

## ANNEXURE A

### SECURITY OF EMPLOYMENT AND SEVERANCE PAY

For the purpose of this Annexure, notwithstanding the definition of 'employee' in clause 3 of the Main Agreement, 'employee' shall include persons employed in terms of clause 1(4) and (5) of Part I of the Main Agreement.

#### 1. Retrenchments and/or Redundancies

##### 1.1 Introduction

Any retrenchment of employees falling under the scope of this agreement must be undertaken in accordance with either Procedure A or Procedure B set out below. The procedure to be used will depend on:

- The size of the Company;
- The number of employees that the Company proposes to retrench; and
- The Company's retrenchment history over the preceding twelve-month period.

##### 1.2 Procedure A must be applied by those employers who:

1.2.1 Employ 50 or fewer employees; or

1.2.2 Employ more than 50 employees but who are contemplating retrenching less than the number of employees reflected hereunder:

- For employers of up to 200 employees : 10 employees
- For employers of more than 200 but not more than 300 employees : 20 employees
- For employers of more than 300 but not more than 400 employees : 30 employees
- For employers of more than 400 but not more than 500 employees : 40 employees
- For employers of 500 or more employees : 50 employees;

and

Where the number of employees retrenched in the 12-month period prior to the date of the notice of invitation to consult, together with the number of employees that the employer contemplates retrenching, is less than the above.

1.3 Procedure B applies to those employers who employ more than 50 employees and who are contemplating the retrenchment of at least the number of employees reflected hereunder:

- For employers of up to 200 employees : 10 or more employees.
- For employers of more than 200 but not more than 300 employees : 20 or more employees.
- For employers of more than 300 but not more than 400 employees : 30 or more employees.
- For employers of more than 400 but not more than 500 employees : 40 or more employees.
- For employers of 500 or more employees : 50 or more employees.

or

Where the number of employees retrenched in 12-month period prior to the date of the notice of invitation to consult, together with the number of employees that the employer contemplates retrenching, is equal to or exceeds the above.

##### 1.4 For the purposes of this procedure:-

"Notice of invitation to consult" means the notice referred to in clauses 2.1.1 and 3.1.1; and

"Employee" includes all persons employed by the legal entity that is the employer (e.g. a company, a CC or a sole proprietor) and is not confined to scheduled employees in terms of the Agreement.

1.5 This procedure is intended partly as a guide to the relevant provisions of the Act, and partly to establish specific terms regulating work security in the industry. If there is a conflict between this annexure and the Act, the Act prevails, except for those clauses which are intended to supplement the Act.

#### 2. PROCEDURE A

## 2.1 Notice of proposed retrenchment

2.1.1 An employer must notify all relevant consulting parties and the Regional Bargaining Council when that employer contemplates terminating the employment of one or more employees for reasons related to its operational requirements.

(2.1.1 substituted by Government Notice R.899 of 11 September 2009)

2.1.2 Consulting parties include any registered trade union of which any of the employees potentially affected by the proposed retrenchment are members, and the nominated representatives of any potentially affected employees who are not members of a registered trade union.

2.1.3 The notice referred to in 2.1.1 must be given in writing, as soon as possible after retrenchment is contemplated but at least 21 days before the contemplated date of retrenchment.

2.1.4 In the written notice, the employer must invite the consulting parties to commence consultations over the proposed retrenchment. At the same time, the employer must disclose all relevant information to the consulting parties. This information must include, but is not limited to the following:

- 2.1.4.1 The reasons for the proposed retrenchment;
- 2.1.4.2 The alternatives that the employer considered before proposing the retrenchment, and the reasons for rejecting these alternatives;
- 2.1.4.3 The number of employees likely to be affected and the job categories in which they are employed;
- 2.1.4.4 The proposed selection criteria to be used to determine which employees to retrench;
- 2.1.4.5 The proposed date of retrenchment;
- 2.1.4.6 The proposed severance pay;
- 2.1.4.7 Any assistance which the employer proposes to offer to the employees who are likely to be retrenched;
- 2.1.4.8 The possibility of the future re-employment of the retrenched employees;
- 2.1.4.9 The number of employees employed by the employer; and
- 2.1.4.10 The number of employees that the employer has dismissed for reasons based on its operational requirements in the preceeding twelve-month period.

## 2.2 Consultation Process

2.2.1 The employer must engage in a meaningful joint consensus-seeking process with the appropriate consulting party, and attempt to reach consensus on:

- 2.2.1.1 Appropriate measures to:
  - Avoid the retrenchment;
  - Minimise the number of retrenchments;
  - Change the timing of the retrenchment; and
  - Mitigate the adverse effects of the retrenchment;

2.2.1.2 The method for selecting the employees to be dismissed; and

2.2.1.3 The severance pay for dismissed employees.

2.2.2 The employer must allow the consulting parties an opportunity to make representations about any of the above matters, and any other issues relevant to the proposed retrenchment.

2.2.3 The employer must consider and respond to any representations made and, if the employer does not agree with them, it must state the reasons for disagreeing. If the consulting party's representations are made in writing, then the employer must respond in writing.

2.2.4 In any dispute in which an arbitrator is required to decide whether or not any information sought by the consulting parties is relevant, the onus is on the employer to prove that the information which it has refused to disclose is not relevant for the purposes for which it is sought.

2.2.5 The employer must select the employees to be dismissed according to selection criteria:

- That have been agreed by the consulting parties; or
- If no criteria have been agreed, criteria that are fair and objective.

### **2.3 Severance Pay**

The formula contained in clause 35 of this Agreement must be used to determine the amount of severance pay to be paid to a retrenched employee.

### **2.4 Notification of termination of employment**

When the consultation process has been concluded, the employer must give notice of termination to those employees selected for retrenchment on the following basis:

- One week, if the employee has been employed for six months or less; or
  - Two weeks, if the employee has been employed for more than six months but less than twelve months.
  - Four weeks, if the employee has been employed for twelve months and more.
- (item 2.4 substituted by Government Notice R.868 of 9 September 2005)

### **2.5 Notification to the Bargaining Council**

2.5.1 Once the affected employees have been given notice of the termination of their employment, the employer must inform the bargaining council's Regional Office, in writing, of the number and occupational categories of the employees that have been retrenched.

### **2.6 Re-employment of retrenched employees**

2.6.1 If an employer who has previously retrenched employees engages new employees, that employer must, as far as is practicable, give preference to the re-engagement of those persons who were retrenched from the establishment and who are qualified and available to undertake the categories of work required by the employer.  
(substituted by Government Notice r.748 of 23 September 2011)

## **3. PROCEDURE B**

### **3.1 Notice of proposed retrenchment**

- 3.1.1 An employer must notify all relevant consulting parties when that employer contemplates terminating the employment of one or more employees for reasons related to its operational requirements.
- 3.1.2 Consulting parties include any registered trade union of which any of the employees potentially affected by the proposed retrenchment are members, and the nominated representatives of any potentially affected employees who are not members of a registered trade union.
- 3.1.3 The notice referred to in 3.1.1 must be given in writing, as soon as possible after retrenchment is contemplated.
- 3.1.4 In the written notice, the employer must invite the consulting parties to commence consultations over the proposed retrenchment. At the same time, the employer must disclose all relevant information to the consulting parties. This information must include, but is not limited to the following:
- 3.1.4.1 The reasons for the proposed retrenchment;
  - 3.1.4.2 The alternatives that the employer considered before proposing the retrenchment, and the reasons for rejecting these alternatives;
  - 3.1.4.3 The number of employees likely to be affected and the job categories in which they are employed;
  - 3.1.4.4 The proposed selection criteria to be used to determine which employees to retrench;

- 3.1.4.5 The proposed date of retrenchment;
- 3.1.4.6 The proposed severance pay;
- 3.1.4.7 Any assistance which the employer proposes to offer to the employees who are likely to be retrenched;
- 3.1.4.8 The possibility of the future re-employment of the retrenched employees;
- 3.1.4.9 The number of employees employed by the employer; and
- 3.1.4.10 The number of employees that the employer has dismissed for reasons based on its operational requirements in the proceeding twelve-month period.

### **3.2 Appointment of a CCMA facilitator**

- 3.2.1 The employer, or the consulting parties representing the majority of the employees that the employer proposes to retrench may, within 15 days of the date of the employer's notice of invitation to consult, request the CCMA to appoint a facilitator to facilitate the retrenchment process in terms of section 189A of the Labour Relations Act.
- 3.2.2 If a facilitator is appointed, the facilitator will assist the parties to the consultation process and will act in terms of the Regulations made by the Minister.
- 3.2.3 If a CCMA facilitator has been appointed and 60 days have elapsed from the date of the employer's notice of invitation to consult:
  - 3.2.3.1 The employer may give notice of termination to those employees selected for retrenchment on the following basis:
    - One week, if the employee has been employed for six months or less; or
    - Two weeks, if the employee has been employed for more than six months but less than twelve months.
    - Four weeks, if the employee has been employed for twelve months and more.  
(item 3.2.3.1 substituted by G.N R.868 of 9 September 2005)
  - 3.2.3.2 A registered trade union or the employees who have received notice of termination may, in accordance with the provisions of section 189A of the Act, may either:
    - Give notice of a strike in terms of the applicable provisions of the Act; or
    - Refer a dispute concerning whether there is a fair reason for the dismissal to the Labour Court in terms of the applicable provisions of the Act.

