

ANALYSIS OF THE EFFECTIVENESS OF THE BARGAINING COUNCIL EXEMPTION SYSTEM

A Final Tridevworx Report

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TRI DEV WORX
Economic • Social • Environmental



This Report was produced by Adrian Sayers, Faldie Esau and Paul Lundall on behalf of Tridevworx for the Department of Labour. Officials from the Department of Labour, Bargaining Councils and the companies that responded positively to the Questionnaires played a significant role in the provision of information that made possible this Report.

ABBREVIATIONS

APDP	Automotive Production Development Programme
BC	bargaining council
BCEA	Basic Conditions of Employment Act
CCMA	Commission for Conciliation, Mediation and Arbitration
CIDB	Construction Industry Development Board
CTCP	Clothing Textile Competitive Programme
DTI	Department of Trade and Industry
ECC	Employment Conditions Commission
GDP	gross domestic product
IDC	Industrial Development Corporation
IDZ	Industrial Development Zone
ILO	International Labour Organisation
LRA	Labour Relations Act
LRS	Labour Research Service
MEIBC	Metal and Engineering Industry Bargaining Council
MIBCO	Motor Industries Bargaining Council
MIDP	Motor Industry Development Programme
NBC	National Bargaining Council for the Clothing Manufacturing Industries
NBCRFLI	National Bargaining Council for the Road Freight and Logistics
NEASA	National Employer Association of South Africa
NEDLAC	National Economic Development and Labour Advisory Council
NEF	National Economic Forum
NIPF	National Industrial Policy Framework
NSF	National Skills Fund
PI	Production Incentives
PWP	Public Works Programme
QES	Quarterly Employment Survey
QLFS	Quarterly Labour Force Survey
SALGA	South African Local Government Association
SARS	South African Revenue Services
SATAWU	South African Transport and Allied Workers Union
SC	Statutory Council
SETA	Sectoral Education and Training Authority
SIC	Standard Industrial Classification system
SBP	Small Business Project
SMME	small, medium-sized and micro-enterprises
SOC	state-owned corporation
TBC	Transnet Bargaining Council
UIF	Unemployment Insurance Fund
UTATU-SARWHU	United Transport and Allied Trade Union-South African Railways and Harbours Union

TABLE OF CONTENTS

Abbreviations	3
Executive Summary	8
Introduction	17
1. Literature Review and Research Methodology	21
1.1. Literature review	22
(a) Secondary literature	
(b) Documentary review	
(c) Assessment of quantitative data	
1.2. Data gathering tools, data collection and data Analysis	28
(a) Construction of an Impact Assessment Framework	
(b) Data gathering and analysis and the production of final report	
2. The Labour Market and Collective Bargaining Trends	32
2.1. Sector trends and the scope of bargaining councils	37
(a) Sector and scope	
(b) Enterprise size	
(c) Bargaining council coverage by enterprise size	
(d) Number of employees covered by bargaining councils	
2.2. Core business, coverage and exemption provisions of bargaining councils	55
(a) Core business and coverage of bargaining councils	
(b) Exemption provisions	
2.3. Levels of self-regulation and bargaining Councils?	87
3. Measuring the Impact of the Regulatory Framework for Bargaining Council Exemptions	93
3.1. Brief history of the extent, failure and success rates of exemption applications: 2002-2012	95
(a) Trends in exemption applications	
(b) Trends in exemption applications: 2010-2012	
3.2. Bargaining council exemptions: 2013	109
(a) Applications made, approved, refused, appealed and withdrawn	
(b) Party and non-party applications for exemptions received, approved, refused, appealed and withdrawn	
© The Number of employees covered by exemption applications in small, medium and large Firms	
(d) Party and Non-Party Applications by Type of Request	

4. Economic and Organisational Dimensions of Bargaining Council Exemptions and Company Responses	137
4.1. Organisational and financial dimensions of bargaining council exemptions	140
(a) Access to bargaining council information and support	
(b) Consultation	
(c) Turnaround times of the exemption process	
(d) Costs to company	
4.2. Company experiences of the exemption system: cases in the manufacturing sector	149
(a) Company exemption applications: 2013	
(b) Access to bargaining council information and support	
(c) Consultation	
(d) Turnaround times of the exemption process	
(e) Costs to company	
4.3. Stakeholder initiatives to change the exemption system	159
(a) Adjusting the exemption system to changing circumstances	
(b) Attaining exemption through litigation	
5. Improving Outcomes of Exemptions	164
5.1. Key organisational, financial and economic challenges	166
(a) Organisational, financial and regulatory challenges	
(b) Economic challenges	
5.2. Reporting protocols and regulatory impact assessment	171
(a) Information and reporting protocols: bargaining and statutory councils, party and non-party stakeholders	
(b) Reporting protocols: the Department of Labour and bargaining councils	
5.3. Policy considerations	176
(a) Competitive advantages	
(b) Cyclical downturns and access to sector support instruments	
5.4. Recommendations on improving outcomes through sustained stakeholder engagement	182

Figures

Figure 1: Employment by industry type for persons aged 15-64 years	39
Figure 2: Access to information facilitated by bargaining councils	131
Figure 3: Type of support provided by bargaining councils	143
Figure 4: Bargaining council turnaround time for exemption applications	145
Figure 5: Costs to company to participate in the exemption process	147
Figure 6: Manufacturing companies (Metal, Engineering and Motor): Access to information	152
Figure 7: Manufacturing companies (Metal, Engineering and Motor): Type of support provided by bargaining councils	154
Figure 8: Manufacturing companies (Metal, Engineering and Motor): Consultation before application was lodged	155
Figure 9: Manufacturing companies (Metal, Engineering and Motor): Participation in the exemption decision-making process	156
Figure 10: Manufacturing companies (Metal, Engineering and Motor): Turnaround time for exemption applications	157
Figure 11: Manufacturing companies (Metal, Engineering and Motor): Turnaround time for appeals	157
Figure 12: Manufacturing companies (Metal, Engineering and Motor): Costs to company to participate in the exemption process	158
Figure 13: Manufacturing Companies (Metal, Engineering and Motor): Cost to Company – Prohibitive, negligible and other?	159

Tables

Table 1: Sample realisation for Company Survey	31
Table 2: Distribution of bargaining and statutory councils among SIC sectors	40
Table 3: Definitions of enterprise size in relation to employee class sizes used by bargaining councils	45
Table 4: Total number of enterprises in the sector covered by bargaining councils in 2013	49
Table 5: Total number of employees in sector covered by bargaining councils in 2013	53
Table 6: A synopsis of the core Business and coverage of bargaining councils: 2013	58
Table 7: A synopsis of exemption provisions: 2013	70
Table 8: Levels of self-regulation among bargaining councils/forums	90
Table 9: Trends in bargaining council exemptions: 2000-2004	97
Table 10: Party and non-party applications and number of applications by type of request 2000-2004	98
Table 11: Exemptions applications according to party and non-party members, 2009 (numerical values)	101
Table 12: Exemption applications according to party and non-party members, 2009 (percentage values)	102
Table 13: Information on exemption applications 2010-2012 derived from Supplementary Questionnaire to 2013 Survey	107
Table 14: Total number of applications made, approved, refused, appealed and withdrawn in 2013	110
Table 15: Percentage breakdown between applications made versus applications approved, refused, appealed and withdrawn	113
Table 16: Number of exemptions received, approved, refused, appealed and withdrawn between party and non-party applications in 2013	115
Table 17: Number of employees covered by applications from small, medium and large firms	124

Table 18: Party and non-party applications by type of request	131
Table 19: Reasons for party and non-applications for exemption	136
Table 20: Consolidation of company applications made, approved, refused, appealed and withdrawn to the Metal and Engineering Industries Bargaining Council and the Motor Industry Bargaining Council 2013	150
Table 21: Survey of company applications by type of request	151
Table 22: Three critical challenges bargaining councils dealt with in 2013	166

