 April 2004****LABOUR RELATIONS ACT, 1995****NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF COUNTRY AREAS COLLECTIVE AMENDING AGREEMENT FOR THE WESTERN CAPE REGION TO NON-PARTIES**

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 3 May 2004, and for the period ending 30 June 2005.

M.M.S. MDLADLANA**Minister of Labour****No. R. 509****30 April 2004****WET OP ARBEIDSVERHOUDINGE, 1995****NASIONALE BEDINGINGSRAAD VIR DIE KLERASIE VERVAARDIGINGSNYWERHEID: UITBREIDING VAN KOLLEKTIEWE WYSIGINGSOOREENKOMS VIR DIE PLATTELANDSE GEBIEDE VAN DIE WES-KAAP STREEK NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Nasionale Bedingingsraad vir die Klerasievervaardigingsnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 3 Mei 2004, en vir die tydperk wat op 30 Junie 2005 eindig.

M.M.S. MDLADLANA**Minister van Arbeid****SCHEDULE****NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY COUNTRY AREAS COLLECTIVE AGREEMENT FOR THE WESTERN CAPE REGION**

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

Cape Clothing Association

(hereinafter referred to as the "employers" or the "employers' organisation"), 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, to amend the Agreement published under Government Notice No. R. 1287 of 19 September 2003.

1. SCOPE OF APPLICATION ON AGREEMENT

- (1) The terms of this Agreement shall be observed in the Clothing Industry—
 - (a) by all employers and employees who are members of the employers' organisations and the trade union, respectively;
 - (b) in the Magisterial Districts of George and Worcester.
- (2) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall—
 - (a) apply only in respect of employees for whom wages are prescribed in this Agreement; and
 - (b) not apply to employees and working directors whose wages are more than R22 256 per annum.
- (3) Clauses 1 (1) (a), 2 and 19B of this 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 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 30 June 2005.

3. CLAUSE 19: EXEMPTIONS

Substitute the following for clause 19:

"19. EXEMPTIONS

A. For any business entity registered with falling within the Council's registered scope inasmuch as it relates to the scope of this 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 Agreement may apply to the Council for exemption from any or all of the provisions of this 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 contain 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 Agreement from which the exemption is sought;
 - (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 response resulting from such consultations; and
 - (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 subclause (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 refused.
 - (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time 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 rejected.

- (e) Subject to the time period for considering the application, referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected and the reasoning of the members of the Exemption Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
 - (f) The Exemption 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 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 on 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 quantum thereof: Provided that such fee shall be consistent with—
- (i) the cost incurred for the hearing of the appeal;
 - (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, in addition, 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 decision of the Exemptions Board 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 who 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 levies, or, if so, an agreed payment plan exists in respect of any such outstanding moneys. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions which 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 will 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 affected employees at the plant are in favour of the proposed exemption, if it affects wages, benefit fund contributions, or levies. Either the employer, or the trade union may request a ballot.
- (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 made 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, transferability, administration, management, costs, growth and stability. "Sufficiency", for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.
 - (d) The terms of the exemption sought, including the period thereof.
 - (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 and required 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 Agreement.

B. For any employer who 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 Agreement shall be granted in the following circumstances:
 - (a) Where the employer, who 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 set out in this Agreement or 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 not be amended without the Council's approval.
- (2) An employer who 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 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) above that is in contravention of any law or the minimum employment standards set out in this Agreement shall be null and void ab initio."

4. CLAUSE 26: CLOTHING INDUSTRY HEALTH CARE FUND

- (1) Substitute the following new subclause for subclause (4) (f):
 - "(f) The Management Committee shall appoint an auditor for the Fund, who shall be a registered accountant, and determine his remuneration, which shall be paid out of the Fund. The accounts of the Fund shall be audited annually for the 12 months ending 31 December each year from the year commencing 1 January 2003. A copy of the audited financial statements, approved by the Management Committee, shall be signed by the Chairperson of the Management Committee and the Regional Secretary of the Regional Chamber, and a copy provided to the General Secretary of the Council who shall transmit a copy to the Registrar: Labour."
- (2) Substitute the following new subclause for subclause (5) (c):
 - "(c) Maternity benefits:
 - (i) Subject to the provisions of this Agreement a female contributor who—
 - (aa) has continuously contributed to the Health Care Fund for no less than one year; and
 - (ab) has continuously been employed in the Industry for no less than one year;
 as at the date of ceasing employment because of her pregnancy shall be entitled to the maternity benefits set out in (iii) below. Female contributors entitled to maternity benefits shall include the following:
 - A. A female contributor who becomes unemployed through no fault of her own because of retrenchment or closure or liquidation of her employer's establishment, regardless of the stage of her pregnancy at the time of becoming unemployed; and
 - B. a female contributor who resigns, subject to her pregnancy, at the date of resignation, being 22 weeks or more.
 - (ii) For the purposes of this subclause, non-contributing periods owing to illness and/or short time shall be deemed to be periods of contribution.
 - (iii) Any employee who is entitled to maternity benefits shall receive a lump sum payment equal to 25 per cent of such employee's weekly wage earned at the time of ceasing employment because of her pregnancy, multiplied by 13: Provided that no such payment shall be made to the employee—
 - (aa) earlier than four weeks prior to the expected date of her confinement, which expected date shall be determined by a recent medical certificate signed by a medical practitioner indicating the number of weeks' pregnancy and the expected date of confinement; or
 - (ab) in the event of a prematurely born child which is alive at birth, unless she produces a birth certificate; or
 - (ac) in respect of a miscarriage, abortion or still-born child that occurs during the first 35 weeks of pregnancy; or
 - (ad) if the employee dies prior to claiming the benefit due to her in terms of this subclause, until such time as the Master of the High court has decided to whom such benefit should be paid."

5. CLAUSE 42: ATYPICAL WORK, OUTSOURCING AND SUB-CONTRACTING

Insert the following new clause 42:

"42. ATYPICAL WORK, OUTSOURCING AND SUB-CONTRACTING

- (1) A survey shall be conducted under the auspices of the Council into the incidence of contract work in the Industry with the intention of making any agreement reached as a result of the survey effective from 1 July 2004.
- (2) Every employer shall complete a questionnaire as approved by the Council.

(3) All employers shall be required to co-operate with the survey."

Signed at Cape Town on behalf of the parties this 17th day of February 2004.

C. O. JEFTHA

Chairperson

M. W. SIDDONS

Vice-Chairperson

W. A. ROBERTS

Acting General Secretary

No. R. 510

30 April 2004

LABOUR RELATIONS ACT, 1995

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF PERIOD OF OPERATION OF MAIN COLLECTIVE AGREEMENT FOR THE WESTERN CAPE REGION

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby, in terms of section 32 (6) (a) (i) of the Labour Relations Act, 1995, extend the period fixed in Government notice No. R. 1274 of 12 September 2003 by a further period ending 30 June 2004.

M. M. S. MDLADLANA

Minister of Labour

No. R. 510

30 April 2004

WET OP ARBEIDSVERHOUDINGE, 1995

NASIONALE BEDINGINGSRAAD VIR DIE KLERASIE VERVAARDIGINGSNYWERHEID: VERLENGING VAN 'N TYDPERK VAN HOOF KOLLEKTIEWE OOREENKOMS VIR DIE WES-KAAP STREEK

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verleng hierby, kragtens artikel 32 (6) (a) (i) van die Wet op Arbeidsverhoudinge, 1995, die tydperk vasgestel in Goewermentskennisgewing No. R. 1274 van 12 September 2003, met 'n verdere tydperk wat op 30 Junie 2004 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

No. R. 511

30 April 2004

LABOUR RELATIONS ACT, 1995

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF MAIN COLLECTIVE AMENDING AGREEMENT FOR THE WESTERN CAPE REGION TO NON-PARTIES

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 3 May 2004, and for the period ending 30 June 2005.