### **3.3 Procedure when a CCMA facilitator is not appointed**

- 3.3.1 The employer must engage in a meaningful joint consensus-seeking process with the appropriate consulting party, and attempt to reach consensus on:
  - 3.3.1.1 Appropriate measures to:
    - Avoid the retrenchment;
    - Minimise the number of retrenchments;
    - Change the timing of the retrenchment; and
    - Mitigate the adverse effects of the retrenchment;
  - 3.3.1.2 The method for selecting the employees to be retrenched; and
  - 3.3.1.3 The severance pay for retrenched employees.
- 3.3.2 The employer must allow the consulting parties an opportunity to make representations about any of the above matters, and any other issues relevant to the proposed retrenchment.
- 3.3.3 The employer must consider and respond to any representations made and, if the employer does not agree with them, it must state the reasons for disagreeing. If the consulting party's representations are made in writing, then the employer must respond in writing.
- 3.3.4 In any dispute in which an arbitrator is required to decide whether or not any information sought by the consulting parties is relevant, the onus is on the employer to prove that the information which it has refused to disclose is not relevant for the purposes for which it is sought.

### **3.4 Selection criteria**

- 3.4.1 The employer must select the employees to be dismissed according to selection criteria:
- That have been agreed by the consulting parties; or
  - If no criteria have been agreed, criteria that are fair and objective.
- 3.4.2 A party may not refer a dispute over the retrenchment to the bargaining council unless a period of 30 days has elapsed from the date on which the employer's notice of invitation to consult was given.
- 3.4.3 After a dispute has been referred to the bargaining council, and after the relevant period referred to in section 64(1)(a) of the Act has elapsed:
- 3.4.3.1 The employer must give notice of termination to those employees selected for retrenchment on the following basis:
- One week, if the employee has been employed for six months or less; or
  - Two weeks, if the employee has been employed for more than six months.
  - Two weeks, if the employee has been employed for more than six months but less than twelve months.
  - Four weeks, if the employee has been employed for twelve months and more.
- (substituted by G.N R.868 of 9 September 2005)
- 3.4.3.2 A registered trade union or the employees who have received notice of termination may, in accordance with the provisions of section 189A of the Act, either:
- Give notice of a strike; or
  - Refer a dispute concerning whether there is a fair reason for the dismissal to the Labour Court in terms of the applicable provisions of the Act.

### **3.5 Severance pay**

The formula contained in clause 35 of this Agreement must be used to determine the amount of severance pay to be paid to a retrenched employee.

### **3.6 Notification to the Bargaining Council**

- 3.6.1 Once the affected employees have been given notice of the termination of their employment, the employer must inform the Bargaining Council's regional office, in writing, of the number and occupational categories of the employees that have been retrenched.

### **3.7 Re-employment of retrenched employees**

- 1.7.1 If an employer who has previously retrenched employees engages new employees, that employer must, as far as is practicable, give preference to the re-engagement of those persons who were retrenched from the establishment and who are qualified and available to undertake the categories of work required by the employer.

(item 3.7.1 substituted by G.N. R.1374 of 3 October 2003)

## **2. Lay-offs**

For the purpose of this clause, "*lay-off*" means the temporary suspension, without pay, of employment for a minimum of five full consecutive shifts owing to a reduction in the volume of work in an establishment or section of an establishment or owing to any other economic reason or any other contingency or circumstance beyond the control of the employer.

### **The following procedures and conditions shall apply in respect of lay-off provisions:-**

- (a) An employer shall give the Regional Office, affected employees and affected party trade unions fourteen clear working days' notice of the intention to lay-off employees.
- (b) The notification of lay-off shall provide the names of the affected employees, the reasons for the lay-off and the estimated duration of the lay-off.
- (c) The employer shall, during the fourteen-day notification period, consult with the representatives of the trade

- unions and/or elected shop stewards on the reasons for the lay-off and the manner in which it will operate.
- (d) The employer shall give the affected employees a minimum of five shifts notice of the intention to lay-off. This notice shall include the specific date on which the employees are to resume work.
  - (e) The employer shall not be required to pay wages to the employees on lay-off, provided that where the employer believes resumption of work can be affected and expressly instructs the employees to present themselves for employment on a particular day, they shall receive not less than four hours' work or pay in lieu thereof, in respect of such day.
  - (f) Lay-off may not continue beyond a period of eight weeks unless otherwise agreed between the employer and representatives of the party trade unions representing the affected employees or such other representatives of the affected employees.
  - (g) Periods not worked by an employee whilst on lay-off shall count as shifts actually worked and these employees shall be credited with the full shifts for an ordinary week, whilst on the lay-off, for purposes of paid leave and leave enhancement pay up to an eight week maximum in any calendar year.
  - (h) Employees on lay-off may engage in any other employment for remuneration during the duration of the lay-off.
  - (i) Should an employee on lay-off not return to employment within three working days of the due date. The employee shall be deemed to have terminated employment with the employer, unless the absence is condoned by the employer."
  - (j) The provisions of subclause (8)(i)(a) of this Agreement shall *mutatis mutandis* apply to the payment of earnings in respect of lay-off."
- (substituted by G.N R.868 of 9 September 2005)

### 3. Limited duration contracts of employment

#### (a) Definition

An employer may employ an employee for a specified, limited contract period in terms of a limited duration contract of employment, otherwise known as a limited duration contract of employment, fixed term, short term or temporary contract as per the schedule hereto on the following specified categories of work:

- (i) **Site work**  
Employment in terms of a contract which specifies that employment is in respect of a specific construction site for the duration of the site contract or a specific portion or section thereof.
- (ii) **Turnaround work**  
Employment in terms of a contract of employment which specifies that employment is for the duration, or portion thereof, of
  - (aa) a contract secured by the employer to carry out specified installation, maintenance, overhaul or development work on existing equipment or on an installation not owned by the employer. or
  - (ab) major maintenance, overhaul or development work on equipment or an installation owned by the employer necessitating the recruitment of employees over and above the normal complement.
- (iii) **Ship repair work**  
Employment in terms of a contract of employment that specifies that employment is for the duration or portion thereof of a specific contract secured by the employer to carry out repairs on a particular vessel.
- (iv) **Short-term fluctuations in workload**  
Employment in terms of a contract of employment which arises out of a situation where the employer is required to take on additional employees as a result of having secured additional work of a short-term nature. This employment must be limited in duration to a period not exceeding four months. Provided that if a longer period is required to complete a specific task or activity, then the period of the specific task or activity shall be specified in the limited duration contract of employment.  
Any other work, activity or requirement that falls outside the work categorised above, may not be subject to a limited duration contract of employment, fixed term, short term or temporary contract in terms of this agreement. This does not affect an employer's right to implement the probationary provisions prescribed in the Labour Relations Act in respect of new employees.

**(b) General**

- (i) The provisions of the Main Agreement shall apply in respect of employees engaged on limited duration contracts of employment. The provisions of clause 1 above shall not, however, apply to such employees: Provided the termination of such employees' services does not precede the agreed expiry date of the limited duration contract.
- (ii) An employer shall on engagement of an employee in terms of a limited duration contract of employment give the employee a signed copy of the contract which has been entered into.
- (iii) Every employer who has employees engaged in terms of a limited duration contract of employment shall each month, in such form as required by the Council from time to time, notify the Council of the number of such employees in his employ. The employer shall, at the request of the representatives of the trade unions represented at the company, make this information available to such representatives. This information shall include the names of the individual employees, if required.
- (iv) The Special Provisions Limited to Construction Sites covered by Project Labour Agreements are set out in Annexure H.  
(Substituted by G.N. R.77 of 2 February 2007)

**Footnote:**

Whilst the provisions of this Annexure apply to party trade unions it is recommended that they also be observed in respect of non-party trade unions and any employee representative body elected in terms of an agreed procedure, unless such non-party trade union or employee representative body elects otherwise.

**LIMITED DURATION CONTRACT OF EMPLOYMENT**

Schedule referred to in clause 3(a) of Annexure A to the Main Agreement.

**CONTRACT OF EMPLOYMENT**

(The employer).....agrees to engage the services of (the employee) and the employee hereby agrees to accept service with the employer on the following terms and conditions:

- (i) (a) The contract of employment in terms of clause 3 of Annexure A to the Main Agreement shall be for a maximum period of .....months/weeks from date of employment, for the purpose of site work/turn-around work/ship repair work (delete whichever is not applicable) from .....to .....or completion of the specific work detailed hereunder:  
.....  
.....

- b) The contract of employment for short-term fluctuations in workload shall not exceed a period of four months from date of employment, viz from ..... to ....., or completion of the specific work detailed hereunder:

*(Note: Should a period longer than four months be required to complete a specific task or activity, the period and the specific task or activity must be specified hereunder:)*  
.....  
.....

- (ii) On completion of the contract detailed in (i) above, this contract shall automatically terminate. Such termination shall not be construed as being retrenchment but as completion of contract.

The employee shall nonetheless still be given one shift's notice of expiry of the contract period.

- (iii) The remaining conditions of employment, not expressly detailed above, shall be existing employer policy, rules and regulations and the general conditions of employment as contained in the Main Agreement for the Iron, Steel, Engineering and Metallurgical Industry, subject to the limitation set out in (ii) above.
- (iv) Where employment continues after completion of this contract in terms of (i) above this contract shall become null and void and the provisions of the Main Agreement shall apply.