Bibliography **186**

1. Legislation	186
2. Reports of Government, its Departments, Public Entities and Commissions/ Committees of Enquiry	186
3. Bargaining Council Documentation	186
4. Secondary Literature	192

ANNEXURES

A: Questionnaires	194
1. Questionnaire: Bargaining Councils	
2. Questionnaire: Applicants for Exemption	
3. Questionnaire: Organised Business	
4. Questionnaire: Organised Labour	

EXECUTIVE SUMMARY

The exemption system of bargaining councils, facilitated by various labour market institutions is a central pillar to the architecture and flexibility of collective bargaining. The prevalence of collective bargaining at the levels of plant, company and industry has played a significant role in the development of self-regulatory policies and practices to determining conditions of employment and remuneration in South Africa – as facilitated by the Labour Relations Act (LRA).¹ The making of agreements, and compliance therewith, informs the extent to which self-regulation between employers and employees in a particular industry have been effected. Bargaining councils, which constitute the predominant form of centralised sector bargaining in both the public and private sectors, are a collective bargaining system distinct from plant-level or company-level bargaining (as evidenced in the food processing, retail and financial sectors) and formal but non-statutory industry-wide collective bargaining (in the Mining and Automotive industries). A bargaining council presupposes acceptable levels of organisation among employer associations and labour unions. An examination of the operations and effectiveness of the exemption mechanisms in bargaining councils is central to assessing the impact of the main collective agreements reached in bargaining councils and the possible economic consequences for that sector. Despite certain identified flaws and challenges to ensure procedural fairness, the exemption system of bargaining councils can be considered effective due to the successful processing of applications.

Recent litigation involving the Metal and Engineering Industry Bargaining Council (MEIBC) and the National Bargaining Council for the Clothing Manufacturing Industries (NBC) has challenged the right of the Minister of Labour to extend the main collective agreements reached in bargaining councils to all enterprises in the relevant industry.² The enforcement of compliance has led to writs of execution being issued to a large number of

¹ Labour Relations Act No. 66 of 1995 and Labour Relations Amendment Act No. 12 of 2002.

² Le Roux, P.A.K.: The extension of bargaining council agreements – The courts and challenges from non-parties, *Contemporary Employment Law*, Vol. 22, No. 8, March 2013.

companies; this is despite the existence of bargaining council exemption systems that, according to recent research, have not experienced any significant problems.³ Most exemptions have been approved within as little as 2 to 4 weeks – a practice that is not inconsistent with a global practice of granting blanket exemptions or exemptions based on the application of individual enterprises to the respective authorities. The former in the instances where particular labour market arrangements prevailed concerning geographical areas and/or sectors, as in the case of India and Malaysia.⁴ However, it is said that a number of jobs have also been lost owing to the compliance measures being implemented. Various commentators subsequently challenged the current labour market regime’s flexibility, including the bargaining council exemption system.

However, bargaining councils are not the only form of centralised collective bargaining that exists to govern labour market activity in various sectors. The Mining, Automotive and Food Processing sectors are largely regulated by employer associations and trade unions that have attained a level of domination that does not require the use of provisions of the LRA that requires the Minister of Labour to extend main collective agreements to non-parties. Furthermore, the prevalence of company-level bargaining in large enterprises in sectors such as Finance, Retail and Food Processing that exist side by side with the provision of sectorial determinations for SMMEs contributes to the multidimensionality of labour market arrangements. These observations reinforce findings of the Presidential Labour Market Commission and the ILO that the South African labour market regulatory environment accommodates a range of options and is therefore sufficiently flexible. Regulatory flexibility was used to encapsulate this state of affairs.

An examination of the operation and effectiveness of the exemption mechanisms in bargaining councils stemming from the terms of reference of this study provide valuable insights into the nature of labour market flexibility.

³ Shane Godfrey, Johann Maree and Jan Theron³: *Conditions of employment and small business: Coverage, compliance and exemptions*, Working Paper 06/106, Development Policy Research Unit, UCT, March 2006.

⁴ See Centre for Development and Enterprise (CDE): *Rethinking South Africa’s labour market: Lessons from Brazil, India and Malaysia*, edited proceedings of a round table convened by the Centre for Development and Enterprise, No. 22, June 2013.

This involves investigating the exemption process, criteria and conditions associated with the granting of exemptions by bargaining councils. Furthermore, the experiences of bargaining councils and companies making application viewed through the lens of procedural fairness, contributes towards an understanding of current flaws, despite the successes recorded in terms of the number of applications processed.

The multitude of collective bargaining and the setting of sectoral determination processes that contribute to the development of a tentative typology of collective bargaining and particularly bargaining councils into areas of high, medium and low self-regulation. It informs the nature and intensity of application of the exemption system within bargaining councils and the extent to which companies, party or non-party, use such systems. A typology that could partly shape the development of different solutions to deal with the specific organisational, financial, regulatory and economic challenges that various councils have encountered.

A high self-regulation level involves the conclusion of collective bargaining agreements among employers and employees, the extension and compliance with main collective agreements – where appropriate – for a particular sector. This includes both statutory and non-statutory forms of centralised bargaining that predominantly regulate the Mining, Manufacturing, Transport and public sectors and, to a lesser extent, the community, social and personal services and the Wholesale, Retail, Catering and Accommodation sectors. Provisions for exemptions are provided for bargaining councils constituted in terms of the LRA. Hence for those sectors where a bargaining council regulates the activities of a plethora of enterprises varying in size and represented by a range of employer associations and trade unions. Most of the exemption applications have been processed by bargaining councils in the Manufacturing and Transport sectors, where such provisions were prevalent. It is not evident which, if any, type of exemption provisions existed in the non-statutory centralised bargaining forums of the Mining, Automotive and Pelagic Fishing industries.

The least number of exemption applications has been made and processed in Construction and sectors where a medium to low self-regulation levels prevailed. This was particularly the case where new forms of centralised bargaining were being forged – for instance, in the Civil Engineering, Bulk Water Supply and Hairdressing, Cosmetology and Beauty sectors, or where the existing forums experienced significant challenges with the development of a main collective agreement and the enforcement of compliance thereto.

What is evident is that the sectors that were covered by the 25 of the 45 bargaining councils that responded to this survey and that provided for exemptions straddled the manufacturing, construction, transport, community, social and personal services and the Wholesale, Retail, Catering and Accommodation sectors. Most of the 69 942 enterprises covered were small (81.6%) and medium-sized (15.2%), while large enterprises comprised 3.2% of all enterprises. The bulk of the exemption applications that were processed involved the Manufacturing (93%; 3 105 of 3 338) and to a lesser extent the Transport (2.9%; 96) sectors. Of the applications, 3 133 were processed by the MEIBC (2061), the Motor Industry Bargaining Council (MIBCO) (599), the National Bargaining Council for the Clothing Manufacturing Industry (377) and the National Bargaining Council for the Road Freight and Logistics Industry (95). Of the 3 338 exemption applications by both party and non-party enterprises, 87% (2 906) were successfully processed. Only 182 (5.8%) of 3 133 of the applications made in 2013 were refused.

A survey of bargaining councils and case studies of companies in the Manufacturing sectors has identified areas to improve the exemption process. The MEIBC and MIBCO provided company details that enabled the survey of companies that applied for exemption in 2013. Out of 800 dispatched Questionnaires, 83 (9.5%) responses were received from the Metal and Engineering and Motor companies; these comprised 625 applications. Their experiences provide insights into whether procedural fairness prevailed in bargaining council exemption systems using factors such as access to information and support, turnaround time and costs to company.

Access to information and support

Bargaining councils have sought to facilitate the exemption process by providing access to the relevant information and providing various measures to support prospective applicants. Most bargaining council activities have revolved around the provision of the relevant forms, information about the procedures to be followed, and the financial information required when making an application. However, information about opposing applicants and available sector support measures has not been readily available. The same cannot be said about the support provided by bargaining councils. While 20 of the 25 bargaining councils provided support to companies about the procedures to be followed by companies, including consultation processes, two councils did not provide support on the completion of the application forms and the required financial information. Five bargaining councils did not provide support to facilitate accessing targeted assistance for small enterprises.