M. M. S. MDLADLANA

Minister of Labour

No. R. 511

30 April 2004

WET OP ARBEIDSVERHOUDINGE, 1995

NASIONALE BEDINGINGSRAAD VIR DIE KLERASIEVERVAARDIGINGSNYWERHEID: UITBREIDING VAN HOOF KOLLEKTIEWE WYSIGINGSOOREENKOMS VAN DIE WES-KAAP STREEK NA NIE-PARTYE

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Nasionale Bedingingsraad vir die Klerasievervaardigingsnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 3 Mei 2004, en vir die tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

SCHEDULE**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY:
MAIN COLLECTIVE AGREEMENT FOR THE WESTERN CAPE REGION**

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

Cape Clothing Association

(hereinafter referred to as the "employers" or the "employers' organisation"), 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, to amend the Agreement published under Government Notice No. R. 1274 of 12 September 2003.

1. SCOPE OF APPLICATION OF AGREEMENT

- (1) The terms of this Agreement shall be observed in the Clothing Industry—
 - (a) by the employers and employees who are members of the employers' organisation and the trade union, respectively;
 - (b) in the Magisterial Districts of—
 - (i) The Cape, Simonstown, Goodwood and Bellville, including those portions of the Magisterial Districts of Simonstown, Goodwood and Bellville that were used to create the Magisterial District of Mitchells Plain on 2 March 1992, Somerset West and Strand, by employers and employees who are engaged in or employed in the operations referred to in paragraphs (a) and/or (b) of the definition of "Clothing Industry" in clause 3 of this Collective Agreement;
 - (ii) Wynberg, including that portion of the Magisterial District of Wynberg that was used to create the Magisterial District of Mitchells Plain on 2 March 1992, by employers and employees who are engaged or employed in the operations referred to in paragraphs (a) and/or (b) and/or (c) of the definition of "Clothing Industry" in clause 3 of this Collective Agreement; and
 - (iii) Malmesbury, including that portion of the Magisterial District of Moorreesburg was constituted on 29 November 1985, by Government Notice No. 2649, by employers and employees who are engaged or employed in the operations referred to in paragraph (a) (excluding belts made from leather or synthetic material) and/or (b) of the definition of "Clothing Industry" in clause 3 of this Collective Agreement.
- (2) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall—
 - (a) apply only in respect of employees for whom wages are prescribed in this Agreement;
 - (b) not apply to employees and working directors whose wages are more than R48 386 per annum;
 - (c) not apply to employers and employees engaged or employed in the Knitting Division.
- (3) Clauses 1 (1) (a), 2 and 19 B of this Collective 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 AGREEMENT

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Act, and shall remain in force until 30 June 2005.

3. CLAUSE 19: EXEMPTIONS

Substitute the following for clause 19:

A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this Agreement**"19. EXEMPTIONS**

- (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 Agreement may apply to the Council for exemption from any or all of the provisions of this 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 contain 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 Agreement from which the exemption is sought;

- (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; and
- (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 subclause (7) below, within 45 days from the date of lodgment of the application with the General Secretary, failing which the application shall be deemed to have been refused.
- (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time 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 rejected.
- (e) Subject to the time period for considering the application referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected 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 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 on 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 quantum thereof: Provided that such a fee shall be consistent with—
 - (i) the cost incurred for the hearing of the appeal;
 - (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, in addition, 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 decision of the Exemptions Board 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 who 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 levies, or, if so, an agreed payment plan exists in respect of any such outstanding moneys. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions which 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 will 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 affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. Either the employer or the trade union may request a ballot.
- (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 made 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, transferability, administration, management, costs, growth and stability. "Sufficiency" for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.
 - (d) The terms of the exemption sought, including the period thereof.
 - (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, variable 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 and required to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining and 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 Agreement.

B. For any employer who 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 Agreement shall be granted in the following circumstances:
 - (a) Where the employer, who 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 set out in this Agreement or 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 not be amended without the Council's approval.
- (2) An employer who 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) (b) (i) above:
 - (a) The employer shall place on the notice board of the establishment a notice to employees specifying the proposed variation to this 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) above that is in contravention of any law or the minimum employment standards set out in this Agreement shall be null and void ab initio."

4. CLAUSE 26: CLOTHING INDUSTRY HEALTH CARE FUND

- (1) Substitute the following new subclause for subclause (4) (f):

"(f) The Management Committee shall appoint an auditor for the Fund, who shall be a registered accountant, and determine his remuneration, which shall be paid out of the Fund. The accounts of the Fund shall be audited annually for the 12 months ending 31 December each year from the year commencing 1 January 2003. A copy of the audited financial statements, approved by the Management Committee, shall be signed by the Chairperson of the Management Committee and the Regional Secretary of the Regional Chamber, and a copy provided to the General Secretary of the Council who shall transmit a copy to the Registrar: Labour."
- (2) Substitute the following new subclause for subclause (5) (c):

"(c) Maternity benefits:

 - (i) Subject to the provisions of this Agreement a female contributor who—
 - (aa) has continuously contributed to the Health Care Fund for no less than one year; and
 - (ab) has continuously been employed in the Industry for no less than one year;
 as at the date of ceasing employment because of her pregnancy shall be entitled to the maternity benefits set out in (iii) below. Female contributors entitled to maternity benefits shall include the following:
 - (A) A female contributor who becomes unemployed through no fault of her own because of retrenchment or closure or liquidation of her employer's establishment, regardless of the stage of her pregnancy at the time of becoming unemployed; and

- (B) a female contributor who resigns, subject to her pregnancy, at date of resignation, being 22 weeks or more.
- (ii) For the purposes of this subclause, non-contributing periods owing to illness and/or short time shall be deemed to be periods of contribution.
- (iii) Any employee who is entitled to maternity benefits shall receive a lump sum payment equal to 25 per cent of such employee's weekly wage earned at the time of ceasing employment because of her pregnancy, multiplied by 13: Provided that no such payment shall be made to the employee—
- (aa) earlier than four weeks prior to the expected date of her confinement; which expected date shall be determined by a recent medical certificate signed by a medical practitioner indicating the number of weeks' pregnancy and the expected date of confinement; or
 - (ab) in the event of a prematurely born child which is alive at birth, unless she produces a birth certificate; or
 - (ac) in respect of a miscarriage, abortion or still-born child that occurs during the first 35 weeks of pregnancy; or
 - (ad) if the employee dies prior to claiming the benefit due to her in terms of this subclause, until such time as the Master of the High Court has decided to whom such benefit should be paid.”.

5. CLAUSE 42: A TYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

Insert the following new clause 42:

“42. A TYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

- (1) A survey shall be conducted under the auspices of the Council into the incidence of contract work in the Industry with the intention of making any agreement reached as a result of the survey effective from 1 July 2004.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to cooperate with the survey.”.

Signed at Cape Town on behalf of the parties this 17th day of February 2004.

C. O. JEFTHA

Chairperson

M. W. SIDDONS

Vice-Chairperson

W. A. ROBERTS

Acting General Secretary

No. R. 512

30 April 2004

LABOUR RELATIONS ACT, 1995

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF PERIOD OF OPERATION OF MAIN COLLECTIVE AGREEMENT FOR THE NORTHERN REGION (CLOTHING)

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (6) (a) (i) of the Labour Relations Act, 1995, extend the period fixed in Government Notice No. R. 1268 of 12 September 2003 by a further period ending 30 June 2005.