(v) Subject to the amendment of the general conditions of employment as set out in (ii) above, the engagement conditions shall be:

(a) Occupation .....

(b) Rate of pay .....

(which shall not be less than the rate scheduled in the Main Agreement).

The employee acknowledges that he/she understands the contents of this contract and signifies acceptance thereof.

Signed at ..... on ..... 19 .....

Employer .....

Employee .....

Witness .....

**Note:** The employer and employee shall, during the period of employment in terms of this contract, observe the provisions of the applicable Benefit Fund Agreements.

(item 3, "Limited Duration contracts of Employment" substituted by G.N. R.1374 of 3 October 2003)

## ANNEXURE B

### FIVE-GRADE JOB AND WAGE STRUCTURE

1. Individual employers, together with worker representatives and/or registered trade unions recognised at establishment level, shall mutually agree on whether to adopt the new job and wage structure or to continue using the current thirteen grades and related arrangements.
2. It is the intention of the parties that the decision whether or not to adopt the new grading structure should be a voluntary one on both sides. However, where consensus on the matter cannot be reached between the parties at establishment level, the following disputes procedures shall apply:

**Step 1:**

The matter shall be referred to the relevant Regional Council for conciliation. Two assessors, one from the employer side and one from the trade union side may, by mutual agreement, be appointed to assist the conciliator. The assessors shall be selected from outside the establishment. Any costs arising from the use of assessors shall be borne by the parties concerned.

**Step 2:**

Where this is unsuccessful in resolving the dispute, both parties or either party may refer the matter to an arbitrator who will attempt to conciliate the dispute. The costs of the conciliation and subsequent advisory arbitration process (where this is undertaken) shall be negotiated at establishment level. Two assessors, one from the trade union side and one from the employer side, will be appointed. The assessors shall be selected from outside the establishment. Any costs arising from the use of assessors shall be borne by the parties concerned. (Step 2 substituted by Government Notice R.1051 of 26 October 2001)

**Step 3:**

Should this conciliation not be successful, the arbitrator will then decide the matter in terms of advisory arbitration.

**Step 4:**

Should the parties not have followed the conciliation/advisory arbitration process set out in Steps 2 and 3 above or should either party not be prepared to accept the advisory arbitration decision, they will be free to pursue the matter in terms of legal industrial action. Alternatively, the parties may agree in advance that the arbitration decision will be final and binding, in which case no legal industrial action may be implemented.

3. No party may adopt one element of this Agreement as set out below, without adopting all of the others, namely:

(a) Multi-skilling/multi-tasking/flexibility.

(b) The five-grade wage model.

(c) Job security as set out elsewhere in this Agreement.

It is, however, recognised that any job requires a degree of flexibility to meet normal operational requirements and changes. This degree of flexibility, therefore, under normal circumstances, will not constitute an element of this Agreement as specified above.



Should a dispute on this issue arise at a workplace then the dispute resolution process outlined in paragraph 4 of the Agreement shall be followed.

4. When agreement has been reached between the parties to adopt the new structure but where disputes arise regarding the grading of workers, the same procedure will be followed as outlined in paragraph 2 above. However, in this case the arbitrator will decide the matter in terms of final binding arbitration.

(Item 4 substituted by Government Notice R.1051 of 26 October 2001)

5. Where establishments adopt the new grading structure, employees will be required to undertake any tasks or combination of tasks falling within the scope of that employee's job grade or any tasks or combination of tasks falling within any grade below this level: Provided that, if necessary, the employee has received or is receiving the necessary training to undertake the tasks in question. Employers will make the necessary mutually agreed training opportunities and assessment available to identified employees while employees will agree to attend the courses and undertake competency-based assessments in accordance with the relevant training requirements. No additional remuneration will be payable to the employee for such changes in area and scope of work over and above that set out under paragraph 8 of this Agreement.
6. The party trade unions undertake to use their best endeavours to ensure that their members are aware of the implications of the new job and wage structure and their obligation as employees, having agreed to enter the new structure, to undertake a broader range of work. To this end, where a decision has been taken in accordance with paragraph 1 above to implement the new job and wage structure, recognised shop stewards will be granted a minimum period of one day's leave, subject to reasonable operational requirements, as a contribution towards a training course for shop stewards to be conducted under the auspices of the unions concerned with regard to this Agreement.
7. The parties will review the five skill definitions with a view to amending these to ensure that they effectively meet the multi-skilling and flexibility objectives of the parties. They will also agree on the new technical schedules in accordance with these definitions and indicative tasks.
8. For those establishments that have implemented or intend to implement the new job and wage system, the following minimum wage shall apply for the new five-grade structure. For those establishments that have implemented the five-grade job and wage structure, the following increases shall apply on the same terms as set out in clause 1 of Part II of this Agreement.

The actual wage structure, including the benchmark figure for artisans, shall be agreed at company level depending upon the nature of multi-skilling, multi-tasking broad banding and employee flexibility agreed between the affected employer and trade union(s).

Grade	<i>Current Minimum Wage Rate</i>	<i>Increase on Actuals and Scheduled Wage Rates</i>	Increase on Scheduled Wage Rate	New Minimum Wage Rates
5	42.34	8.00	3.63	48.98
4	36.47	8.00	3.12	42.18
3	31.40	8.00	2.69	36.32
2	27.04	8.00	2.32	31.28
1	23.29	8.00	2.00	26.94
Whichever is the greater personal increase				

**Note:**

These amounts will be increased in line with the increases to be agreed in the 2012/2013 and subsequent annual Main Agreement negotiations.

The new five-grade wage structure will be phased-in in equal increments, over a maximum period of five years.

Individual establishments may agree to phase the new structure in over a shorter period.

(substituted by G.N. R.1041 of 3 October 2008)

(substituted by Government Notice r.899 of 11 September 2009)

(Substituted by Government Notice R.628 of 23 July 2010)

**(Substituted by Government Notice R.748 of 23 September 2011)**

9. The parties will consider the introduction of a sixth and seventh grade (above Rate A/Grade 5) during the course of the 1997/8 Main Agreement.
10. No employer who agrees to adopt the five-grade job and wage structure on a voluntary basis in terms of paragraph 1 above may retrench any worker as a direct result of any arrangements implemented in terms of this Agreement during the phasing-in period of the new wage structures, unless such retrenchment is on a voluntary basis, or unless external circumstances beyond either party's control impact upon the enterprise. Where jobs become redundant as a result of the process outlined in this Agreement during this period, the following options will be available to employers:
  - (a) Redeployment into other positions.
  - (b) Reduction in the size of the workforce through natural attrition.
  - (c) Voluntary retrenchment with or without further training.
  - (d) Voluntary early retirement.

In all other circumstances and respects, the provisions of clause 35 of the Main Agreement will continue to apply.

11. The provisions of paragraph 10 above will also apply in the following circumstances:
  - (a) The employer has indicated that he is not prepared to adopt the new job and wage structure; and
  - (b) the matter has been referred to arbitration in terms of paragraph 2, Steps 3 or 4; and
  - (c) the arbitrator decides that the company has no valid reasons for refusing to adopt the new structure and has not been dealing with the matter in good faith.
12. In all other cases where establishments adopt the five-grade job and wage structure following arbitration and/or industrial action or the threat of industrial action, the provisions of paragraph 10 above will not apply.
13. The period 1 July to 31 December 1996 will be used by the parties as a period of preparation to introduce the new job and wage structure and revised technical schedules and their benefits to the industry and to assess the likely usage of the new arrangements. Such assessment and introduction will be completed by 31 January 1997. Should the parties find that there are no establishments prepared to enter the new structure at this stage, negotiations will be re-opened. Parties at establishment level proposing to implement the new structure will notify one another of such proposal. The parties will then meet to discuss the proposal.
 

Should agreement be reached in principle, the parties will then discuss proposals relating to the method of introduction of the new structure and, in particular, how work will be restructured, which grades will apply and what training will be provided to employees to enable them to undertake a broader range of tasks.

The parties will also agree at establishment level on appropriate times and methods for worker representatives, shop stewards and management to communicate progress on and implementation of the new job and wage structure to the workforce. Establishments may decide to adopt the five-grade wage structure at any time, subject to the provisions of this paragraph.
14. The parties also agree to the following:
  - (a) To meet with experienced arbitrators in order to develop a set of guidelines to assist arbitrators in facilitating in disputes and in reaching arbitral decisions. For example, one such guideline shall be that arbitrators should not decide in favour of the new structure where either side is able to show that the change would be to their material disadvantage.
  - (b) To define the precise role of the two assessors referred to in paragraph 2 above.
  - (c) To give further consideration to a mechanism for resolving disputes that may arise where employers who have adopted the new job and wage structure seek to retrench workers for reasons unrelated to this.
  - (d) To finalise the proposed Productivity Framework Document by 31 December 1996 for inclusion in this document.
15. The parties acknowledge the necessity to generate employment opportunities in the industry, the importance of the acquisition of skills, and the need to create career opportunities for new workers. Accordingly, new entrants to Grade 1 at the company shall, for a maximum 12-month period—
  - (a) be trained to perform the Grade 1 tasks required at the company concerned, with the training required for these employees to be agreed on at establishment level; and
  - (b) be paid a wage rate of not less than Grade 1 less 20%.