Although the MEIBC and MIBCO were among the bargaining councils that provided all the relevant information and support to applicants, the responses of companies in the Metal and Engineering and Motor sectors were diverse. Less than 50% of the applicants claimed to have received the relevant information and support.

Participation

Both the MEIBC and MIBCO stressed the importance of consulting employees before making an application. This is reflected in the responses of the applicants, most of whom had consulted their affected employees. However, their participation in the actual decision-making process were uneven, pending the provisions of the bargaining council.

Turnaround time

While MIBCO took 30 days to process an exemption application, the MEIBC took an average of 60 days. A significant number of companies experienced turnaround times exceeding the stipulated time. A similar trend could be discerned concerning appeal processes, while no companies were subjected to processes that led to the withdrawal of exemptions.

Costs to company

Bargaining councils could only provide information about the costs levied on companies by the council for participating in the exemption process. These were considered as insignificant by both the MEIBC and MIBCO. The companies reflected different experiences on costs incurred. Most of the Metal and Engineering companies considered the cost to be prohibitive, while the Motor companies considered it to be negligible.

Key challenges and recommendations

It is evident from the results of the research that the exemption system of bargaining councils is effective in providing a certain level of flexibility from the main collective agreement. This is particularly the case with bargaining councils where a high level of self-regulation exists. It is in this context that the MEIBC (2061), MIBCO (599), the National Bargaining Council for the Clothing Manufacturing Industry (377) and the National Bargaining Council for the Road Freight and Logistics Industry (95) processed 3 133 (94%) of the 3 338 exemption applications by both party and non-party enterprises. Only 182 (5.8%) of 3 133 of the applications made in 2013 were refused and 87% (2 906) were successfully processed. The remaining 205 applications for exemption were processed by the National Textile Bargaining Council(18), National Bargaining Council for the Leather Industry(9), Furniture Bargaining Council-Eastern Cape(2), Furniture Bargaining Council-SWD(14), Furniture Bargaining Council-Western Cape(25), Building Bargaining Council-Cape of Good Hope(75), Bargaining Council for the Food, Retail, Restaurant, Catering and Allied Trades(5), National Bargaining Council for the Hairdressing, Cosmetology, Beauty and Skincare Industry(39) and the Bargaining Council for the Laundry, Cleaning and Dyeing Industry-KZN(18).

Specific flaws that can be resolved, however, can be identified when examining the fairness of the exemption procedures. The evidence from the research showed that the flaws in particular concern access to information and support measures, consultation, turnaround time and costs to company. It is evident from an assessment of the afore-mentioned indicators that there is a disjuncture between the exemption provisions of bargaining councils, the

application of the provisions, and the experiences of companies that applied. Experiences vary in relation to the specific sector and needs to be dealt with accordingly, notwithstanding recent attempts to remedy matters by amending the regulatory framework. Bargaining councils are now also required to implement revisions of Section 32 of the LRA (August 2014) that stipulates a timeframe of 30 days for the processing of applications and appeals, and the composition of the committee that will consider the appeals, in addition to the challenges previously identified.

The situation has been compounded by wide-ranging organisational and financial challenges. Bargaining councils were requested to list **the three most critical challenges** that affected their capacity in 2013 to function effectively, including the processing of exemption applications. Most of the challenges listed were of an organisational and financial nature (See table 22 for complete list). Fourteen of the 17 councils that responded listed an organisational and financial issues as a first challenge. Similarly 14 of the 18 respondents listed councils listed an organisational and financial issue as a second priority challenge, while 8 of the 10 respondents listed organisational issues as a third priority challenge. The remaining economic issues, albeit 1st, 2nd or 3rd challenge did not enjoy a high level of priority among bargaining councils.

Issue	Challenge 1	Challenge 2	Challenge 3
Organisational and financial	14	14	8
Economic	3	4	2
Total number of respondents	17	18	10

This, however, does raise the need to develop strategies to improve the exemption system of bargaining councils, based on a multi-pronged approach, that considers the specific circumstances of each bargaining council.

However, critical stakeholders have developed different responses to the problems being experienced. While all the employer associations and unions are not against collective bargaining and the resultant outcomes, their responses covered the entire spectrum of negotiating amicable solutions to litigation. Some bargaining councils have historically altered the exemption

system by introducing blanket exemption arrangements in addition to the requirement that companies make individual applications. The Clothing Bargaining Council has provisions that permit companies of a particular size (5 and less employees) to be exempt from the main collective agreement. It also encouraged non-compliant companies to adhere to a phased-in approach to ensure compliance. The MEIBC also made provision for the blanket exemption of new entrants from the main collective agreement for a specified period. The employer associations in the MEIBC recently tabled a consolidated proposal to revise the definition of small enterprises and requiring companies that employ less than 50 scheduled workers be exempt from the agreement. These initiatives have been informed by definitions of enterprise size based on employee class size and not issues such as turnover per annum specific to a particular SIC sector⁵ or through designated ratings as per CIDB grades.

While individual companies or parties chose to engage in litigation after an unsuccessful application for an exemption or withdrawal, some (with the assistance of employers associations such as NEASA) have supported litigation to prevent the Minister of Labour to extend the main collective agreement to non-parties. The former involved a number identifiable cases, namely National Bargaining Council for the Clothing Manufacturing Industry (Cape) & others vs Zietsman NO & others; SATAWU vs National Bargaining Council for the Road Freight Industry and Another (2011) 22 SALLR 1 (BC), Trafford Trading (Pty) Ltd vs National Bargaining Council for the Leather Industry of South Africa & Exemptions Appeal Committee of the National Bargaining Council for the Leather Industry of South Africa and Others (DA11/09) and SUBARU Pretoria (Pty) Ltd vs the Motor Industry Bargaining Council (MIBCO), Mr Meyer NO and MIBCO's Exemptions Board and MIBCO's Appeals Board (JR 2068/2010).

While bargaining councils, as a form of centralised collective bargaining, will continue to exist, it is imperative that the development of effective monitoring and evaluation processes be pursued to assess the intended and unintended consequences of labour market policies. This will involve the development of

⁵ Republic of South Africa: Employment Equity Act, No. 55. of 1998.

data sources and indicators to inform debate about impacts on matters such as access to social justice and labour market flexibility. It will enable the measurement of the effectiveness of the bargaining council exemption system using factors such as success rate of applications and procedural fairness (access to information and support, participation, turnaround time and costs to company). The administrative data gathered about the bargaining council exemption systems needs to be developed and integrated into the National Statistical System and the government-wide monitoring and evaluation system that informs deliberations of the impacts of labour market policies. This will involve not only revisions about shared definitions about enterprise size and labour market information about collective bargaining and the exemption system, but also the development of indicators that will reflect trends in labour market flexibility.

Concerns about the paucity of the discourse in response to the current stresses and strains to which labour market institutions are subjected can also be addressed by ascertaining labour market dynamics at sectoral level. More comprehensive sectoral studies of employment conditions can also enrich current discourses that range from demands for deregulation to the need to adhere to a centrally regulated labour market. However, the picture is more nuanced and requires creative solutions – a consideration that becomes even more important as we move to a situation where more sectors will embrace various forms of centralised bargaining to protect vulnerable workers; more importantly, a changing situation that will indicate the extent to which the labour market facilitates access to social justice and thus the realisation of a human rights regime – as enshrined in South Africa’s Constitution.

INTRODUCTION

South Africa's labour market institutions are multidimensional in their determination of remuneration and employment conditions. Despite the prevalence of regulated minimum floors to wages and employment conditions that have been prescribed in legislation such as the Basic Conditions of Employment Act (BCEA)⁶ as well as through Sectoral Determinations recommended by the Employment Conditions Commission (ECC) and promulgated by the responsible Minister, a wide spectrum of employment practices in ancillary sectors and industries across the economy and public sector at large have become associated with standards and conditions that are above these minimum floors.