M. M. S. MDLADLANA

Minister of Labour

No. R. 512

30 April 2004

WET OP ARBEIDSVERHOUDINGE, 1995

NASIONALE BEDINGINGSRAAD VIR DIE KLERASIEVERVAARDIGINGSNYWERHEID: VERLENGING VAN TYDPERK VAN HOOF KOLLEKTIEWE OOREENKOMS VIR DIE NOORDELIKE STREEK (KLERASIE)

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verleng hierby, kragtens artikel 32 (6) (a) (i) van die Wet op Arbeidsverhoudinge, 1995, die tydperk vasgestel in Goewermmentskennisgewing No. R. 1268 van 12 September 2003, met 'n verdere tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

No. R. 513

30 April 2004

LABOUR RELATIONS ACT, 1995

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION TO NON-PARTIES OF MAIN COLLECTIVE AMENDING AGREEMENT FOR THE NORTHERN REGION (CLOTHING)

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 3 May 2004, and for the period ending 30 June 2005.

M. M. S. MDLADLANA

Minister of Labour

No. R. 513

30 April 2004

WET OP ARBEIDSVERHOUDINGE, 1995

NASIONALE BEDINGINGSRAAD VIR DIE KLERASIEVERVAARDIGINGSNYWERHEID: UITBREIDING NA NIE-PARTYE VAN HOOF KOLLEKTIEWE WYSIGINGSOOREENKOMS VIR DIE NOORDELIKE STREEK (KLERASIE)

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Nasionale Bedingsraad vir die Klerasievervaardigingsnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 3 Mei 2004, en vir die tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

SCHEDULE**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY,
MAIN COLLECTIVE AGREEMENT FOR THE NORTHERN REGION (CLOTHING)**

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

Transvaal Clothing Manufacturers' Association

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

Southern African Clothing and Textile Workers' Union

(hereinafter referred to as the "employees" or the "trade unions") of the other part, being the parties to the National Bargaining Council for the Clothing Manufacturing Industry, to amend the Agreement published under Government Notice No. R. 1268 of 12 September 2003.

1. SCOPE OF APPLICATION OF AGREEMENT

- (1) The terms of this 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; and
 - (b) in the Province of the Transvaal, as it existed prior to the coming into operation of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).
- (2) Clauses 1 (1) (a), 2 and 19B of this 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 AGREEMENT

This Agreement shall come into operation on such date as may be specified by the Minister of Labour in terms of the Act, and shall remain in force until 30 June 2005.

3. CLAUSE 19: EXEMPTIONS

Substitute the following for clause 19:

"19. EXEMPTIONS**(A). For any business entity registered with an falling within the Council's registered scope inasmuch as it relates to the scope of this 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 Agreement may apply to the Council for exemption from any or all of the provisions of this 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 contain 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 Agreement from which the exemption is sought;
 - (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; and
 - (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 subclause (7) below, within 45 days from the date of lodgment 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 appropriate from the applicant, prior to making a decision. The time 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 rejected.
 - (e) Subject to the time period for considering the application referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected 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 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 on 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 quantum thereof: Provided that such fee shall be consistent with—
 - (i) the cost incurred for the hearing of the appeal;
 - (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, in addition, 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) shall, read with the changes required by the context, apply equally to the appeal process.
- (d) The decision of the Exemptions Board shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee and, where applicable, the the Exemptions Board of the following:
 - (a) There is a demonstrable commercial need for the exemption.
 - (b) Competitors covered by the Council who 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 levies, or, if so, an agreed payment plan exists in respect of any such outstanding moneys. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions which 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 will 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 affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. Either the employer or the trade union may request a ballot.
- (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 made 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, transferability, administration, management, costs, growth and stability. "Sufficiency", for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.
 - (d) The terms of the exemption sought, including the period thereof.
 - (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 and required 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 Agreement.

B. For any employer who 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 Agreement shall be granted in the following circumstances:
 - (a) Where the employer, who 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 set out in this Agreement or 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 not be amended without the Council's approval.
- (2) An employer who 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 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) above that is in contravention of any law or the minimum employment standards set out in this Agreement shall be null and void ab initio."

4. CLAUSE 28: A TYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

Insert the following new clause 28:

"28. A TYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

- (1) A survey shall be conducted under the auspices of the Council into the incidence of contract work in the Industry with the intention of making any agreement reached as a result of the survey effective from 1 July 2004.

(2) Every employer shall complete a questionnaire as approved by the Council.

(3) All employers shall be required to cooperate with the survey."

Signed at Cape Town on behalf of the parties this 17th day of February 2004.

C. O. JEFTHA

Chairperson

M. W. SIDDONS

Vice-Chairperson

W. A. ROBERTS

Acting General Secretary

No. R. 514

30 April 2004

LABOUR RELATIONS ACT, 1995

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF PERIOD OF OPERATION OF MAIN COLLECTIVE AGREEMENT FOR THE NORTHERN REGION (KNITTING)

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby, in terms of section 32 (6) (a) (i) of the Labour Relations Act, 1995, extend the period fixed in Government Notice No. R.1270 of 12 September 2003 by a further period ending 30 June 2005.

M. M. S. MDLADLANA

Minister of Labour

No. R. 514

30 April 2004

WET OP ARBEIDSVIRHOUDINGE, 1995

NASIONALE BEDINGINGSRAAD VIR DIE KLERASIEVERVAARDIGINGSNYWERHEID: VERLENGING VAN TYDPERK VAN HOOF KOLLEKTIEWE OOREENKOMS VIR DIE NOORDELIKE STREEK (BREI-AFDELING)

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verleng hierby, kragtens artikel 32 (6) (a) (i) van die Wet op Arbeidsverhoudinge, 1995, die tydperk vasgestel in Goerwementskennisgewing No. R. 1270 van 12 September 2003, met 'n verdere tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

No. R. 515

30 April 2004

LABOUR RELATIONS ACT, 1995

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION TO NON-PARTIES OF MAIN COLLECTIVE AMENDING AGREEMENT FOR THE NORTHERN REGION (KNITTING)

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 3 May 2004, and for the period ending 30 June 2005.

M. M. S. MDLADLANA

Minister of Labour

No. R. 515

30 April 2004

WET OP ARBEIDSVERHOUDINGE, 1995

NASIONALE BEDINGINGSRAAD VIR DIE KLERASIEVERVAARDIGINGSNYWERHEID: UITBREIDING NA NIE-PARTYE VAN HOOF KOLLEKTIEWE WYSIGINGSOOREENKOMS VIR DIE NOORDELIKE STREEK (BREI-AFDELING)

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby kragtens artikel 32(2) van die Wet of Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Nasionale Bedingingsraad vir die Klerasievervaardigingsnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 3 Mei 2004; en vir die tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

SCHEDULE**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY
MAIN COLLECTIVE AGREEMENT FOR THE NORTHERN REGION (KNITTING)**

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

Transvsaal Clothing Manufacturers' Association

(hereinafter referred to as the "employers" or the "employers' organisation"), 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, to amend the Agreement published under *Government Notice* No. R1270 of 12 September 2003.

1. SCOPE OF APPLICATION OF AGREEMENT

(1) The terms of this Agreement shall be observed —

- (a) by all employers who are the members of the employers' organisation and area engaged in the Knitting Industry, and by all employees who are members of the trade union and who are employed in the Industry;
- (b) in the municipal area of Pretoria and the Magisterial Districts of Johannesburg, Germiston, Roodepoort, Alberton and Benoni.

(2) Clauses 1 (1) (a), 2 and 16B of this 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 AGREEMENT

This Collective Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Act, and shall remain in force until 30 June 2005.