16. The parties, in order to promote local employment opportunities on construction sites, agree to apply the wage structure specified in paragraph 15 above to those construction site employees who are not covered by Schedule G, section (d) of the Main Agreement and—
- (a) who are employed on fixed-term contracts of employment for the duration of the construction project or a lesser defined period; and
  - (b) who are sourced from local communities; and
  - (c) whose activities are confined to general labouring tasks.
17. Where employers wishing to implement the five-grade job and wage structure wish to exclude any employees or category of employees from these arrangements they must obtain agreement on these exclusions with the worker representatives, trade unions and workers concerned at establishment level. Workers excluded in terms of this paragraph will continue to receive their current rates of pay increased in line with the annual Main Agreement negotiations. The Regional Council must be notified of these exclusions.
18. In terms of the 1993 Main Agreement Settlement, none of the above arrangements will apply to Schedule G, Section (d): Structural Engineering (paragraph will be further debated with representatives of the Constructional Association).
19. *Industry training issues*
1. Principles that should inform the Recognition of Prior Learning Process (RPL)
 

The parties have agreed to the following:-

    - (a) RPL is a process to give recognition to workers for the skill and knowledge that they already have. The RPL process involves assessment against agreed standards to obtain credits leading to certification.
    - (b) In companies implementing the Five Grade system, all workers wishing to be assessed for the purpose of RPL in terms of unit standards required by the company for the employees' current occupations shall be allowed this opportunity. The time-frame for this assessment shall be agreed between worker representatives and management at company level. In companies not implementing the Five Grade system, assessment for the purpose of RPL shall take place by mutual agreement.
    - (c) No worker shall be obliged to participate in the RPL process.
    - (d) No worker can be downgraded as a result of the RPL process.
    - (e) Workers shall be assessed in a language of their own choice, insofar as this is practicable at the company concerned.
    - (f) All decisions relating to the RPL process shall be decided on by the unions and employers jointly at national level.
    - (g) RPL is not a once-off process but is an ongoing process.
  2. Training Modules: Five Grade Structure –
 

The parties have agreed to conclude negotiations on the number of unit standards per grade, by 31 March 1998.
  3. Training of Industry Employees –
    - (i) The employer and trade union parties have agreed that workers identified in subparagraph (ii) shall have access to paid training which will provide them with career development opportunities. Such paid training shall be appropriate to the needs of the organisation and the industry.
    - (ii) In order to achieve this objective management shall jointly consider with worker representatives, at company level, appropriate training programmes to address identified skill deficiencies, the amount of training required and the identification of which employees require training.
    - (iii) The above provisions will not affect existing company-level training arrangements falling outside this framework.

## ANNEXURE C

### THE SKILLS DEFINITIONS ACCOMPANYING THE NEW FIVE-GRADE STRUCTURE

The prime objective of the proposed definitions is to move from the current individual task descriptions to one which defines an employee's area and scope of work in terms of competently held skills. In other words, at the end of the restructuring period the only restriction on any employee's work is whether he or she is formally skilled to carry out a particular task. This situation currently only exists with artisans who can be legally asked to carry out any task that lies within their discipline.

The position cannot be achieved overnight, for a number of reasons. Firstly, it will take a few years to reorganise the training infrastructure to provide for standardised modular training at all levels of the new career structure. Even if such modules were available it would not be economically feasible to bring all engineering employees up to the levels of formal skill required by the grade in which they have been placed by virtue of the current wage level. Finally, it will take a considerable period of 'cultural' adjustment for the industry to understand the new system and take maximum productivity advantage of it.

For these reasons, it is essential that the parties see the foreseeable future (i. e. until the new industry training framework is in place) as a period of transition where it will be necessary, because of the diversity of the industry, to live in both the new and old worlds. The definitions proposed below deal with this transition by providing some broad guidelines as to the work performed by employees at each level. It is for this reason that both a skill definition and a general scope of work definition appear at each level.

Workers will not be expected to be able to perform all of the indicative tasks in a particular grade to qualify as workers in that grade. Which particular tasks workers will be required to perform is a matter for discussion between management and workers and this will be one of the determining factors in deciding whether or not the establishment will adopt the new five-grade system.

In order to fully utilise manpower resources, all employees will perform work within their skills and capabilities. To this end, employees will accept any necessary training and be prepared, after consultation, to perform tasks within their grade as the needs of the operation require.

The requirements specified under each grade in this document will be revised and amended in line with the requirements of the to-be-agreed national training framework on an ongoing basis.

#### **Definition of terms used in these levels**

Where the expression 'formally competent in X modules' appears, this shall mean the employee has completed training modules that are recognised by the Metal and Engineering Industry Education and Training Board and, where applicable, the Plastics Industry Training Board to the specified competency standard.

The indicative tasks associated with each of the five grades will be used by the parties and the Technical Work Group in restructuring the current Main Agreement technical operations into five grades. However, specific operations that include these indicative tasks may, by agreement of the parties at central level, be graded into either a higher or lower grade, dependent upon particular circumstances. Where agreement cannot be reached by the parties on the grading of particular operations the matter will be referred to an agreed arbitrator who will decide the matter on the basis of the skill definitions and indicative tasks contained in this document, taking into account any particular circumstances that may apply. The definitions will require examination to ensure that they conform with occupational health and safety legislation and relevant licensing arrangements.

The new skill definitions of the five-grade job structure are set out below. During the period September 1996 to January 1997 all the current job descriptions of the Main Agreement will be reclassified into five grades for utilisation by those companies where the new five-grade structure is to be implemented.

#### **GRADE 1**

An employee at this level will undergo an induction training period, including occupational health and safety, and perform duties that are essentially of a manual and/or repetitive nature. Minimal skill, discretion and judgement is required as set procedures generally apply and the employee works mainly under direct supervision. He or she has no supervisory responsibility.

Employees will not be expected to undertake all of the following indicative tasks to qualify as a Grade 1 worker.

Which particular tasks employees will be required to perform at this level is a matter for discussion between management and the affected employee(s). These tasks should, within reason and subject to current operational practices, not be in unrelated areas.

### **Indicative tasks**

The following indicative tasks apply to this grade:

- Operation of automatic machines requiring no setting beyond the location of material and running the machine. Able to carry out basic pre-start machine inspection and lubrication.  
Operation of machines where such operation is limited to loading, setting the machine in motion, stopping and unloading the machine.
- Drilling to jigs, fixtures, stops, templates or dimples.
- Operating automatic submerged arc or gas shielded wire or flux cored wire arc welding machines (excluding setting up), butt, flash, projection, resistance or spot or arc spot or seam stud welding machine.
- Cutting to pre-set stops, grinding and/or deburring.
- Assembly of pre-manufactured components from stock requiring no interpretation or adjustments, but including deburring.
- Identification of different products and materials used in the product process of the plant in the area in which the employee works.
- The use of basic measurement tools such as a rule, tape, slip and 'no-go' gauges, etc.
- Write labels, weigh and record.
- Operate basic materials handling equipment such as pallet truck and mechanical and fixed pendant hoists.
- Packing, stocking, loading, unloading and cleaning duties in tool and/or stock and/or materials stores directly linked to the shopfloor and/or production process.
- Operating plastic production machines, including running adjustments.
- General labouring and cleaning duties, including removal of rust or coating and boiler cleaning and oiling and greasing on non-operating machinery.

### **GRADE 2**

An employee at this level is formally competent in 'x' modules and carries out work within the area and scope of this training; or is required to exercise a limited degree of discretion and judgement that may become virtually automatic with practical experience. The employee—

1. works under direct supervision or functions as a member of a work team;
2. understands and utilises basic statistical process control procedures, including the measurement of output specifications; and
3. consistently meets the production and quality standards set for activities at this level.

Employees will not be expected to undertake all of the following indicative tasks to qualify as a Grade 2 worker. Which particular tasks employees will be required to undertake at this level is a matter for discussion between management and the affected employee(s). These tasks should, within reason and subject to current operational practices, not be in unrelated areas.

### **Indicative tasks**

The following indicative tasks apply to this grade:

- Repetition work on semi-automatic or single purpose machines or equipment, including adjustment of material or tools within clearly defined limits.
- Assembles components using basic written, spoken and/or diagrammatic instruction in a mass production assembly environment, including mechanical adjustment and the identification of parts and their location.

- Basic gas welding skills not involving codes, or oxyacetylene cutting of scrap.
- Hand-welding by mechanically fed electrodes or preliminary welding or welding in fixtures (and completion of weld when removed from the fixture.)
- Operation of pre-set machines, including random checking with fixed gauges and replacement of tipped tooling.
- Use of measurement equipment related to the functions of this grade.
- Use of power-driven materials handling equipment such as a floor-operated crane, forklift and stacker (relevant license to be held where applicable).
- Use of computer to input data, produce reports and maintain database.
- Receiving locating preparing and issuing materials, tools and/or stock from requisition lists, in tool and/or stock and/or materials stores directly linked to the shopfloor and/or production process, including—
  - picking of stock;
  - checking and recording of stock; and
  - operation of materials and handling equipment.