Bargaining councils constitute an institutional dimension, if not the most important, for the determination of minimum floors to employment conditions and social security in a number of public and private sectors. The purpose of this study is to examine the operation and effectiveness of the exemption mechanisms in bargaining councils with particular reference to the the following terms of reference:

- *Investigate the extent at which companies are applying for exemption and find out the causes for such applications.*
- *Investigate the existence of any barriers to companies making use of bargaining council exemption processes.*
- *Investigate the extent to which companies are utilising the councils to get exemptions.*
- *Examine the process used by different bargaining councils in dealing with exemptions, the criteria and information they require and how they apply their exemption criteria to different applications.*
- *Investigate the conditions set by bargaining councils in issuing exemptions to companies (focus on all sources of discrepancies in conditions, including bargaining council constitutions).*

⁶ Basic Conditions of Employment Act No. 75 of 1997 and Basic Conditions of Employment Amendment Act No. 65 of 2002.

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- *Determine the advantages gained by companies in obtaining an exemption, both in relation to competitive advantage in relation to other companies in a sector.*
 - *The study should inform future reporting protocols between bargaining councils and the Department of Labour.*
 - *In attaining the overall objective, the study should also investigate the exemption mechanism from the perspective of applicants⁷.*

The report is structured to reflect how the aforementioned Terms of Reference were discharged.

Chapter 1 (Literature review and research methodology) reflects on the literature that has been generated on labour markets in South Africa since the establishment of a democracy. It enables the contextualisation of the research project and the development of appropriate research methods to generate evidence that contributed to the research findings.

Chapter 2 (The Labour Market and Collective Bargaining Trends) contextualises the subject matter of exemptions by assessing collective bargaining trends in the labour market. This involves an examination of the scope and coverage of bargaining councils, the conclusion and extension of main collective agreements with due regard for enterprise size. Furthermore, it is evident that the bargaining council system primarily regulates the labour market activities of SMMEs, despite the existence of a few single-employer public sector bargaining councils. Current methods of determining the scope and coverage of bargaining councils is, however considered, problematic – largely due to inadequate statistical information at SIC subsector level. It incorporates consideration of the respective exemption systems of bargaining councils in particular sectors that facilitate downward and upward variation of remuneration and employment conditions. Although statutory councils do not engage in collective bargaining owing to their low representation thresholds, the existing three councils have been included in this examination owing to the prevalence of exemption provisions in their deliberations.

⁷ See Terms of Reference as contained in the Agreement between the Department of Labour and Tri DEV Worx AFP Pty Ltd

Chapter 3 (Measuring the impacts of the regulatory framework for bargaining council exemptions) reflects on the impacts of the legislative framework for the exemption systems of bargaining councils using existing methods to measure the activity of bargaining councils focusing on the number of exemption applications by party and non-party, the type of exemption applications, and the number of exemption applications that have been approved, refused and are under consideration. The applications made by company size for both parties and non-parties are also considered. Companies have also made multiple applications for exemptions pending their circumstances and critical factors that affect their operations. Nonetheless, it is evident that there is a disjuncture between the provisions for exemptions and the actual processing of applications – a deficit that can be ascribed to the operational, financial and self-regulatory problems being experienced by bargaining councils.

Chapter 4 (Economic and organisational dimensions of bargaining council exemptions and company responses) develops the range of indicators that inform considerations concerning whether the exemption systems of bargaining councils are procedurally fair, effective and efficient. This involves considering the central issue of procedural fairness of the application and decision-making process and its organisational and financial implications. The economic consequences of applying criteria such as compliance with the main collective agreement and the need to ensure compliance with the BCEA and competitive requirements of the various sectors is also considered here.

While the aforementioned chapter considered the extent to which companies are using the bargaining councils to attain exemptions, the barriers to companies making use of the bargaining council exemption processes are examined here. This is done with specific reference to factors such as access to information and support, consultation, turnaround time and costs to company. However, it is evident that the exemption system can also be used as an early warning system of problems being experienced within a sector. The capacity of bargaining councils to ascertain the significance of its

exemption systems in this manner and the use of available sector remedial support measures is an issue that requires more attention, however.

It is evident that the perspectives of various stakeholders and commentary on these considerations in response to current challenges are critical to the development of potential remedial measures. The self-regulation of a sector involving employer associations and trade unions exercising corporate and occupational rights to attain an amicable solution to a problem and the pursuit of a shared objective, albeit labour market and development issues through social dialogue constitutes the sine qua non to deal with challenges. The organisational, financial, regulatory policy and strategy implications of this examination of bargaining councils therefore requires more attention. This is reflected in the concluding **Chapter 5 (Improving outcomes of exemptions)**, in which we specifically refer to the organisational, financial and self-regulatory activity of bargaining councils.

1

**LITERATURE REVIEW
AND RESEARCH
METHODOLOGY**

The development of the research methodology that was applied involved a review of all the relevant documentation, qualitative data and secondary literature. An assessment of the available local and global literature – both quantitative and qualitative – was critical to the construction of a custom-designed outcome evaluation framework essential to examining the effectiveness of the bargaining council exemptions. It enables a contemporary perspective concerning employment conditions, data availability, access to key stakeholders, and the geographical distribution of these phenomena. It facilitates the gathering and analysis of both quantitative and qualitative data to enrich the outcome evaluation, considering the primary objective. Such a custom-designed outcome evaluation framework is therefore an integral part of the data collection and assessment process of bargaining council exemption systems.

The success of the evaluation largely relied on the availability of records and documents (printed and/or electronic data) through **a literature review**. In the course of the evaluation, quantitative, documentary and anecdotal evidence were assembled, interpreted and analysed. While official documentation such as the constitutions and main collective agreements of the various bargaining councils reflects binding decisions, a range of ancillary documentation informs much of the subsequent deliberations that have taken place on the issue. Although this is reflected on a preliminary literature review, it informed the design of an **Impact Assessment Framework**, including questionnaire construction for surveys, in-depth interviews and focus group discussions.

1.1. Literature review

A review of available literature on the subject matter can be grouped into three categories: secondary literature, quantitative data, official documents of affected stakeholders such as the Department of Labour, the Judiciary, bargaining councils, and the perspective of organised business and labour.

(a) Secondary literature

A significant body of literature on South Africa's labour market, particularly collective bargaining, has emerged since 1994. The seminal two-volume *South African Labour Market Bibliography* by F. Esau and D. Horner⁸ provides a comprehensive overview of the literature of the labour market over the preceding two decades. It was compiled to assist the work of the Labour Market Commission and the ILO Country Review, and provides an overview of the primary journals, principal government publications and compilers and repositories of labour market information and analyses until 1996. It was one of the many projects facilitated by the Comprehensive Labour Market Policy Commission in 1995–6. The Commission also generated substantial literature.⁹

This has recently been augmented with the publication of books, journal articles and papers on the relationships between collective bargaining and the wages and conditions of employment regime, and SMMs and economic growth and development. Academics who have made preliminary contributions to this burgeoning literature include Haroon Borat, Carlene van der Westhuizen and Sumayya Goga¹⁰; Halton Cheadle¹¹; Shane Godfrey, Johann Maree, Jan Theron and Margareet Visser¹² as well as the Labour Research Service (LRS) through its Annual Collective Bargaining Review. These provide an overview of the collective bargaining process and its relationships to income determination and conditions of employment.

⁸ Esau, Faldie. and Horner, Dudley: *A South African Labour market bibliography*, Vol. 1&2, SALDRU, UCT, 1997.

⁹ See Standing, Guy, Sender, John and Weeks, John: *Restructuring the labour market: The South African challenge*, an ILO Country Review, 1996.

¹⁰ Haroon Borat, Carlene van der Westhuizen and Sumayya Goga¹⁰: Analysing wage formation in the South African labour market: *The role of bargaining councils*, Development Policy Research Unit Working Paper 09/135, January 2009.