3. CLAUSE 16: EXEMPTIONS

Substitute the following for clause 16:

"16. 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 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 Agreement may apply to the Council for exemption from any or all of the provisions of this 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 contain 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 Agreement from which the exemption is sought;
 - (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; and

- (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 subclause (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 appropriate from the applicant, prior to making a decision. The time 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 rejected.
- (e) Subject to the time period for considering the application, referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected 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 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 quantum thereof: Provided that such fee shall be consistent with—
 - (i) the cost incurred for the hearing of the appeal;
 - (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 in addition, 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 decision of the Exemptions Board 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 who 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 levies, or, if so, an agreed payment plan exists in respect of any such outstanding moneys. "Arrears", for this purpose, means 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 will 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 affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. Either the employer or the trade union may request a ballot.
- (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 made 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, transferability, administration, management, costs, growth and stability. "Sufficiency", for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.
 - (d) The terms of the exemption sought, including the period thereof.
 - (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 and required 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 Agreement.

B. For any employer who 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 Agreement shall be granted in the following circumstances:
 - (a) Where the employer, who 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 set out in this Agreement or 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 not be amended without the Council's approval.
- (2) An employer who 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 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) above that is in contravention of any law or the minimum employment standards set out in this Agreement shall be null and void ab initio."

4. CLAUSE 32: A TYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

Insert the following new clause 32:

"32. A TYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

- (1) A survey shall be conducted under the auspices of the Council into the incidence of contract work in the Industry with the intention of making any agreement reached as a result of the survey effective from 1 July 2004.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to cooperate with the survey."

Signed at Cape Town on behalf of the parties, this 17th day of February 2004.

C. O. JEFTHA

Chairperson

M. W. SIDDONS

Vice-Chairperson

W. A. ROBERTS

Acting General Secretary

No. R. 516**30 April 2004****LABOUR RELATIONS ACT, 1995****NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF PROVIDENT FUND COLLECTIVE AMENDING AGREEMENT FOR THE EASTERN CAPE REGION TO NON-PARTIES**

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 3 May 2004, and for the period ending 30 June 2005.

M. M. S. MDLADLANA**Minister of Labour****No. R. 516****30 April 2004****WET OP ARBEIDSVIRHOUDINGE, 1995****NASIONALE BEDINGINGSRAAD VIR DIE KLERASIEVERVAARDIGINGSNYWERHEID: UITBREIDING VAN VOORSORGFONDS KOLLEKTIEWE WYSIGINGSOOREENKOMS VIR DIE OOS-KAAP STREEK NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Nasionale Bedingingsraad vir die Klerasievervaardigingsnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 3 Mei 2004, en vir die tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA**Minister van Arbeid****SCHEDULE****NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY
PROVIDENT FUND COLLECTIVE AGREEMENT FOR THE EASTERN CAPE REGION**

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

Eastern Province Clothing Manufacturers' Association

(hereinafter referred to as the "employers" or the "employers' organisation"), 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, to amend the Agreement published under Government Notice No. R. 1295 of 19 September 2003.

1. SCOPE OF APPLICATION OF AGREEMENT

(1) The terms of this Agreement shall be observed in the Clothing Industry—

- (a) by employers who are members of the employers' organisation and by all employees who are members of the trade union;
- (b) in the Magisterial Districts of—
 - (i) Port Elizabeth, including that portion of Hankey which, prior to the publication of Government Notice No. 1515 of 4 October 1963, fell within the Magisterial District of Port Elizabeth, including that portion which was transferred by the publication of Government Notice No. 1687 of 5 September 1975 to Uitenhage and excluding that portion of Hankey which was transferred by Government Notice No. 1974 of 26 September 1980 to Port Elizabeth; and
 - (ii) East London, including that portion which was transferred to Mdantsane by Government Notice No. 1481 of 27 August 1971, excluding those portions of the Ciskei which were transferred to East London by Government Notice No. 1877 of 4 September 1981 and Government Notice No. 1079 of 10 June 1988 and including that portion which was transferred to Ciskei by Government Notice No. 2354 of 5 October 1980.

(2) Clauses 1 (1) (a), 2 and 7 B of this 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 AGREEMENT

This Agreement shall come into operation:

- (1) in respect of the parties to this Agreement, on the date of signature;
- (2) in respect of non-parties on the date fixed by the Minister of Labour to be the effective date from which the Agreement shall be extended to become binding on non-parties;

and shall remain in force until 30 June 2005.

3. CLAUSE 1: SCOPE OF APPLICATION OF AGREEMENT

In subclause 1 (b) (i), substitute the expression "Government Notice No. 1974 of 26 September 1980" for the expression "Government Notice No. 1474 of 24 September 1980".

4. CLAUSE 7: EXEMPTIONS

Substitute the following for clause 7:

"7. 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 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 Agreement may apply to the Council for exemption from any or all of the provisions of this 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 contain 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 Agreement from which the exemption is sought;
 - (d) satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultation 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; and
 - (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 subclause (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 appropriate from the applicant, prior to making a decision. The time 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 submission.
- (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 rejected.
- (e) Subject to the time period for considering the application, referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected 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 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 on 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 quantum thereof: Provided that such fee shall be consistent with—
 - (i) the cost incurred for the hearing of the appeal;
 - (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, in addition, have the power to raise a cost order on the applicant in respect of cost 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 decision of the Exemptions Board 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 who 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 levies, or, if so, an agreed payment plan exists in respect of any such outstanding moneys. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions which 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 will 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 affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. Either the employer, or the trade union may request a ballot.
- (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 made 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, transferability, administration, management, costs, growth and stability. "Sufficiency", for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.

- (d) The terms of the exemption sought, including the period thereof.
- (e) Any existing 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 and required 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 Agreement.

B. For any employer who 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 Agreement shall be granted in the following circumstances:
 - (a) Where the employer, who 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 set out in this Agreement or 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 not be amended without the Council's approval.
- (2) An employer who 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 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) above that is in contravention of any law or the minimum employment standards set out in this Agreement shall be null and void ab initio.”.

Signed at Cape Town on behalf of the parties, this 17th day of February 2004.

C. O. JEFTHA

Chairperson

M. W. SIDDONS

Vice-Chairperson

W. A. ROBERTS

Acting General Secretary

No. R. 517

30 April 2004

LABOUR RELATIONS ACT, 1995

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF PERIOD OF OPERATION OF MAIN COLLECTIVE AGREEMENT FOR THE FREE STATE AND NORTHERN CAPE REGION

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby, in terms of section 32 (6) (a) (i) of the Labour Relations Act, 1995, extend the period fixed in Government Notice No. R. 1276 of 12 September 2003 by a further period ending 30 June 2005.

M. M. S. MDLADLANA

Minister of Labour

No. R. 517

30 April 2004

WET OP ARBEIDSVIRHOUDINGE, 1995

NASIONALE BEDINGINGSRAAD VIR DIE KLERASIE VERVAARDIGINGSNYWERHEID: VERLENGING VAN TYDPERK VAN HOOF KOLLEKTIEWE OOREENKOMS VIR VRYSTAAT EN NOORD-KAAP STREEK

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verleng hierby, kragtens artikel 32 (6) (a) (i) van die Wet op Arbeidsverhoudinge, 1995, die tydperk vasgestel in Goewermentskennisgewing No. R. 1276 van 12 September 2003, met 'n verdere tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

No. R. 518

30 April 2004

LABOUR RELATIONS ACT, 1995

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF MAIN COLLECTIVE AMENDING AGREEMENT FOR THE FREE STATE AND NORTHERN CAPE REGION TO NON-PARTIES

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 3 May 2004, and for the period ending 30 June 2005.