### **GRADE 3**

An employee at this level is formally competent in ‘x’ modules and carries out work within the scope of this training; or is required to exercise a considerable degree of discretion and judgement and demonstrate a basic analytical ability. The employee—

1. works under routine supervision or functions as a member of a work team;
2. understands and can interpret statistical process control procedures, including the measurement of output specifications and the plotting of charts; and
3. consistently meets the production and quality standards set for activities at this level.

Employees will not be expected to undertake all of the following indicative tasks to qualify as a Grade 3 worker. Which particular tasks employees will be required to undertake at this level is a matter for discussion between management and the affected employee(s). These tasks should, within reason and subject to current operational practices, not be in unrelated areas.

#### **Indicative tasks**

The following indicative tasks apply to this grade:

- Use of drawings and written instructions to set up machines or installation of programs in the case of numerically controlled machines.
- Complex assembly of components or sub-assemblies that may require routine adjustment.
- Basic fault-finding, basic service and lubrication on machines or products with which the employee is familiar in line with maintenance and/or quality schedules.
- Use of keyboard or hard copy to compile statistics and records of activities up to this grade.
- Ability to measure accurately, including the use of precision-measuring instruments normally used in the particular work area.
- Down hand ferrous welding in a finished run.
- Operation of multi-head oxyacetylene cutting, profiling, flame planning or bevel cutting machine.
- Setting of plastic production machines.

### **GRADE 4**

An employee at this level is formally competent in ‘x’ modules and carries out work within the area and scope of this training; or has the knowledge and skill to perform autonomous, non-routine tasks of some complexity and is required to exercise analytical, problem-solving and decision-making skills and exercise judgment acquired after considerable practice and experience.

The employee—

1. works from complex instructions and procedures and can generate reports in a fixed format on activities

- up to level four when required;
2. may assist in the provision of on-the-job-training;
  3. works under or functions as a leader of a work team, and plans and organises activity in his or her immediate area of work;
  4. consistently meets the production and quality standards set for activities at this level; and
  5. uses tools and equipment within the scope of his or her training or competency.

Employees will not be expected to undertake all of the following indicative tasks to qualify as a Grade 4 worker. Which particular tasks employees will be required to undertake at this level is a matter for discussion between management and the affected employee(s). These tasks should, within reason and subject to current operational practices, not be in unrelated areas.

**Indicative tasks**

The following indicative tasks apply to this grade:

- Measure and monitor production output and quality standards within a set area or plant with available resources and equipment.
- Machinist's work, including setting up and grinding own tools and maintaining a limited number of machines in terms of their operation and basic service (excluding toolroom).
- Marking and setting out.
- Using a computer to construct simple graphs and spreadsheets.
- Inventory and store control, including supervision of Grade 2 employees in tool and/or stock and/or material stores directly linked to the shopfloor and/or production process.

**GRADE 5**

An employee at this level is formally competent in 'x' modules and carries out work within the area and scope of this training; or is normally a qualified artisan (or the equivalent thereof) who is able to exercise the skills and knowledge of a trade. He or she—

1. understands and applies quality control techniques;
2. exercises good interpersonal and communication skills;
3. exercises discretion within the scope of this grade;
4. works under plant level supervision or a part of a team;
5. performs non-artisan tasks incidental and peripheral to his or her work, including the operation of materials handling equipment and the cleaning of work areas.

**GRADING OF SUPERVISORS**

Supervisors will be graded in the grade immediately above that of the employees whom they supervise.

*Notes:*

1. In due course it will be necessary to develop further criteria for production employees who operate at an equivalent level to the qualified artisan, i.e. Grade 5.
2. The tasks listed above are merely given as an initial guide as to the types of task that are general characteristics of that particular grade.
3. Employees in any given grade may also be required to undertake work in lower grades.
4. The parties will consider the introduction of a sixth and seventh grade (above Rate A/Grade 5) during the course of the 1997/98 Main Agreement.

**ANNEXURE D  
PRODUCTIVITY BARGAINING**

1. *Objective*

Subject to the provisions of clause 37 of the Main Agreement, an employer, his employees, any employee representative body and any trade unions representing the affected employees may, by mutual agreement, enter into voluntary negotiations to conclude a productivity agreement with the objective of achieving measurable improvements in productivity performance and work life at company level in terms of the principles and

guidelines contained in this Annexure.

## 2. *Productivity Guidelines*

An opportunity exists for employers, employees, trade union representatives and other employee representative bodies to negotiate agreements, at company level, with the objective of achieving measurable improvements in productive performance, increase productivity, efficiency, effective utilisation of all resources, flexibility and other related objectives. The negotiations to achieve these objectives should be conducted in accordance with the following principles and guidelines:-

- (a) No party may adopt one element of the five grade job and wage structure agreement annexed to this agreement without adopting all of the other components of that agreement, namely:-
  - (i) Multi-skilling/multi-tasking/flexibility;
  - (ii) The five grade job and wage model; and
  - (iii) Job security as set out in the five grade job and wage structure agreement.
- (b) It is however recognised, in terms of the five grade job and wage structure agreement that any job requires a degree of flexibility to meet normal operational requirements and changes. Under normal circumstances, this flexibility will therefore not, for purposes of (a) above, constitute an element of the job and wage structure agreement.
- (c) Any wage increases, benefit improvements and/or improvements to any other working conditions and conditions of employment negotiated in terms of the productivity improvement agreement must be directly linked to measures designed and agreed by the employer, employees, trade union representatives and other employee representative bodies to achieve real gains in productivity, efficiency, effective utilisation of all resources, flexibility and other related objectives. Any wage and/or benefit increases resulting from productivity gains shall be shared among the workers concerned. These gains shall be reflected separately from normal earnings. At company-level the parties shall determine how these productivity gains will be shared.
- (d) All work re-organisation and other related issues undertaken within the context of this clause shall be a matter for negotiations including new methods and approaches to work and work organisation.
- (e) Changes negotiated in terms of this procedure at the workplace, must be genuine, be in accordance with the objectives and principles of this Annexure, be designed to improve efficiency and enhance productivity and living standards without compromising health, safety and environmental standards.
- (f) It is the express intention of the parties to the Bargaining Council that the decision whether or not to negotiate and introduce productivity and efficiency improvement agreements at company level should be a voluntary one on both sides.
- (g) Any productivity agreement concluded, in terms of this agreement, shall be recorded in writing and signed by the employer, any trade unions representing the affected employees and/or employee representative body and should contain the following elements:-
  - (i) The parties to the agreement including any representative trade unions and employee representative bodies;
  - (ii) The date of the implementation, period of operation, termination provisions and renegotiation of productivity targets where appropriate;
  - (iii) Details of the relevant wage increases, bonus, benefit improvement and/or improvements to any other working conditions and conditions of employment in accordance with the terms of the productivity improvement agreement;
  - (iv) A commitment to the disclosure of any relevant available information appropriate to the attainment of the objectives of the productivity agreement in accordance with the provisions of the Act;
  - (v) A statement of intent with regard to the overall purpose and objectives of the productivity agreement.
  - (vi) Any relevant productivity formulae, indices, standards, targets and/or objectives appropriate to the productivity agreement;



- (vii) A mechanism for evaluating the scheme on an on-going basis and for making adjustments in the light of developments and changing circumstances;
  - (viii) A feedback and communication system to inform employees and their representatives of targets reached, standards met and the applicable incentive rewards;
  - (ix) A dispute resolution procedure; and
  - (x) Details of how the productivity gains will be shared at company-level.
3. Any agreement entered into in terms of this section shall be submitted to the National Bargaining Council for record purposes.

#### **ANNEXURE E**

#### **EMPLOYEE SHARE OPTION PARTICIPATION SCHEMES (ESOPS) AND THE REQUIREMENTS OF THE BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT (BBBEE Act)**

The parties agreed as follows:

- (1) That in compliance with the objectives of black ownership targets as set out in terms of the BBBEE Act and Codes, it is desirable to consider broadening the ownership of businesses through, amongst other initiatives, the establishment of broad based employee ownerships schemes (Esops).
- (2) That Esops, properly implemented, can assist in the promotion of an inclusive, ownership culture and thereby contribute to the broadening of the foundation of shared interests between employees and the company
- (3) That the establishment of Esops is a voluntary choice of the shareholders in deciding how the company is to comply with the ownership criteria contained in the BBBEE Act and related Codes
- (4) That where companies decide to implement Esops the following broad guidelines are recommended for the Esop establishment process:
  - That the company will develop the desired allocation, financial, legal, governance and benefit model of the Esop
  - That the parties engage in a consultative, consensus seeking process in the roll out and administration of the Esop in order to enhance the value creation, benefit realization and overall understanding of the scheme by all parties.
  - That Esops should be structured on non-racial, equal allocation criteria within the bargaining unit in particular
  - That the Esop outcomes should create sustainable financial, legal, company and employee empowerment benefits that deliver long term value and savings benefits to the beneficiaries
  - That the Esop implementation process should be complemented by an effective education and communication program for the trustees and beneficiaries during both the establishment processes and the ongoing management of the trust after establishment
  - That the Esop Trust should be adequately resourced with company, employee beneficiary, and independent trustees and have sufficient independent operational capacity for the Trust to be effectively managed to the highest standards of corporate governance on behalf of beneficiaries
- (5) That they will engage constructively in the Esop consultative processes with the specific understanding that the establishment of employee ownership is about forging labour-management partnerships to create shared wealth, grow that wealth and enhance the understanding of all stakeholders about the value drivers of the company.
- (6) Upon these guidelines being substantively agreed by the industry, organised labour specifically commits to work in partnership with the employer parties to:

(a) *At industry level:*

to jointly promote in the NEDLAC Metals and Engineering Sector Summit planning committee, and any subsequent industry Codes which may emerge from this process, a customisation of the ownership portion of the scorecard contained in the DTI Codes of Good Practice, in favour of maximising ownership points to secure the full and unfettered allocated ownership points to any company in the industry that enters an employee ownership transaction in substantive compliance with the terms of this guideline

where requested by a member company or union, to collaboratively engage parties at company level to assist in building partnerships around employee ownership solutions in a facilitated, problem solving and consultative way

jointly market and promote consultative, partnership driven processes to establish employee ownership at company level in public and for training interventions

(b) *At company level to*

support company ownership accreditation applications and lobby for the maximisation of ownership points with the relevant authorities and/or ratings agencies wherever companies have entered an employee ownership transaction in substantive compliance with the terms of this guideline

participate positively in collaborative and joint communication and education processes to promote the understanding of employee beneficiaries of the ownership transaction.”