¹¹ Halton Cheadle¹¹: *Regulated flexibility and small business: Revisiting the LRA and the BCEA*, Working Paper 06/109; Development Policy Research Unit, June 2006.

¹² Shane Godfrey, Johann Maree and Jan Theron: *Conditions of employment and small business: Coverage, compliance and exemptions*, Working Paper 06/106, Development Policy Research Unit, UCT, March 2006 and Shane Godfrey, Jan Theron and Margareet Visser: *The state of collective bargaining in South Africa: An empirical and conceptual study of collective bargaining*, Working Paper 07/130, Development Policy Research Unit, November 2007.

(b) Documentary review

However, it is not satisfactory to conclude that the bargaining council exemption system has been successful based on the number of applications approved, or to have the unsubstantiated perception that the system does not work without examining the economic, organisational and regulatory dimensions of exemption systems. Copies of the latest official bargaining council documents – constitutions, main agreements and other documents related to exemptions – were obtained from the bargaining councils and Department of Labour and were perused and analysed.

While these documents were downloaded from the websites of bargaining councils and the Department of Labour, assisted by forwarding documents of some bargaining councils, we sent letters to all the bargaining councils to verify the correctness of the information. We also asked bargaining councils to provide information that is currently not in possession of Tridevworx. The responses to date enabled us to discern the bargaining councils that are affected by exemption provisions and thus the focus of this study. However, it was important to delineate collective bargaining trends and to develop a tentative typology of bargaining councils and their exemption systems so as to ascertain nuances in current practices.

(c) Assessment of quantitative data

Other data sources were considered to populate a matrix format that captures the basic information of the bargaining council system in identified sectors and/or geographical areas, including provisions for exemption as stated in the previous Report. Categories being used to organise the information in matrix format involve among others the sectoral and geographical scope of the bargaining council with reference to the Standard Industrial Classification system (SIC). We looked at basic trends such as the number of enterprises covered (parties and non-parties), number of small enterprises covered (parties and non-parties), number of employees covered as a percentage of the total number of employees in the industry.

Statistics South Africa's Standard Industrial Classification of all Economic Activities (SIC) was "designed for the classification of establishments according to kind of economic activity, and provides a standardized framework for the collection, tabulation, analysis and presentation of statistical data on establishments"¹³.

"SIC is based upon the latest (third revision which appeared in 1990), ISIC 1/ with suitable adaptations for local conditions. However, the third revision of the ISIC differs in various respects from the previous edition so that the fifth edition of the SIC also differs from previous editions. The original version of the ISIC was published in October 1949. Three revised editions have been published since then. Statistics South Africa (Stats SA) has closely followed the ISIC since 1950/51 in order to promote the international comparability of the statistics concerned"¹⁴

While South Africa is currently using the 1993 Standard Industrial Classification of all Economic Activities, ISIC Rev. 4 is being used internationally. Broadly, the description of industries are the same between SIC 1993 and ISIC Rev. 4, but the latter takes into account new and recent developments in the different industries, such as the growing of genetically modified crops and the raising of genetically modified animals. Although exclusion clauses are present in both editions, SIC 1993 generally refers to activities or services in a given activity (in this case farming/agricultural services/commercial hunting), whereas in ISIC Rev. 4, the given exclusion could be located in separate and distinct section, for instance, Wholesale and retail trade; repair of motor vehicles and motorcycles with its distinct divisions. Scrutiny across all industries within major divisions or sections need to be done when ISIC Rev. 4 is adopted by South Africa and implemented accordingly.

The Quarterly Labour Force Survey (QLFS) and Quarterly Employment Survey (QES)

It is apparent from the work by Cheadle, Godfrey, Maree, Grawitsky and others that the primary data source for comparative purposes at the sector level has been the QLFS and QES. These sources are essentially official datasets at a national level that could be disaggregated to a provincial level.

¹³ Statistics South Africa: Standard Industrial Classification of all Economic Activities (SIC), Fifth Edition, January 1993, ii.

¹⁴ Ibid

Further disaggregation can only be done by means of extrapolation with a suite of assumptions.

These data sets allow the primary investigators and researchers over the past two decades to peg their data manipulation at the first level of analysis. In other words, a straightforward comparison with the number of employees per SIC category in the QLFS data set, compared to the bargaining council records, as defined, covering a total of 51 bargaining councils: 42 private sector councils, 6 local government and government councils, and 3 statutory councils.

Population census data: 2001 and 2011

The 2001 and 2011 census data (it is estimated that the data on economic activities for the 2011 census will only be available in April 2014) does not feature in any of the current and earlier work on bargaining councils. Tridevworx assumed that census data could be mined in this respect, given its richness at the subnational and lower disaggregation levels, especially geographically. Upon closer scrutiny, this proved not to be the case. First, census is based on population and households, focus on individuals and not the employed, unemployed at the levels of sector, enterprise or industry. The latter is achieved by reverse osmosis, as it were, where the primary data at the household and individual levels are extracted, translated and loaded into the former matrix, which constitute *labour market data and information* derived from census data. The first level of analysis using census data in this respect was done. Further disaggregation of the data to define the major group level [e.g. 420] to the subgroup [42 000] and determined geographical areas at enumerator area level ultimately proved to be extremely challenging.

Census of Manufacturing

Stats SA, focusing on total manufacturing and major groups that was released in October 1998, last conducted a census of manufacturing in 1996. Three provinces were broadly surveyed: Gauteng (45.4%), KwaZulu-Natal (20.2%) and the Western Cape (18.4%), and the balance was presumably made up of the other provinces.

A *Large sample survey of the Manufacturing industry* was subsequently conducted every five years, to contribute to the national accounts (e.g. GDP, fixed capital formation, supply and use tables, and changes in inventories). This survey, which was last conducted in 1986 and updated in October 1998, has subsequently not been updated and is therefore of limited use.

The Manufacturing: Utilisation of production capacity survey has a sample of about 980 large enterprises in the country. It is done on a quarterly basis and the latest is August 2013, which is used in the Composite Coincident Business Cycle indicator, to analyse movements in gross fixed capital formation in the national accounts.

All the above-mentioned Manufacturing surveys primarily address the national picture and national accounts and is not suitable for disaggregated lower-level application. A similar exercise could be done for Agriculture and Mining to illustrate the status quo of data and information currently in South Africa, especially when data is required at the lower geographical levels within a sector. Thus, broad strokes could only be taken given the existing set of circumstances on data in the country.

We decided, for the purpose of this Report, to source data from the bargaining councils themselves and to use other credible sources of data for benchmarking and validation. The intention is to use a definition of sector and enterprise size that fits with the international SIC practices. While it is acknowledged that bargaining councils are using a range of different definitions of enterprise size, we acknowledge the use of the internationally accepted definition of enterprise size¹⁵, namely small (1 to 50 employees), medium (51 to 200 employees) and large (> 200). In this context, the Questionnaires were designed to elicit responses from the bargaining council about the specific information it has periodically gathered.

Furthermore, the intention was to consider indicators that were used in previous studies and to develop indicators that would improve insights into issues such as the procedural fairness of the exemption procedures and the

¹⁵ Based on the National Small Business Act (1996, 2003, 2004).

unintended consequences of the decision-making of bargaining councils. Here, we considered access to information, cost to company of applications, turnaround time of applications, and the extent of consultation prior to the application and during the decision-making process with relevant affected parties. The following were also considered: unintended consequences of bargaining council decisions consider whether the BCEA and the main collective agreements were undermined and thus the competitiveness of enterprises in the sector, the submission of a company turnaround strategy or plan, the availability of sector support instruments, and the involvement of bargaining council, parties and non-parties therein.

1.2. Data gathering tools, data collection and data analysis

A central aspect of the research methodology used in the Report is the development of **data gathering tools, the collection of data, and the analysis of the relevant data** in addition to the literature review. The construction of an Impact Assessment Framework therefore outlines the implementation of such research methodology, which includes the construction of Questionnaires directed at the key stakeholders, the conduct of surveys using the most appropriate software available, the analysis of the collected data, and the production of a Final Report.