M. M. S. MDLADLANA

Minister of Labour

No. R. 518

30 April 2004

WET OP ARBEIDSVERHOUDINGE, 1995**NASIONALE BEDINGINGSRAAD VIR DIE KLERASIEVERVAARDIGINGSNYWERHEID: UITBREIDING VAN HOOF KOLLEKTIEWE WYSIGINGSOOREENKOMS VIR DIE VRYSTAAT EN NOORD-KAAP STREEK NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Nasionale Bedingsraad vir die Klerasievervaardigingsnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 3 Mei 2004, en vir die tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

SCHEDULE**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: MAIN COLLECTIVE AGREEMENT FOR THE FREE STATE AND NORTHERN CAPE REGION**

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

Free State and Northern Cape Clothing Manufacturers' Association

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

South 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, to amend the Agreement published under Government Notice No. R. 1276 of 12 September 2003.

1. SCOPE OF APPLICATION OF AGREEMENT

- (1) The terms of this Agreement shall be observed in the Clothing Industry—
 - (a) by all employers who are members of the employers' organisation and are engaged in the Clothing Industry, and by all employees who are members of the trade union and who are employed by the industry; and
 - (b) in the Magisterial Districts of Bloemfontein, Frankfort, Kimberley, Kroonstad, Parys and Vredefort.—
- (2) Clauses 1 (1) (a), 2 and 19 B of this Collective 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 AGREEMENT

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Act, and shall remain in force until 30 June 2005.

3. CLAUSE 19: EXEMPTIONS

Substitute the following for clause 19:

"19. EXEMPTIONS**A. For any business entity registered with and falling within the Council's registered scope in as much as it relates to the scope of this 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 Agreement may apply to the Council for exemption from any or all of the provisions of this 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 contain 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 Agreement from which the exemption is sought;
 - (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; and

- (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 subclause (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 appropriate 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 rejected.
- (e) Subject to the time period for considering the application, referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected 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 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 on 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 quantum thereof: Provided that such fee shall be consistent with—
 - (i) the cost incurred for the hearing of the appeal;
 - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemption Board is satisfied that such an appeal is without merit.
- (c) The Exemptions Board shall in addition, 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;
- (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 who 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 levies, or, if so, an agreed payment plan exists in respect of any such outstanding moneys. "Arrears," for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions which 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 will 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 affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. Either the employer or the trade union may request a ballot.
- (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 made 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, transferability, administration, management, costs, growth and stability. "Sufficiency", for the purpose of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund;
 - (d) The terms of the exemption sought, including the period thereof;
 - (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 hardships 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 and required 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 Agreement.

B. For any employer who 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 Agreement shall be granted in the following circumstances:
 - (a) Where an employer, who is a party or a member of a party to the Councils 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 set out in this Agreement or 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 not be amended without the Council's approval.
- (2) An employer who 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 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) above that is in contravention of any law or the minimum employment standards set out in this Agreement shall be null and void ab initio."

4. CLAUSE 37: A TYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

Insert the following new clause 37:

"37. A TYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

- (1) A survey shall be conducted under the auspices of the Council into the incidence of contract work in the Industry with the intention of making any agreement reached as a result of the survey effective from 1 July 2004.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to cooperate with the survey."

Signed at Cape Town on behalf of the parties, this 17th day of February 2004.

C. O. JEFTHA
Chairperson

M. W. SIDDON
Vice-Chairperson

W. A. ROBERTS
Acting General Secretary

No. R. 519**30 April 2004**

LABOUR RELATIONS ACT, 1995

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF PERIOD OF OPERATION OF COLLECTIVE FUND AGREEMENT FOR THE NORTHERN REGION

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby, in terms of section 32 (6) (a) (i) of the Labour Relations Act, 1995, extend the period fixed in Government Notice No. R. 1291 of 19 September 2003 by a further period ending 30 June 2005.

M. M. S. MDLADLANA

Minister of Labour

No. R. 519**30 April 2004**

WET OP ARBEIDSVERHOUDINGE, 1995

NASIONALE BEDINGINGSRAAD VIR DIE KLERASIEVERVAARDIGINGSNYWERHEID: VERLENGING VAN TYDPERK VAN KOLLEKTIEWE FONDSOOREENKOMS VIR DIE NOORDELIKE STREEK

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verleng hierby, kragtens artikel 32 (6) (a) (i) van die Wet op Arbeidsverhoudinge, 1995, die tydperk vasgestel in Goewermenskennisgewing No. R. 1291 van 19 September 2003, met 'n verdere tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

No. R. 520**30 April 2004**

LABOUR RELATIONS ACT, 1995

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION TO NON-PARTIES OF COLLECTIVE FUND AMENDING AGREEMENT FOR THE NORTHERN REGION

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 3 May 2004, and for the period ending 30 June 2005.

M. M. S. MDLADLANA

Minister of Labour

No. R. 520**30 April 2004**

WET OP ARBEIDSVERHOUDINGE, 1995

NASIONALE BEDINGINGSRAAD VIR DIE KLERASIEVERVAARDIGINGSNYWERHEID: UITBREIDING NA NIE-PARTYE VAN FONDS KOLLEKTIEWE WYSIGINGSOOREENKOMS VIR DIE NOORDELIKE STREEK

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Nasionale Bedingingsraad vir die Klerasievervaardigingsnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 3 Mei 2004, en vir die tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

SCHEDULE**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY
COLLECTIVE FUND AMENDING AGREEMENT FOR THE NORTHERN REGION**

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

Transvaal Clothing Manufacturers' Association

(hereinafter referred to as the "employers" or the "employers' organisation"), 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, to amend the Agreement published under Government Notice No. R. 1291 of 19 September 2003.

1. SCOPE OF APPLICATION OF AGREEMENT

- (1) The terms of this Agreement shall be observed in the Clothing Industry—
 - (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 Province of the Transvaal, as it existed prior to the coming into operation of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).
- (2) Notwithstanding the provisions of subclause (1)—
 - (a) the terms of this Agreement shall apply only in respect of employees for whom wages are prescribed in the Council's Main Collective Agreement; and
 - (b) the provisions of clause 3, 4 and 5 of this Collective Agreement shall apply in respect of any employee in the Industry for whom no wages are prescribed in the Main Collective Agreement if such employee and his employer have mutually, and with the Bargaining Council, agreed thereto in writing.
- (3) For the purposes of subclause (2) (b), any reference to employees for whom wages are prescribed in the Main Collective Agreement shall be deemed to include employees referred to in that Agreement and any reference to the wage prescribed for an employee shall be deemed to be a reference to such employee's actual wage.
- (4) Clause 1 (1) (a) 2 and 14 B of this Collective 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 AGREEMENT

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Act, and shall remain in force until 30 June 2005.

- (2) Upon the expiry of this Agreement or any extension thereof and in the event of a subsequent agreement not being negotiated within a period of two years from the expiry of this Agreement or any extension thereof, the Provident Fund established and continued in terms of clause 9 shall be liquidated as though the employees had left the Industry.

3. CLAUSE 14: EXEMPTIONS

Substitute the following for clause 14:

"14. 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 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 Agreement may apply to the Council for exemption from any or all of the provisions of this 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 contain 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 Agreement from which exemption is sought.
 - (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; and
 - (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 subclause (7) below, within 45 days from the date of lodgement of the application with the General Secretary, failing which the application will be deemed to have been rejected.

- (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time 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 rejected.
- (e) Subject to the time period for considering the application, referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected 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 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 sub-clause (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 on 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 quantum thereof: Provided that such fee shall be consistent with—
 - (i) the cost incurred for the hearing of the appeal;
 - (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, in addition, 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 decision of the Exemptions Board 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 who 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 levies, or, if so, an agreed payment plan exists in respect of any such outstanding moneys. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions which 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 will 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 affected employees at the plant are in favour of the proposed exemption, if it affects wages, benefit fund contributions, or levies. Either the employer or the trade union may request a ballot.
- (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 made 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, transferability, administration, management, costs, growth and stability, "Sufficiency", for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.
 - (d) The terms of the exemption sought, including the period thereof.
 - (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 and required 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 Agreement.