(inserted by G.N. R.839 dated 14 September 2007

## ANNEXURE F

### CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV/AIDS AND EMPLOYMENT

#### 1. INTRODUCTION

- 1.1 The Human Immunodeficiency Virus (HIV) and the Acquired Immune deficiency Syndrome (AIDS) are serious public health problems which, have socio economic, employment and human rights implications.
- 1.2 It is recognised that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale.<sup>1</sup>
- 1.3 HIV knows no social, gender, age or racial boundaries, but it is accepted that socio-economic circumstances do influence disease patterns. HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women, particularly are more vulnerable to infection in cultures and economic circumstances where they have little control over their lives.
- 1.4 Furthermore HIV/AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.
- 1.5 One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and program. Addressing aspects of HIV/AIDS in the workplace will enable employers, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. In light of this, the Code has been developed as a guide to employers, trade unions and employees.
- 1.6 Furthermore the Code seeks to assist with the attainment of the broader goals of:
- Eliminating unfair discrimination in the workplace based on HIV status;
  - Promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection;
  - Promoting appropriate and effective ways of managing HIV in the workplace;
  - Creating a balance between the rights and responsibilities of all parties; and
  - Giving effect to the regional obligation of the Republic as a member of the Southern African Development Community.

The HIV/AIDS Technical Assistance Guidelines have been published by the Department of Labour and is available from all their offices.

It provides comprehensive guidelines on how to manage HIV/AIDS in the workplace.

(footnote substituted by G.N. R.1165 of 8 October 2004)

## 2. OBJECTIVES

2.1 The Code's primary objective is to set out guidelines for employers and trade unions to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:

- (i) creating a non-discriminatory work environment;
- (ii) dealing with HIV testing, confidentiality and disclosure;
- (iii) providing equitable employee benefits;
- (iv) dealing with dismissals; and
- (v) managing grievance procedures.

2.2 The Code's secondary objective is to provide guidelines for employers, employees and trade unions on how to manage HIV/AIDS within the workplace. Since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed in item 5.1, on the following:

- (i) creating a safe working environment for all employers and employees;
- (ii) developing procedures to manage occupational incidents and claims for compensation;
- (iii) introducing measures to prevent the spread of HIV;
- (iv) developing strategies to assess and reduce the impact of the epidemic on the workplace; and
- (v) supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.

2.3 In addition, the Code promotes the establishment of mechanisms to foster co-operation at the following levels:

- (i) between employers, employees and trade unions in the workplace; and
- (ii) between the workplace and other stakeholders at a sectoral, local, provincial and national level.

## 3. POLICY PRINCIPLES

3.1 The promotion of equality and non-discrimination between individuals with HIV infection and those without and between HIV/AIDS and other comparable health/medical conditions.

3.2 The creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.

3.3 The protection of human rights and dignity of people living with HIV or AIDS is essential to the prevention and control of HIV/AIDS.

3.4 HIV/AIDS impacts disproportionately on women and this should be taken into account in the development of workplace policies and programs.

3.5 Consultation, inclusivity and encouraging full participation of all stakeholders are key principles which should underpin every HIV/AIDS policy and program.

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

- 4.1 All employers and employees, and their respective organisations are encouraged to use this Code to develop, implement and refine their HIV/AIDS policies and programs to suit the needs of their workplaces.
- 4.2 For the purposes of this code, the term “workplace” should be interpreted more broadly than the definition given in the Labour Relations Act, Act 66 of 1995, Section 213, to include the working environment of, amongst others, persons not necessarily in an employer-employee relationship, those working in the informal sector and the self-employed.
- 4.3 This Code however does not impose any legal obligation in addition to those in the Employment Equity Act and Labour Relations Act, or in any other legislation referred to in the Code. Failure to observe it does not, by itself, render an employer liable in any proceedings, except where the Code refers to obligations set out in law.
- 4.4 The Code should be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

#### **5. LEGAL FRAMEWORK**

- 5.1 The Code should be read in conjunction with the Constitution of South Africa Act, No. 103 of 1996, and all relevant Legislation which includes the following:
- (i) Employment Equity Act, No. 55 of 1998;
  - (ii) Labour Relations Act, No. 66 of 1995;
  - (iii) Occupational Health and Safety Act, No. 85 of 1993;
  - (iv) Mine Health and Safety Act, No. 29 of 1996;
  - (v) Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
  - (vi) Basic Conditions of Employment Act, No. 75 of 1997;
  - (vii) Medical Schemes Act, No. 131 of 1998; and
  - (viii) Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000.
- 5.2 The contents of this code should be taken into account when developing, implementing or reviewing any workplace policies or programs in terms of the statutes listed above.
- 5.3 The following are selected, relevant sections contained in certain of the above-mentioned legislation. These should be read in conjunction with other legislative provisions.
- 5.3.1 The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, No. 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist employers and employees to apply this principle consistently in the workplace, the Code makes reference to other pieces of legislation.
- 5.3.2 Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.

- 5.3.3 No employee, or applicant for employment, may be required by their employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of an employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.
- 5.3.4 In accordance with Section 187 (1)(f) of the Labour Relations Act, No. 66 of 1995, an employee with HIV/AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188 (1)(a)(i).
- 5.3.5 In terms of Section 8(1) of the Occupational Health and Safety Act, No. 85 of 1993, an employer is obliged to provide, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.
- 5.3.6 Section 2(1) and Section 5(1) of the Mine Health and Safety Act, No. 29 of 1996 provides that an employer is required to create, as far as reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.
- 5.3.7 An employee who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, may apply for benefits in terms of Section 22(1) of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.
- 5.3.8 In accordance with the Basic Conditions of Employment Act, No. 75 of 1997, every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick leave [Section 22 (2)].
- 5.3.9 In accordance with Section 24(2)(e) of the Medical Schemes Act, No. 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their “state of health”. Further in terms of Section 67 (1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefits to their members.
- 5.3.10 In accordance with both the common law and Section 14 of the Constitution of South Africa Act, No. 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

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

- 6.1 No person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, including with regard to:
- (i) recruitment procedures, advertising and selection criteria;
  - (ii) appointments, and the appointment process, including job placement;
  - (iii) job classification or grading
  - (iv) remuneration, employment benefits and terms and conditions of employment;
  - (v) employee assistance programs;
  - (vi) job assignments;
  - (vii) the workplace and facilities;
  - (viii) occupational health and safety;

- (ix) training and development;
  - (x) performance evaluation systems;
  - (xi) promotion, transfer and demotion;
  - (xii) disciplinary measures short of dismissal; and
  - (xiii) termination of services.
- 6.2 To promote a non-discriminatory work environment based on the principle of equality, employers and trade unions should adopt appropriate measures to ensure that employees with HIV and AIDS are not unfairly discriminated against and are protected from victimisation through positive measures such as:
- (i) preventing unfair discrimination and stigmatisation of people living with HIV or AIDS through the development of HIV/AIDS policies and programs for the workplace;
  - (ii) awareness, education and training on the rights of all persons with regard to HIV and AIDS;
  - (iii) mechanisms to promote acceptance and openness around HIV/AIDS in the workplace;
  - (iv) providing support for all employees infected or affected by HIV and AIDS; and
  - (v) grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

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

### 7.1 HIV Testing

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

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

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

7.1.3 In implementing the sections below, it is recommended that parties take note of the position set out in item 7.1.2.

### 7.1.4 Authorised testing

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

- (i) during an application for employment;
- (ii) as a condition of employment;
- (iii) during procedures related to termination of employment;

- (iv) as an eligibility requirement for training or staff development programs; and
- (v) as an access requirement to obtain employee benefits.

#### 7.1.5 Permissible testing

- (a) An employer may provide testing to an employee who has requested a test in the following circumstances:
  - (i) as part of a health care service provided in the workplace;
  - (ii) in the event of an occupational accident carrying a risk of exposure to blood or other body fluids;
  - (iii) for the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.
- (b) Furthermore, such testing may only take place within the following defined conditions:
  - (i) at the initiative of an employee;
  - (ii) within a health care worker and employee-patient relationship;
  - (iii) with informed consent and pre-and post-test counseling, as defined by the Department of Health's National Policy on Testing for HIV; and
  - (iv) with strict procedures relating to confidentiality of an employee's HIV status as described in clause 7.2 of this Code.