(a) Construction of an Impact Assessment Framework

A draft Impact Assessment Framework has been developed since the project commenced in September 2013. It involves an assessment of the secondary literature that reflects on the subject matter. Importantly, we collected and analysed the relevant core documentation of each bargaining council. The intention was to develop a typology of bargaining councils and their exemption systems based on the intensity of self-regulation. It involves the use of criteria such as the level of organisation and representation of parties, geographical and sector collective bargaining trends, scope of bargaining councils, core business, coverage and exemption provisions. The typology, together with an assessment of the recent impact of the legislative framework for the

exemption system of bargaining councils, informed the construction of a set of Questionnaires to attain inputs from the bargaining councils, employer associations and trade unions and enterprises that applied for exemption during 2013. This is essential to the completion of such an Impact Assessment Framework, and provides the basis for finalising preparations for the next phase of the project: data gathering and analysis and the production of the Final Report.

(b) Data gathering, data analysis and the production of the Final Report

The data gathering process involves the use of data gathering tools through the customisation of a set of Questionnaires targeting specific stakeholders involved in the bargaining council process. The first Questionnaire focused on data collection from the identified bargaining councils, while the second Questionnaire sought to elicit responses from parties and non-parties to bargaining councils. The remaining Questionnaire was used as a tool to gather information among companies that have applied for exemptions, including their experience.

Tridevworx developed a multipronged approach to the development and implementation of data collection and analysis to produce these research findings in response to the terms of reference provided by the Department of Labour. Separate surveys were conducted for bargaining councils and exemption applicants, while strategic interviews were held with employer associations and trade unions, which led to the production of a Draft and Final Report.

Bargaining councils Survey and interviews

All bargaining and statutory councils (51 in 2013) were asked to provide Tridevworx with copies of their constitutions, main collective agreements and any documentation relevant to the exemption process applicable to the council. We reviewed these documents and produced a synopsis of the scope, coverage, the exemption system used, and participating parties.

Then we identified the bargaining councils that had exemption systems; these had to complete a semi-structured Questionnaire and a supplementary Questionnaire after interviews were conducted with the relevant General Secretaries. Questionnaires were dispatched to 45 of the 52 registered bargaining councils. The five public sector bargaining councils and the Transnet Bargaining Council had no provisions for exemptions in their constitution or main collective agreement. Interviews were conducted with 45 bargaining and statutory councils between March and May 2014. Twenty-five bargaining council Questionnaires were returned by end June 2014.

Employer association and trade union Survey and selected interviews

We identified bargaining and statutory councils that have dealt with exemptions since 2009 and particularly in 2013 and conducted a Survey of some employer associations and trade unions involved in bargaining councils that processed exemptions without success in terms of response rate. Selected interviews were held with some of these associations to ascertain the gravity of the problems and challenges being experienced with their particular exemption systems and related problems. This proved difficult due to the prevailing negotiating processes in councils such as the MEIBC. Although this exercise was not part of the terms of reference, an attempt should be made to elicit responses from these associations towards the report seeing that they are critical to the development of remedial measures.

Company Survey

We asked bargaining and statutory councils that have dealt with exemptions since 2009 and particularly in 2013 to forward the names and contact details of companies that had applied for exemption in 2013. This information was critical to implementing a Survey of such companies.

Only the Metal and Engineering, Motor, Clothing, Textiles and Leather bargaining councils provided us with the contact detail of companies that had applied for exemptions. Others responded with reference to Section 201 of the LRA. This enabled Tridevworx to conduct a company-level Survey. Questionnaires were dispatched to 800 companies, requesting their participation in the research process. Of the companies, 83 responded

positively to our request. On the basis of the company response rate, as noted below, it was decided to use the Metal and Engineering and the Motor industries as case studies to understand company perspectives on bargaining councils. The number of companies surveyed does not reflect the number of exemption applications received, primarily owing to multiple applications by individual companies. Commentary on the responses provided by the Textiles, Clothing and Leather as well as Food companies are provided in the text.

Table 1: Sample realisation for company Survey

Bargaining council	No. of exemption applications in 2013	No. of Questionnaires dispatched	No. of responses to Questionnaires	Response rate (%)
MEIBC	2 061	555	49	8.8
MIBCO	599	202	29	14.4
Total	3 069	800	83	9.5

Tridevworx nevertheless proceeded to analyse the data gathered, as reflected in the ensuing chapters, despite the identified afore-mentioned shortcomings. The literature review and the experience gained from this study has clearly demonstrated that more research is required to inform vexed issues and debates on labour market flexibility and minimum wages and conditions of employment. A research agenda can be developed based on the following considerations:

- Norms and standards can be developed in relation to enterprise size with due regard for criteria such as employee class size and turn-over.
- More detailed research is required on factors informing procedural fairness such as access to bargaining council information and support, consultation, turnaround time and costs to company at a sectoral level. This will enable the development of more customised remedial strategies.
- A need exists for the sustained generation of reliable data and indicators on exemptions. This could form part of an overall process of developing more comprehensive labour market data that forms an integral part of the government-wide Monitoring and Evaluation system and the National Statistical System once such data is quality assured using the South African Statistical Quality Assurance Framework (SASQAF).

2

**THE LABOUR MARKET AND
COLLECTIVE BARGAINING
TRENDS**

The LRA provides the legislative framework governing collective bargaining in South Africa's labour market. It accommodates the use of various forms of social dialogue to enable dispute resolution and the determination of employment conditions. While the BCEA provides the framework for the determination of minimum conditions of employment and wage regulation by sectoral determinations for identified sectors requiring regulation. Where union and employer representation has not reached sufficient levels to aid the establishment of industry-wide bargaining councils, albeit in a specific geographical area, the ECC was tasked to consult with affected parties and to advise the Minister on the content of such sectoral determinations. An arrangement that intends to protect 'vulnerable sectors' without curtailing the opportunity for private sector stakeholders to regulate sector-specific employment conditions and wages in sectors where they are better organised.

While sectoral determinations, bargaining council agreements as well as the determination of employment conditions and wage regulation in non-statutory centralised bargaining forums determines minimums for a particular sector, company-level bargaining determines employment conditions and wages over and above the minimums. Although collective bargaining at the workplace level is all-pervasive, the nature and extent is informed by rules contained in procedural agreements. A consensus that is primarily reflected in a main collective agreements of a bargaining council, other forms of centralised bargaining, and company-level agreements are commonly referred to as **levels of bargaining**. In this sense, the notion of *levels of bargaining* refers to the propensity to engage in collective bargaining at the levels of the company, sectors and subsectors, and reflects the self-regulation level attained in the labour market based on sufficient representation and decision-making. In this context, bargaining councils and particularly collective bargaining institutional arrangements are a significant component of the institutional architecture of the broader labour market. It is critical to dispute resolution and the determination of the conditions of employment and wages in a range of sectors in both private and public spheres.

Company-level bargaining

The prevalence of company-level bargaining has historically provided the foundation for collective bargaining processes. Company-level bargaining has been consolidated in some large enterprises in sectors not traditionally governed by bargaining councils as specified in the LRA. Here, collective bargaining practices in companies in the Retail, Food Processing and Financial Services sectors are good examples.

Effective co-ordination of collective bargaining initiatives in and among some companies has led to the establishment of more centralised bargaining arrangements to standardise employment conditions and wage regulation in particular sectors, for instance, the Automotive and most Mining sectors. While formal statutory recognition in the form of a bargaining council has not been sought, sectors such as the Civil Engineering recently established a bargaining council in 2013.

Centralised collective bargaining

Centralised collective bargaining arrangements remains pivotal to the establishment of uniform employment conditions and wages at sector level. While bargaining councils remain the dominant form of centralised bargaining, non-statutory forms prevail in the Automotive and Mining industries.