B. For any employer who 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 Agreement shall 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 set out in this Agreement or 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 who 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 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) above that is in contravention of any law or the minimum employment standards set out in this Agreement shall be null and void ab initio."

Signed at Cape Town on behalf of the parties, this 17th day of February 2004.

C. O. JEFTHA

Chairperson

M. W. SIDDONS

Vice-Chairperson

W. A. ROBERTS

Acting General Secretary

No. R. 521

30 April 2004

LABOUR RELATIONS ACT, 1995

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF PROVIDENT FUND COLLECTIVE AMENDING AGREEMENT FOR THE KWAZULU-NATAL REGION TO NON-PARTIES

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 3 May 2004, and for the period ending 30 June 2005.

M. M. S. MDLADLANA

Minister of Labour

No. R. 521

30 April 2004

WET OP ARBEIDSVERHOUDINGE, 1995

NASIONALE BEDINGINGSRAAD VIR DIE KLERASIEVERVAARDIGINGSNYWERHEID: UITBREIDING VAN VOORSORG-FONDS KOLLEKTIEWE WYSIGINGSOOREENKOMS VIR DIE KWAZULU-NATAL STREEK NA NIE-PARTYE

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Nasionale Bedingingsraad vir die Klerasievervaardigingsnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 3 Mei 2004, en vir die tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

SCHEDULE**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY
PROVIDENT FUND COLLECTIVE AGREEMENT FOR THE KWAZULU-NATAL REGION**

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

Natal Clothing Manufacturers' Association

(hereinafter referred to as the "employers" or the "employers' organisation"), 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, to amend the Agreement published under *Government Gazette* No. R.1289 of 19 September 2003.

1. SCOPE OF APPLICATION

(1) The terms of this Agreement shall be observed in the Clothing Industry—

- (a) by all employers who are members of the employers' organisation and by all employees who are members of the trade union and who are engaged and employed in the Industry;
- (b) in the Magisterial District of Chatsworth, Durban, Inanda, Pinetown, Pietermaritzburg and Lower Tugela.

(2) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall—

- (a) apply in respect of employees for whom wages are prescribed in the Main 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) (a) The purpose of this Agreement is to make provision for retirement, disability, death and retrenchment benefits.

(b) Employers employing five or fewer employees shall, upon application to the Council in terms of clause 15 of the Agreement published under *Government Notice* No. 1516 of 27 November 1998 be exempted from this Agreement.

(c) Where an employer or an employee can satisfy the Council that any of the provisions of this Agreement are restricting entrepreneurial initiative and/or employment opportunities, such employer or employee may apply to the Council for exemption from those specified provisions in terms of clause 15 of this Agreement.

(d) Clauses 1 (1) (a), 2 and 15B of this 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 AGREEMENT

This Agreement shall come into operation on a date to be fixed by the Minister of Labour in terms of section 32(2) of the Act, and shall remain in force for the period ending 30 June 2005.

3. CLAUSE 15: EXEMPTIONS

Substitute the following for clause 15:

"15. 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 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 Agreement may apply to the Council for exemption from any or all of the provisions of this 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 contain 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 Agreement from which the exemption is sought;
 - (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; and
 - (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 subclause (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 refused.
 - (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time 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, referred to 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 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 on 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 quantum thereof: Provided that such fee shall be consistent with—
 - (i) the cost incurred for the hearing of the appeal;

- (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, in addition, 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 decision of the Exemptions Board 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 who 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 levies, or, if so, an agreed payment plan exists in respect of any such outstanding moneys. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions which 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 will 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 affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. Either the employer or the trade union may request a ballot.
- (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 made 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, transferability, administration, management, costs, growth and stability. "Sufficiency", for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.
 - (d) The terms of the exemption sought, including the period thereof.
 - (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 and required 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 Agreement.

B. For any employer who 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 Agreement shall 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 set out in this Agreement or 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, 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 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 establishment 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) above that is in contravention of any law or the minimum employment standards set out in this Agreement shall be null and void ab initio."

Signed at Cape Town on behalf of the parties, this 17th day of February 2004.

C. O. JEFTHA
Chairperson

M. W. SIDDONS
Vice-Chairperson

W. A. ROBERTS
Acting General Secretary

No. R. 522

30 April 2004

LABOUR RELATIONS ACT, 1995

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF MAIN COLLECTIVE AMENDING AGREEMENT FOR THE KWAZULU-NATAL REGION TO NON-PARTIES

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 3 May 2004, and for the period ending 30 June 2005.

M. M. S. MDLADLANA
Minister of Labour

No. R. 522

30 April 2004

WET OP ARBEIDSVERHOUDINGE, 1995

NASIONALE BEDINGINGSRAAD VIR DIE KLERASIEVERVAARDIGINGSNYWERHEID: UITBREIDING VAN HOOF KOLLEKTIEWE WYSIGINGSOOREENKOMS VIR DIE KWAZULU-NATAL STREEK NA NIE-PARTYE

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in Bylae hiervan verskyn en wat in die Nasionale Bedingingsraad vir die Klerasievervaardigingsnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 3 Mei 2004, en vir die tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA
Minister van Arbeid

SCHEDULE**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY****MAIN COLLECTIVE AGREEMENT FOR THE KWAZULU-NATAL REGION**

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

Natal 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, to amend the Agreement published under Government Notices Nos. R. 1285 of 19 September 2003.

1. SCOPE OF APPLICATION OF THE AGREEMENT

- (1) The terms of this 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 the Agreement shall—
 - (a) apply in respect of employees for whom wages are prescribed in this 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) (a) The purpose of this 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 or fewer employees shall, upon application to the Council in terms of clause 23, be exempted from this Agreement.
- (c) Where an employer or an employee can satisfy the Council that any of the provisions of this 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 the Agreement.
- (4) Clauses 1 (1) (a), 2 and 23B of this Collective 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 AGREEMENT

This Agreement shall come into operation on such date as the Minister of Labour extends the Agreement to non-parties and shall remain in force for the period ending 30 June 2005.

3. CLAUSE 23: EXEMPTIONS

Substitute the following for clause 23:

"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 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 Agreement may apply to the Council for exemption from any or all of the provisions of this 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 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 and the response resulting from such consultations. Such consultations shall include a registered trade union where such union has members employed at the workplace.
 - (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 subclause (7) below, and in form the applicant of its decision within 45 days from the date of lodgement of the application with the General Secretary. If notification of the decision is not received within this period, the application shall be deemed to have been refused.
 - (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 of 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 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 moneys. 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, transferability, administration, management, costs, growth and stability. The alternative proposed shall, in all material respects, offer benefits at least equal to, 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. 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 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 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 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 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 Agreement shall be null and void ab initio."

4. CLAUSE 40: A TYPICAL WORK AND SUBCONTRACTING

Insert the following new subclause:

- "(3) (a) A survey shall be conducted under the auspices of the Council into the incidence of contract work in the Industry with the intention that any agreement reached as a result of the survey shall be effective from 1 July 2004.
- (b) Every employer shall complete a questionnaire as approved by the Council.
- (c) All employers are required to cooperate with the survey."

Signed at Cape Town on behalf of the parties, this 17th day of February 2004.

C. O. JEFTHA

Chairperson

M. W. SIDONS

Vice-Chairperson

W. A. ROBERTS

Acting General Secretary

No. R. 523

30 April 2004

LABOUR RELATIONS ACT, 1995

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF MAIN COLLECTIVE AMENDING AGREEMENT FOR THE EASTERN CAPE REGION TO NON-PARTIES

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 3 May 2004, and for the period ending 30 June 2005.