7.1.6 All testing, including both authorised and permissible testing, should be conducted in accordance with the Department of Health's National Policy on Testing for HIV issued in terms of the National Policy for Health Act, No.116 of 1990.

7.1.7 Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

7.1.8 Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research.<sup>3</sup> Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.

<sup>3</sup> See amongst others the Department of Health's National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.

## 7.2 Confidentiality and Disclosure

7.2.1 All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.

7.2.2 Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.



- 7.2.3 Mechanisms should be created to encourage openness, acceptance and support for those employers and employees who voluntarily disclose their HIV status within the workplace, including:
- (i) encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programs;
  - (ii) encouraging the development of support groups for employees living with HIV or AIDS;
  - (iii) ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

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

- 8.1 An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.
- 8.2 The risk of HIV transmission in the workplace is minimal. However occupational accidents involving bodily fluids may occur, particularly in the health care professions. Every workplace should ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents, and the Mine Health and Safety Act, and that its policy deals with, amongst others:
- (i) the risk, if any, of occupational transmission within the particular workplace;
  - (ii) appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace;
  - (iii) providing appropriate equipment and materials to protect employees from the risk of exposure to HIV;
  - (iv) the steps that must be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis;
  - (v) the procedures to be followed in applying for compensation for occupational infection;
  - (vi) the reporting of all occupational accidents; and
  - (vii) adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

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

- 9.1 An employee may be compensated if he or she becomes infected with HIV as a result of an occupational accident, in terms of the Compensation for Occupational Injuries and Diseases Act.
- 9.2 Employers should take reasonable steps to assist employees with the application for benefits including:
- (i) providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and
  - (ii) assisting with the collection of information which will assist with proving that the employees were occupationally exposed to HIV infected blood.
- 9.3 Occupational exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act. Employers should ensure that they comply with the provisions of this Act and any procedure or guideline issued in terms thereof.

## **10. EMPLOYEE BENEFITS**

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

## **11. DISMISSAL**

- 11.1 Employees with HIV/AIDS may not be dismissed solely on the basis of their HIV/AIDS status.
- 11.2 Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating an employee's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.
- 11.3 The employer should ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorised such a test.

## **12. GRIEVANCE PROCEDURES**

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

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

- 13.1 The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst other, the following elements:
  - 13.1.1 An understanding and assessment of the impact of HIV/AIDS on the workplace; and
  - 13.1.2 Long and short term measures to deal with and reduce this impact, including

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

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

- 14.1 Employers and trade unions should develop appropriate strategies to understand, assess and respond to the impact of HIV/AIDS in their particular workplace and sector. This should be done in co-operation with sectoral, local, provincial and national initiatives by government, civil society and non-governmental organisations.
- 14.2 Broadly, impact assessments should include:
- (i) Risk profiles; and
  - (ii) Assessment of the direct and indirect costs of HIV/AIDS.
- 14.3 Risk profiles may include an assessment of the following:
- (i) The vulnerability of individual employees or categories of employees to HIV infection;
  - (ii) The nature and operations of the organisation and how these may increase susceptibility to HIV infection (e.g. migration or hostel dwellings);
  - (iii) A profile of the communities from which the organisation draws its employees;
  - (iv) A profile of the communities surrounding the organisation's place of operation; and
  - (v) An assessment of the impact of HIV/AIDS upon their target markets and client base.
- 14.4 The assessments should also consider the impact that the HIV/AIDS epidemic may have on:
- (i) Direct costs such as to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment costs and the costs of implementing an HIV/AIDS program;
  - (ii) Indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption.
- 14.5 The cost effectiveness of any HIV/AIDS interventions should also be measured as part of an impact assessment.

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

- 15.1 A Workplace HIV/AIDS Policy
- 15.1.1 Every workplace should develop an HIV/AIDS policy, in order to ensure that employees affected by HIV/AIDS are not unfairly discriminated against in employment policies and practices. This policy should cover:

- (i) the organisation's position on HIV/AIDS;
  - (ii) an outline of the HIV/AIDS program;
  - (iii) details on employment policies (e.g. position regarding HIV testing, employee benefits, performance and procedures to be followed to determine medical incapacity and dismissal);
  - (iv) express standards of behaviour expected of employers and employees and appropriate measures to deal with deviations from these standards;
  - (v) grievance procedures in line with item 12 of this Code;
  - (vi) set out the means of communication within the organisation on HIV/AIDS issues;
  - (vii) details of employee assistance available to persons affected by HIV/AIDS;
  - (viii) details of implementation and co-ordination responsibilities; and monitoring and evaluation mechanisms.
  - (ix) Monitoring and evaluation mechanisms.
- 4 This policy could either be a specific policy on HIV/AIDS, or could be incorporated in a policy on life threatening illness.
- 15.1.2 All policies should be developed in consultation with key stakeholders within the workplace including trade unions, employee representatives, occupational health staff and the human resources department.
- 15.1.3 The policy should reflect the nature and needs of the particular workplace.
- 15.1.4 Policy development and implementation is a dynamic process, so the workplace policy should be:
- (i) communicated to all concerned;
  - (ii) routinely reviewed in light of epidemiological and scientific information; and
  - (iii) monitored for its successful implementation and evaluated for its effectiveness.
- 15.2 Developing Workplace HIV/AIDS Programs
- 15.2.1 It is recommended that every workplace works towards developing and implementing a workplace HIV/AIDS program aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of the epidemic in the organisation.
- 15.2.2 The nature and extent of a workplace program should be guided by the needs and capacity of each individual workplace. However, it is recommended that every workplace program should attempt to address the following in co-operation with the sectoral, local, provincial and national initiatives:
- (i) hold regular HIV/AIDS awareness programs;
  - (ii) encourage voluntary testing;
  - (iii) conduct education and training on HIV/AIDS;
  - (iv) promote condom distribution and use;
  - (v) encourage health seeking behaviour for STD's;
  - (vi) enforce the use of universal infection control measures;
  - (vii) create an environment that is conducive to openness, disclosure and acceptance amongst all staff;
  - (viii) endeavour to establish a wellness program for employees affected by HIV/AIDS;
  - (ix) provide access to counseling and other forms of social support for people affected by HIV/AIDS;
  - (x) maximise the performance of affected employees through reasonable accommodation, such as investigations into alternative sick leave allocation;

- (xi) develop strategies to address direct and indirect costs associated with HIV/AIDS in the workplace, as outlined under item 14.4;
  - (xii) regularly monitor, evaluate and review the program.
- 15.2.3 Employers should take all reasonable steps to assist employees with referrals to appropriate health, welfare and psychosocial facilities within the community, if such services are not provided at the workplace.

## **16. INFORMATION AND EDUCATION**

- 16.1 The Department of Labour should ensure that copies of this code are available and accessible.
- 16.2 Employers and employer organisations should include the Code in their orientation, education and training programs of employees.
- 16.3 Trade unions should include the Code in their education and training programs of shop stewards and employees.

## **GLOSSARY**

- Affected employee:** an employee who is affected in any way by HIV/AIDS e.g. if they have a partner or a family member who is HIV positive.
- AIDS:** AIDS is the acronym for “acquired immune deficiency syndrome”. AIDS is the clinical definition given to the onset of certain life-threatening infections in persons whose immune systems have ceased to function properly as a result of infection with HIV.
- Epidemiological:** the study of disease patterns, causes, distribution and mechanisms of control in society.
- HIV:** HIV is the acronym for “human immunodeficiency virus”. HIV is a virus which attacks and may ultimately destroy the body’s natural immune system.
- HIV testing:** taking a medical test to determine a person’s HIV status. This may include written or verbal questions inquiring about previous HIV tests, questions related to the assessment of ‘risk behaviour’ (for example questions regarding sexual practices, the number of sexual partners or sexual orientation); and any other indirect methods designed to ascertain an employee’s or job applicant’s HIV status.
- HIV positive:** having tested positive for HIV infection.
- Infected employee:** an employee who has tested positive for HIV or who has been diagnosed as having HIV/AIDS.
- Informed consent:** a process of obtaining consent from a patient which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it.
- Policy:** a document setting out an organisation’s position on a particular issue.