The statutory form permits the extension of an agreement to non-parties as facilitated by Section 32(2) of the LRA, where a large number of enterprises, varying in size, operate within a sector – a situation that is significantly different from the automotive and mining forums operative in a sector that is dominated by large-scale enterprises and statutory councils dominated by a single employer.

Large-scale enterprises that dominate its industry by being the sole employer and where unions have historically been well organised has informed the establishment of most public sector bargaining councils and the Transnet Bargaining Council (TBC), a bargaining council constituted by the single employer (Transnet SOC Ltd) and the two registered trade unions SATAWU and UTATU-SARWHU. It is under these circumstances that the concluded

collective agreements are not extended to non-parties and thus do not provide for an exemption system.

“...Section 32(2) of the LRA was never intended to apply where there is only one employer...” Public Servants Association of South Africa v The Minister of Safety and Security and Others [2009] LC 128”

However, there are instances where geographically defined statutory collective bargaining councils have emerged in certain sectors. The Building and Hairdressing industries reflect this trend. Some level of national co-ordination becomes possible when a number of councils with similar sectoral scope exist and where the parties to the council are present in most of the regionally based councils. Only the smaller Gauteng Meat Trade and the Canvas industries bargaining councils have not developed such a national presence.

The efficacy of sector-based collective bargaining arrangements, as informed by the LRA, continued to be embraced by all social partners in National Economic Development and Labour Advisory Council (NEDLAC).

“Although trade unions and employers and their associations in the private sector are free to determine the levels and structure of collective bargaining, the LRA clearly promotes sector level bargaining as the preferred level. It does so for the following reasons:

- Sector level bargaining is low on transactional costs. The negotiations are conducted by representative organisations;
- Sector level bargaining shifts collective bargaining on the major issues out of the workplace, with that workplace relations are less strained;
- Bargaining outcomes are general in nature allowing for variation at the level of the workplace;
- Sector level bargaining sets a social floor for competition. By setting reasonable standards applicable to all employers in the local market, competition between those employers is based on productivity rather than socially undesirable wages or extension of hours;
- Strikes and lockouts take place less frequently at sector level and are generally less damaging to individual employers because competitors in the local market are also subject to the strike;
- Labour mobility and economies of scale make sector wide benefit schemes desirable”.¹⁶

However, the number of statutory bargaining councils has decreased from 104 in 1983 to 49 in 2004. In contrast, the number of workers covered

¹⁶ Cheadle, *Collective Bargaining and the LRA*, undated, p. 148.

increased from 1,171 724 million to 2,358 012 million.¹⁷ The public sector has become a significant player in the restructuring/establishment of bargaining councils that address particular labour market issues. Some of the oldest and largest bargaining councils were in the Manufacturing, Metal and Engineering, Transport and Services sectors. Centralised bargaining using non-statutory forums in the Mining (Chamber of Mines forum), Automotive (National Bargaining Forum) and Pelagic Fishing sectors incorporates most enterprises and covers a large number of workers in these sectors. Extensive plant-level and/or company-level bargaining exist, particularly in the Banking, Retail and Food Manufacturing sectors.

A central component of the living wage campaigns of unions and collective bargaining practices since the 1970s and 1980s have been the establishment of central bargaining in a sector.¹⁸ Social partners through NEDLAC undertook to pursue the establishment of centralised collective bargaining arrangements in all sectors where the basic employment conditions or sectoral determination apply.

Countervailing forces witnessed a growing trend by employers to adopt non-standard work practice forms. The casualisation of work and the increased use of labour brokers as a labour source meant that more workers were not subject to the standard conditions of employment agreed to in collective bargaining processes.¹⁹ This raised the need for a re-examination of the idea of employment security to cover non-standardised work and transitional periods. Pressure on the sustained existence of bargaining councils and forums also increased as the representativeness of employer and employee associations was questioned in circumstances where application for the extension of agreements to non-parties in a sector was considered.

¹⁷ Godfrey, Shane, Theron, Jan and Visser, Margaret: *The state of collective bargaining in South Africa: An empirical and conceptual study of collective bargaining*, Working Paper 07/130, Development Policy Research Unit, November 2007, p. 15.

¹⁸ See Coleman, Neil: *Concept paper: Towards new collective bargaining, wage and social protection strategies – Learning from the Brazilian experience*, Revised COSATU CEC input paper presented at the UCT Carnegie Conference on strategies to overcome poverty and inequality, 4 September 2012, and COSATU: *Concept paper: Towards new collective bargaining, wage and social protection strategies: Learning from the Brazilian experience*, Input to COSATU CEC, 28 May 2012.

¹⁹ Benjamin, Paul: 'Labour law beyond employment', *Acta Juridica* 12, April 2012.

Changes in procedures for the exemption of companies from collective agreements, the enforcement of compliance, and the adoption of geographical, subsector or enterprise size variations in income and employment conditions reflected increased flexibility levels. While it was previously interpreted as ‘a mechanism for selective rigidity’²⁰, scant attention has – however – been paid to the use of exemption procedures and mechanisms in centralised bargaining councils when considering labour market flexibility.

2.1. Sector trends and bargaining council scope

The number of employees, number of enterprises, and enterprise size are critical indicators to measure bargaining council coverage as a centralised bargaining instrument to facilitate the determination of employment conditions and wages in a sector. One of the central concerns, particularly among interested and affected parties, is the coverage and particularly the representativeness of a bargaining councils in a sector as defined by its scope and its role in the determination of minimum employment conditions for a sector as a whole.

Frequent reference has been made to labour unions and large enterprises negotiating main collective agreements at the expense of developing the employment potential of small enterprises. Perceptions that have contributed to provisions in the LRA 30(1)(b) for the representation of small and medium enterprises in its constitutional and associated structures of bargaining and statutory councils. Section 54(2)(f) of the LRA also require the councils to report annually to the Registrar of Labour Relations on how these provisions for small enterprises are effected by councils. This is in addition to provision in council constitutions for exemption procedures – albeit blanket exemptions or for individual companies. It is therefore imperative to ascertain the extent to which sectors and enterprises that vary in size are covered by, and represented on, bargaining and statutory councils that use their own definitions. Furthermore, it is critical to ascertain the extent to which small and

²⁰ Standing, Guy, Sender, John and Weeks, John: *Restructuring the labour market: The South African challenge*, an ILO Country Review, 1996, p. 14.

medium-sized enterprises have been identified as an area that requires specific attention by the existing regulatory provisions such as exemption processes and sector support.

(a) Sector and scope

All the bargaining and statutory councils have a defined sectoral and geographical scope, as specified in their constitution and main agreement. Although most councils have defined a sectoral scope that corresponds with the SIC system, their geographical reference have been informed by magisterial district, regional or national boundaries.

Analysis of bargaining and statutory council coverage makes extensively use of critical indicators such as **employment by industry type** (see Figure 1) and enterprise size by **employee class size**. It is apparent from the work by Cheadle, Godfrey, Maree, Grawitsky and others that the primary source of data for comparative purposes at sector level has been the QLFS and QES. These sources are essentially official data sets at a national level that could be disaggregated to a provincial level. Further disaggregation can only be done by means of extrapolation with a suite of assumptions. These data sets have allowed the primary investigators and researchers over the past two decades to peg their data manipulation at the first level of analysis. In other words, a straightforward comparison with the number of employees per SIC category in the QLFS data set, compared to the bargaining council records.