M.M.S. MDLADLANA

Minister of Labour

No. R. 523

30 April 2004

WET OP ARBEIDSVARHOUDINGE, 1995

NASIONALE BEDINGINGSRAAD VIR DIE KLERASIEVERVAARDIGINGSNYWERHEID: UITBREIDING VAN HOOF KOLLEKTIEWE WYSIGINGSOOREENKOMS VIR DIE OOS-KAAP STREEK NA NIE-PARTYE

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Nasionale Bedingingsraad vir die Klerasievervaardigingsnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 3 Mei 2004, en vir die tydperk wat op 30 Junie 2005 eindig.

M.M.S. MDLADLANA

Minister van Arbeid

SCHEDULE

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY

MAIN COLLECTIVE AGREEMENT FOR THE EASTERN CAPE REGION

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

Eastern Province Clothing Manufacturers' Association

(hereinafter referred to as the "employers" or the "employers' organisation"), 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, to amend the Agreement published under Government Notice No. R. 1272 of 12 September 2003.

1. SCOPE OF APPLICATION OF AGREEMENT

- (1) The terms of this Agreement shall be observed in the Clothing Industry—
- (a) by all employers who are members of the employers' organisations and by all employees who are members of the trade union and who are engaged or employed in the said Industry;
 - (b) within the Magisterial Districts of—
 - (i) Port Elizabeth, including that portion of Hankey which, prior to the publication of Government Notice No. 1515 of 4 October 1963, fell within the Magisterial District of Port Elizabeth, including that portion which was transferred by the publication of Government Notice No. 1687 of 5 September 1975 to Uitenhage and excluding that portion of Hankey which was transferred by Government Notice No. 1974 of 26 September 1980 to Port Elizabeth; and
 - (ii) East London, including that portion which was transferred to Mdantsane by Government Notice No. 1481 of 27 August 1971, excluding those portions of the Ciskei that were transferred to East London by Government Notice No. 1877 of 4 September 1981 and Government Notice No. 1079 of 10 June 1988 and including that portion that was transferred to Ciskei by Government Notice No. 2354 of 5 October 1990.
- (2) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall apply only in respect of employees for whom wages are specified in this Agreement.
- (3) The terms of this Agreement shall not apply to a designer, foreman, factory clerk and supervisor who are remunerated monthly at a rate in excess of the weekly wage specified in this Agreement for such employees, multiplied by four and a third, and whose conditions of employment include the following provisions:
- (a) That his contract of service may not be terminated without a month's notice;
 - (b) that his monthly remuneration may not be reduced as a result of short time working, unpaid public holidays or periods of absence through illness, not exceeding 10 working days in any one year of employment and subject to the production of a medical certificate, if required by the employer.
- (4) Clauses 1 (1) (a), 2 and 14.4B of this Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade union, respectively.

2. DATE AND PERIOD OF OPERATION

This Agreement shall come into operation—

- (1) in respect of the parties to this Agreement, on the date of signature;
 - (2) in respect of non-parties, on the date fixed by the Minister of Labour to be the effective date from which the Agreement shall be extended to become binding on non-parties;
- and shall remain in operation for the period ending 30 June 2005.

3. CLAUSE 1: SCOPE OF APPLICATION OF AGREEMENT

In subclause 1 (b) (i), substitute the expression "Government Notice No. 1974 of 26 September 1980" for the expression "Government Notice No. 1474 of 24 September 1980".

4. CLAUSE 14.4: EXEMPTIONS

Substitute the following for clause 14.4:

"14.4. 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 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 Agreement may apply to the Council for exemption from any or all of the provisions of this 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 contain 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 Agreement from which the exemption is sought;
 - (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; and

- (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 subclause (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 refused.
- (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time 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 rejected.
- (e) Subject to the time period for considering the application, referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected 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 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 on 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 quantum thereof: Provided that such fee shall be consistent with—
 - (i) the cost incurred for the hearing of the appeal;
 - (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, in addition, have the power to raise a cost order on the applicant in respect of cost 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.

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- (5) Subrule (4) applies irrespective of whether a party has lodged a notice of objection in terms of subrule (2).
- (6) In con-arb proceedings a party to the dispute may appear in person or be represented only by –
 - (a) subject to subrule (7) a legal practitioner;
 - (b) a director or employee of that party and if a close corporation also a member thereof; or
 - (c) any *member, office bearer or official* of that party's registered *trade union* or registered employer's organisation.
- (7) If the dispute concerns an unfair dismissal and the party has alleged the reason for the dismissal relates to the employee's conduct or capacity, a party may only be represented by a legal practitioner in the circumstances contemplated in the rules.²
- (8) The provisions of the Act and these rules that are applicable to conciliation and arbitration respectively apply, with the changes required by the context, to con-arb proceedings.
- (9) If the arbitration does not commence on the date specified in terms of the notice in subrule (1), the Commission must schedule the matter for arbitration either in the presence of the parties or by issuing a notice in terms of rule 21.

PART FOUR

ARBITRATIONS

18. How to request arbitration

- (1) A party may request the Commission to arbitrate a dispute by delivering a document in the form of Annexure LRA 7.13 ("the referral document").
- (2) The referring party must –
 - (a) sign the referral document in accordance with rule 4;

¹ See rule 25(1)(a) and (b).

² See rule 25(1)(c)(2).

No. R. 532

30 April 2004

LABOUR RELATIONS ACT, 1995 (ACT No. 66 OF 1995)

COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION

RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE CCMA

CORRECTION NOTICE

Government Notice No. R. 1448 published in *Government Gazette* No. 25515 (*Regulation Gazette* No. 7781) of 10 October 2003, is hereby corrected as follows:

(3) Page 257 is substituted with the following page:-

No. R. 531

30 April 2004

LABOUR RELATIONS ACT, 1995 (ACT No. 66 OF 1995)**COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION****RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE CCMA****CORRECTION NOTICE**

Government Notice No. R. 1793 published in *Government Gazette* No. 25826 (*Regulation Gazette* No. 7854) of 12 December 2003, is hereby corrected as follows:

- (1) By substituting Page 3 with the attached Page 115 (page 3 of *Government Gazette* No. 25826 of 12/12/2003).

Annexure A

- (2) By the insertion of the word "member" between the words "any" and "office bearer" in Rule 17(6)(c) on page 116 (page 4 of *Government Gazette* No. 25826 of 12/12/2003).

25 REPRESENTATION BEFORE THE COMMISSION

- (1)(a) In conciliation proceedings a party to the dispute may appear in person or be represented only by-
- (1) a *director* or *employee* of that party and if a close corporation also a member thereof; or
 - (2) any *member, office bearer* or *official* of that party's registered *trade union* or registered employer's organisation.
- (b) In any arbitration proceedings, a party to the *dispute* may appear in person or be represented only by:
- (1) a *legal practitioner*,
 - (2) a *director* or *employee* of that party and if a close corporation also a member thereof; or
 - (3) any *member, office bearer* or *official* of that party's registered *trade union* or registered employer's organisation.
- (c) If the *dispute* being arbitrated is about the fairness of a dismissal and a party has alleged that the reason for the *dismissal* relates to the employee's conduct or capacity, the parties, despite subrule(1)(b) are not entitled to be represented by a *legal practitioner* in the proceedings unless-
- (1) the commissioner and all the other parties consent;
 - (2) the commissioner concludes that it is unreasonable to expect a party to deal with the *dispute* without legal representation,
- after considering-
- (a) the nature of the questions of law raised by the *dispute*;
 - (b) the complexity of the *dispute*;
 - (c) the public interest; and
 - (d) the comparative ability of the opposing parties or their representatives to deal with the *dispute*
- (2) If the party to the dispute objects to the representation of another party to the dispute or the commissioner suspects that the representative of a party does not qualify in terms of this rule, the commissioner must determine the issue.
- (3) The commissioner may call upon the representative to establish why the representative should be permitted to appear in terms of this rule.
- (4) A representative must tender any documents requested by the commissioner in terms of subrule (3), including constitutions, payslips, contracts of employment, documents and forms, recognition agreements and proof of membership of a trade union or employers' organisation.