Pre and post test	a process of counseling which facilitates an understanding of the nature and
Counseling:	purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence the result, positive or negative, will have on them.
Reasonable	means any modification or adjustment to a job or to the workplace that is
Accommodation:	reasonably practicable and will enable a person living with HIV or AIDS to have access to or participate or advance in employment.
STD's:	acronym for "sexually transmitted diseases". These are infections passed from one person to another during sexual intercourse, including syphilis, gonorrhea and HIV.
Surveillance testing:	This is anonymous, unlinked testing which is done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease. (new Annexure F inserted by Government Notice R.1051 of 20 October 2001)

## ANNEXURE G

### ATTENDANCE OF WORKER REPRESENTATIVES ON NATIONAL AND REGIONAL BARGAINING COUNCIL COMMITTEES

- The employer and trade union parties agree that it is important that workers representatives, appointed by the unions to serve on the Bargaining Council National and Regional Committees, should participate at that level.
- To this end the trade unions will by 31 January of each year, notify the Council Secretary in writing of the names and contact details of the union worker representatives appointed to serve on these National and Regional Committees.
- The Council will maintain a register of these union representatives.
- The Council will, during February each year, notify the companies concerned of the appointment of their employees onto the specific Bargaining Council Committee/s and of the scheduled meeting dates of the committee/s for the year ahead.
- Where the company is unable, for operational or other valid reasons to accept the absence of the employee on the dates concerned it shall immediately communicate with the Council in order that the problem be addressed. The Council Secretary may call upon a senior trade union official and employer representatives to assist in attempting to achieve an amicable resolution of the problem, including meeting with the employer in order to address the specific problems identified.
- Absence from the workplace to attend each scheduled meeting must be based on reasonable prior notice of the meeting to the employer supported by the presentation of the Agenda of the Meeting by the worker representative.
  - The representative's traveling and accommodation expenses will be borne by the Council.
 (Annexure G inserted by GN. R.1082 dated 16 August 2002)

**“ANNEXURE H:**

**CONSTRUCTION SITES COVERED BY A PROJECT LABOUR AGREEMENT**

**1. General provisions:**

- 1.1 The provisions of this Annexure are confined to employers and employees operating on multi-disciplinary construction sites (i.e. sites where metal, electrical contracting, piping, civil and building activities are being undertaken) where a Project Labour Agreement (PLA) or equivalent agreement has been negotiated, or an exemption to apply these provisions to a specific construction site has been granted by a national committee representing the signatories to this Annexure and the Council.
- 1.2 The provisions of this Annexure shall only be applied to a construction site where a Project Labour Agreement or equivalent has been negotiated or where an exemption to apply these provisions has been granted by a national committee
- 1.3 The aim of this section is ensure commonality of conditions of employment between the various industries working together on a construction site.
- 1.4 For the purposes of this section “*construction site*” within the context of the provisions of sub clause 1.1 above means an area where:
- (a) A structure including but not limited to a building, a plant, a pipeline, and a tower is being erected or built; and/or
  - (b) Refurbishment, overhaul, maintenance, alteration upgrading etc of an existing structure referred to in (a) above.
  - (c) Shipbuilding and/or ship repair work is specifically excluded from the definition of “construction site”.
- (1.4(c) inserted by Government Notice R.899 of 11 September 2009)
- 1.5 “Project Labour Agreement (PLA) or equivalent agreement” means an agreement entered into between the parties concerned regulating specific conditions applicable to the specific construction site concerned, including the agreed wage structure.
- 1.6 In order to ensure flexibility and commonality on construction sites, the parties may agree in a PLA to:
- Work normal time of up to 45 hours per week;
  - Structure the working week;
  - Pay Sunday time as normal time until the normal working hours have been made up
- 1.7 The standard wage rates payable to the scheduled employees reflected on the schedule herein, on a specific construction site will be subject to the provisions of clause 1.1 above.
- 1.8 Any person who is able to demonstrate that he/she has obtained previous knowledge and skills of working on a construction site, and is able to perform work in a higher grade, and subject to such work being available may not be employed in Grade (a), Grade 1 and Grade 2 and on the rates herein unless the employee elects otherwise. The period that an employee may be remunerated on Grade 1(a) and 2(a) rates will be the subject of a PLA, but shall not be longer than 4 months.

Grade	Current minimum wage rate	Increase on actual and scheduled wage rate	Increase on scheduled wage rate	Minimum wage rate R C
5	45.35	8.00	3.63	48.98
4	41.15	8.30	3.42	44.57
3	35.20	8.62	3.03	38.23
2	28.72	8.94	2.57	31.29
2(a)	23.61	9.28	2.19	25.80
1	14.59	9.64	1.41	16.00
1(a)	13.20	10.00	1.32	14.52

**(Substituted by Government Notice R.748 dated 23 September 2011)**

- 1.9 Any PLA in existence at the date of coming into operation of this Agreement shall remain valid until expiry of that Agreement.
- 2. Inclement weather:**
- 2.1 Whenever the prescribed ordinary hours of work are reduced on account of inclement weather, it will be dealt with as follows:
- 2.1.1 If work is not possible any time during the first four (4) hours of work due to inclement weather then four (4) hours will be paid provided that the employee has reported for work;
- 2.1.2 If work is not possible any time after four (4) hours due to the inclement weather, the actual hours worked for that day will be paid;
- 2.1.3 If employees are informed the day before not to report for work on that or subsequent days because work will not be possible due to inclement weather, then no payment will be made for that day/s;
- 2.1.4 In cases where work can continue under cover, the provisions of this clause shall not apply;
- 2.2 Notwithstanding the above, employees shall be paid not less than 66% of their weekly wage, irrespective of the number of hours by which the hours for that week were reduced due to inclement weather.
- 3. Retirement benefit funds:**
- 3.1 Employees engaged on limited duration contracts of employment during their first consecutive 12 months' employment with the same employer are not required to contribute to the Industry's benefit funds. In these circumstances the employer is required to provide death and disability cover through the Industry's benefit funds to these employees.
- 3.2 Where these employees have been in the continuous employ of the same employer for more than 12 months then they must participate in the Industry's benefit funds."  
(Annexure H substituted by Government Notice R.77 of 2 February 2007)



## ANNEXURE I

### INDUSTRY POLICY FORM

#### 1. Preamble

As signatories to the Industry Settlement Agreement reached on the 18<sup>th</sup> July 2011, the union and employer parties having noted the significant challenges facing the Metal and Engineering Industry in the context of the imperative of creating and sustaining decent jobs and competitive manufacturing capability in the domestic and global market, have agreed to establish an Industry Policy Forum (hereinafter referred to as the IPF) under the auspices of the MEIBC. The parties have further agreed that in referring the matters contained in this document to the IPF, each party reserves its right to negotiate on the said matter in the IPF.

#### 2. Definition and objectives

The IPF will be tasked with having the mandate of securing agreement between the parties on changes required to promote the growth and viability of the industry as a key contributor to SA's growth, investment and employment objectives.

The purpose of the Forum shall be to provide leadership and to serve the common good of the Metal and Engineering Industry and all its stakeholders in the furtherance of the following key goals and objectives:

- Formulate an overall strategy aimed at securing the sustainability and growth of all industry stakeholders.
- Formulate an industry view on national industrial and trade strategy.
- Become a leading role-player in the national discourse on national economic policy.
- Promote international trade and provide assistance to neighbouring states as they develop their industrial policies.
- Develop employment retention and job creation programs.
- Facilitate the allocation of industry funds.
- Promote the well-being of all employees and employers in the industry.
- Implement programmes and strategies aimed at reducing the cost of living for employees, improving their standard of living and reducing the cost of business in the industry.
- Formulate strategies to secure the increased allocation of Merseta funds for skills training and bursaries and mechanisms to secure access to funds from national Skills Fund.
- Identify industry challenges and threats and devise appropriate strategies to positively address these.
- Any other jointly agreed objectives and strategies aimed at the common good of the industry and all its stakeholders.

#### 3. Terms of reference

Without limiting the scope of issues the parties will need to address in the IPF, the following matters will be addressed as part of the mandate of the committee:

- **Strategies to promote job retention and employment creation**

To investigate and seek consensus on all those factors that contribute to the decline of the industry in terms of output, employment, contribution to the GDP etc. To design strategies and implementation plans to grow investment, skills jobs and markets.

➤ **Strategies to modernize and transform the MEIBC**

To develop strategies and implementation plans that secure the long term future of the council parties on a level playing field that is globally competitive.

- Legal compliance
- Grading and new entry level minimum rates
- Small business
- Regional dispensation
- Exemptions
- Clause 37
- House Agreements
- Demarcation
- Any other relevant policy

➤ **Industrial and Trade Policy**

To develop strategies and implementation plans and secure the consensus of the appropriate stakeholders on such matters as:

- Trade and tariff policies
- Steel pricing policies
- Importation of steel products by parastatals
- Export opportunities and demand site measures
- National power and water challenges
- Transport logistics
- Any other relevant policy

➤ **Rationalization and optimization of industry institutions**

To develop strategies and implementation plan to optimize the use of industry funds to achieve improvements in:

- Employment housing
- Training and skills development
- Healthcare
- Bursaries
- Pensions
- Any other relevant institutions

**4. Composition, Meetings and timeframes**

Composition of the forum will be two representatives per party.

The forum will invite relevant government department representatives on matters requiring government support as the parties deem appropriate.

Meetings will be convened by the CEO of the MEIBC within a month of the finalization of the Main Agreement negotiation.

The parties will determine their own work program, schedule and time table inclusive of:

- Determination of issues
- Alignment of issues with MEIBC forums and processes
- Prioritization of issues
- Time frames for delivery
- Resources required
- Meeting schedules
- Administrative support
- Reporting mechanisms
- Other

**5. Resourcing and research capacity**

To investigate the need and resource appropriately the MEIBC to create the capacity to deliver and inform and well researched set of strategies, policies and implementation plans to affect the work of the IPF

**6. Dispute resolutions**

The parties will use MEIBC dispute resolution procedures.

**(Annexure I inserted by Government Notice R.748 dated 23 September 2011)**

Signed at Johannesburg, for and on behalf of the parties, this **22<sup>nd</sup> July 2011.**

L. TRENTINI

Member

V. MABHO

Member

A. SMITH

Chief Executive Officer

A. Hlakudi

President of the Council