No. R. 530

30 April 2004

LABOUR RELATIONS ACT, 1995 (ACT No. 66 OF 1995)**COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION****RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE CCMA****CORRECTION NOTICE**

Government Notice No. R. 1748 published in *Government Gazette* No. 25797 (*Regulation Gazette* No. 7847) of 5 December 2003, is hereby corrected as follows:

- (1) By the insertion of the word "member" between the words "any" and "office bearer" in Rule 25(1)(a)(2) and 25(1)(b)(3) on page 113 (page 9 of *Government Gazette* No. 25797 of 05/12/2003).

**DEPARTMENT OF TRANSPORT
DEPARTEMENT VAN VERVOER****No. R. 528****30 April 2004****CALL BY THE ACTING MINISTER OF TRANSPORT FOR NOMINATIONS OF MEMBERS OF THE
REGULATING COMMITTEE OF ACSA AND ATNS**

The Regulating Committee of the Airports Company of South Africa (ACSA) and the Air Traffic and Navigation Services (ATNS) Company is a statutory body empowered by the Airports Company Act, No. 44 of 1993, and the Air Traffic and Navigation Services Company Act, No. 45 of 1993. The purpose of the Regulating Committee is to economically regulate ACSA and ATNS. It is responsible for restraining the Companies from abusing their monopoly positions.

The Regulating Committee requires candidates with the knowledge and experience in Corporate Finance, Project Finance, Project Management and Aviation.

The Committee normally meets once every month. *Ad-hoc* meetings are held whenever there are urgent issues. Remuneration is based on time spent in preparation and attendance of meetings.

Nominations for suitably qualified people to perform the duties in terms of the said Acts are being awaited. Both organisations as well as individuals can make nominations, with a brief motivation. A brief CV and a letter of acceptance by the nominee should be enclosed and sent for the attention of Mr Levers Mabaso, to the Director-General: Transport, Private Bag X193, Pretoria, 0001. Tel: (012) 309-3285. Fax: (012) 323-7007 and/or E-mail: mabasol@ndot.pwv.gov.za

The closing date for nominations is 25 May 2004.

JEFF RADEBE**Acting Minister of Transport**

- (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 and required 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 Agreement.

B. For any employer who 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 Agreement shall be granted in the following circumstances:
 - (a) Where the employer, who 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 set out in this Agreement or 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 not be amended without the Council's approval.
- (2) An employer who is as 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 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) above that is in contravention of any law or the minimum employment standards set out in this Agreement shall be null and void ab initio."

5. CLAUSE 16: ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

Insert the following new clause 16:

"16. ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

- (1) A survey shall be conducted under the auspices of the Council into the incidence of contract work in the Industry with the intention of making any agreement reached as a result of the survey effective from 1 July 2004.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to cooperate with ther survey."

Signed at Cape Town on behalf of the parties, this 17th day of February 2004.

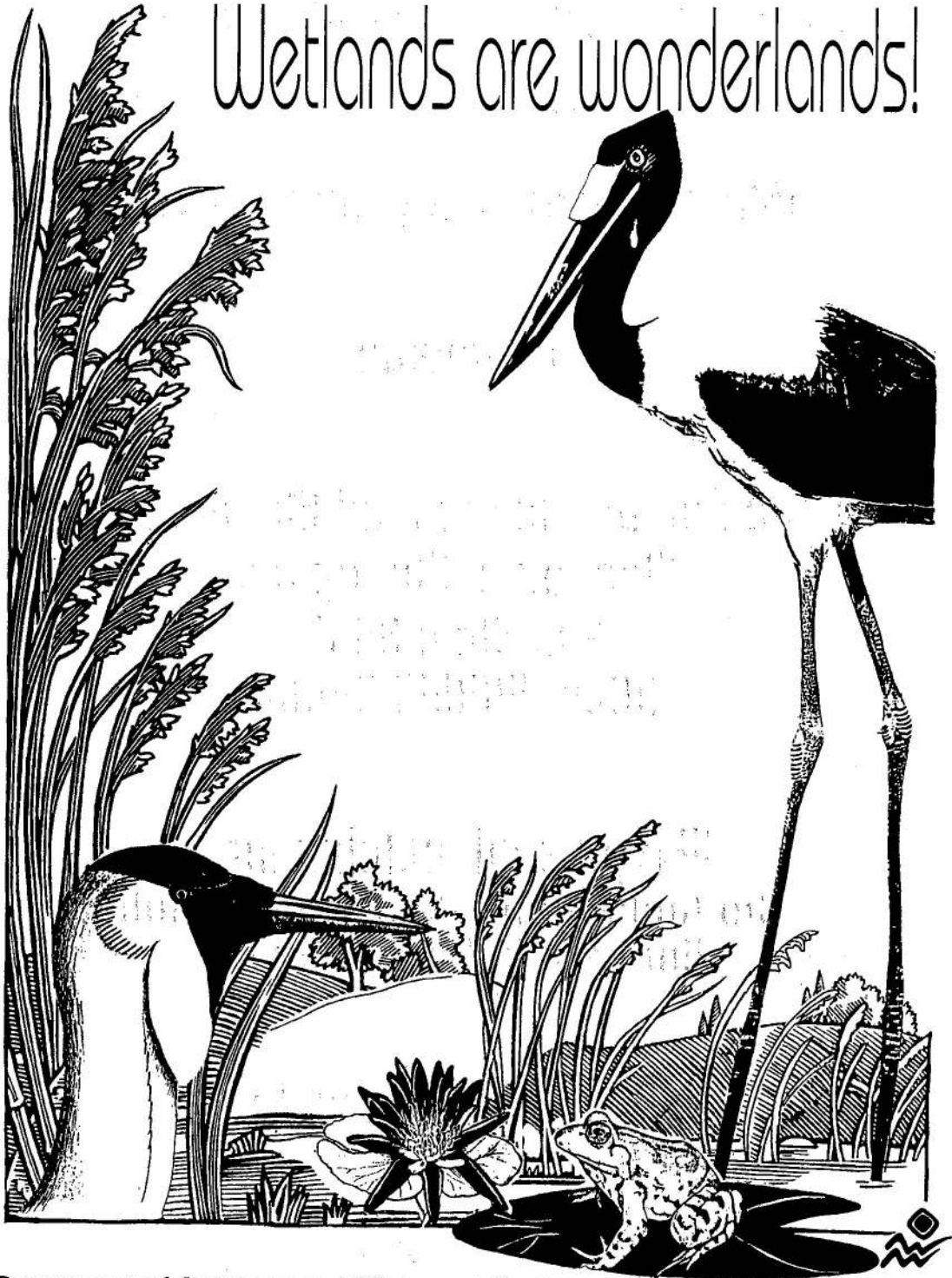
C. O. JEFTHA
Chairperson

M. W. SIDDONS
Vice-Chairperson

W. A. ROBERTS
Acting General Secretary

- (d) The decision of the Exemptions Board 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 who 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 levies, or, if so, an agreed payment plan exists in respect of any such outstanding moneys. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions which 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 will 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 affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. Either the employer, or the trade union may request a ballot.
- (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 made 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, transferability, administration, management, costs, growth and stability. "Sufficiency", for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.
 - (d) The terms of the exemption sought, including the period thereof.
 - (e) Any existing 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.

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Department of Environmental Affairs and Tourism

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