Figure 1: Employment by industry type for persons aged 15-64yrs

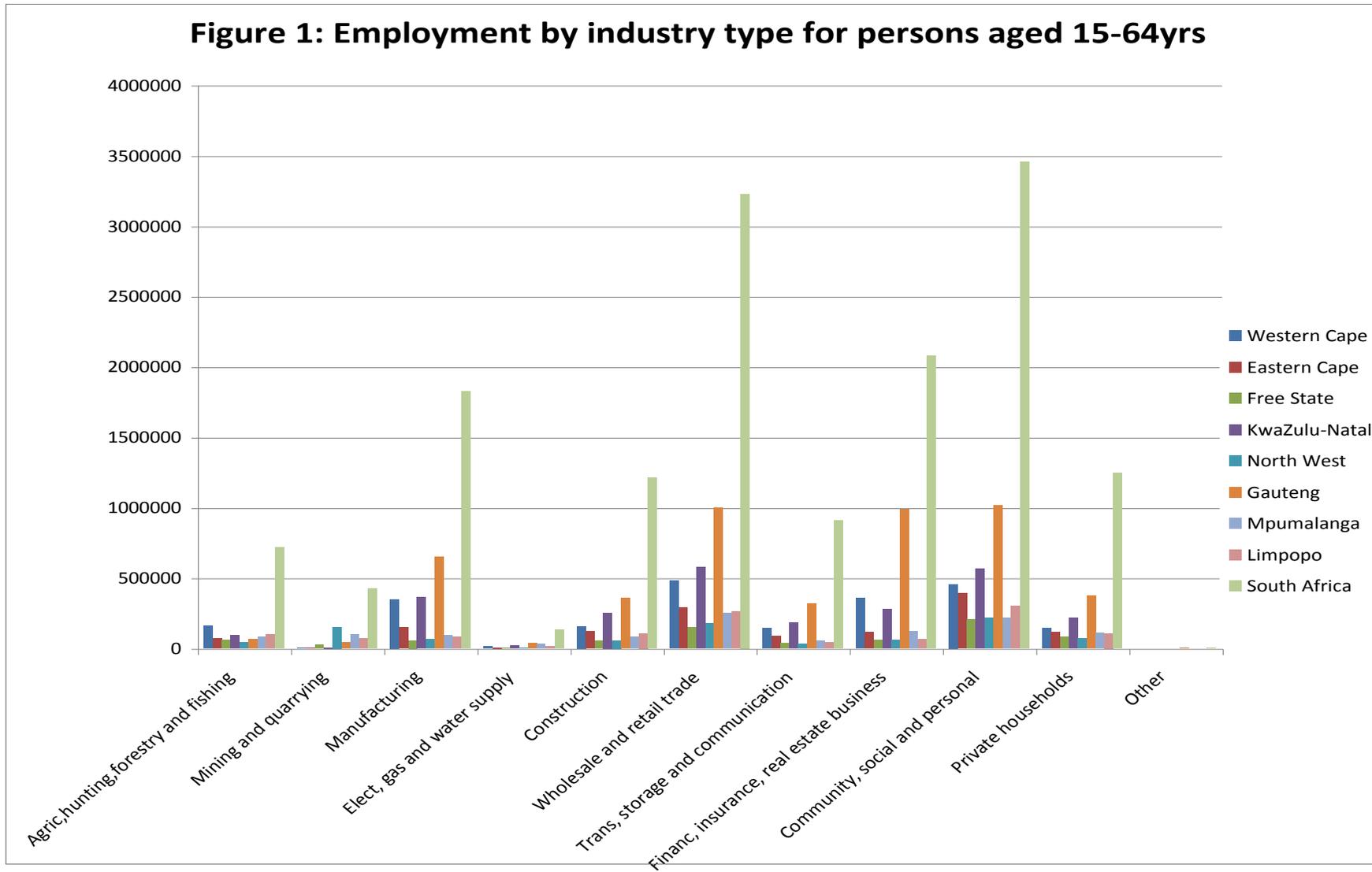


Table 2: Distribution of bargaining and statutory councils among SIC sectors

Main industry: SIC level 1	Industry subsector: SIC level 2	Bargaining/Statutory Council	
Agriculture, Hunting, Forestry and Fishing	Fishing	Statutory Council for the Squid & Related Fisheries	
		Bargaining Council for the Fishing Industry (National)	
Manufacturing	Chemical	National Bargaining Council for the Chemical Industry	
	Clothing	National Bargaining Council for Clothing Manufacturing Industry (NBC)	
	Leather and Footwear	National Bargaining Council of the Leather Industry of SA	
	Textiles	National Textile Bargaining Council	
	Metal and Engineering	Bargaining Council for the Canvas Goods Industry (Wits & Pta)	
	Manufacture, Servicing, Repair and Retail of Transport Equipment	Metal and Engineering Industries Bargaining Council (MEIBC)	
	New Tyres	Motor Industry Bargaining Council	
	Furniture Manufacturing	New Tyres	New Tyre Bargaining Council
			Furniture Bargaining Council, Eastern Cape
			Bargaining Council for the Furniture Manufacturing Industry, KwaZulu-Natal
			Furniture Bargaining Council SW District
			Bargaining Council for the Furniture Manufacturing Industry of the Western Cape
	Wood and Paper, Publishing and Printing	Furniture Manufacturing	Bargaining Council for the Furniture Manufacturing Industry
			National Bargaining Council for Wood, Paper Sector
	Food Processing	Wood and Paper, Publishing and Printing	Statutory Council of the Printing, Newspaper and Packaging Industry of South Africa
			Bargaining Council for the Grain Industry (National)
National Bargaining Council for the Sugar Manufacturing and Refining Industry			
Other Manufacturing	Food Processing	Bargaining Council for the Diamond Cutting Industry (SA)	
Electricity, Gas and Water Supply	Bulk Water Supply	Amanzi Bargaining Council	
		Civil Engineering	Bargaining Council for the Civil Engineering Industry
Construction	Electrical	National Bargaining Council for the Electrical Industry	
		Bargaining Council for the Building Industry, Kimberley	
	Building	Building	Building Industry, Southern & Eastern Cape
			Building Industry, East London

		Bargaining Council for the Building Industry, Bloemfontein
		Building Industry Bargaining Council (Cape of Good Hope)
		Building Bargaining Council (North and West Boland)
Wholesale and Retail trade	Catering and Accommodation	Bargaining Council for the Food Retail, Restaurant, Catering & Allied Trades
		Statutory Council for Fast Food, Restaurant, Catering & Allied Trades
		Bargaining Council for the Restaurant, Catering and Allied Trades
	Retail (Meat Trade)	Bargaining Council for the Meat Trade, Gauteng
Transport, Storage and Communication	Land Transport, Transport via Pipelines, Water Transport, Air Transport and Supporting and Auxiliary Transport Activities	Bargaining Council for the Road Freight & Logistical (NBCRFLI)
		Motor Ferry Industry Bargaining Council of South Africa (National)
		South African Road Passenger Bargaining Council (SARPBAC)
		Transnet Bargaining Council
Community and Social Services	Local Government	South African Local Government Bargaining Council
	Education	Education Labour Relations Council
	General Public Service	General Public Service Sectoral Bargaining Council
	Health and Social Development	Public Health and Social Development Sectoral Bargaining Council
		Public Service Co-ordinating Bargaining Council
	Safety and Security	Safety and Security Sectoral Bargaining Council
Private households	Cleaning	Bargaining Council for the Contract Cleaning Services Industry (KwaZulu-Natal)
	Hairdressing and Other Beauty Treatments	Semi-National Bargaining Council for the Hairdressing, Cosmetology, Beauty & Skincare Industry
		Bargaining Council for the Hairdressing Trade, Cape Peninsula
		Bargaining Council for the Hairdressing, Cosmetology, Beauty and Skincare
		Hairdressing and Cosmetology Bargaining Council KwaZulu-Natal
	Washing and Dry-cleaning of Textiles and Fur Products	Bargaining Council for the Laundry, Cleaning and Dyeing Industry (Cape)
		Bargaining Council for the Laundry, Cleaning and Dyeing Industry (KwaZulu-Natal)

It is evident from Figure 1 and Table 2 that the coverage of bargaining councils by distribution of employment by industry type in relation to the scope of councils essentially defined at SIC level 2 cannot easily be ascertained for respective bargaining and statutory councils. Although the definitions of sectoral scope broadly correspond to categories of sectors as defined by the SIC system, available official statistics makes the verification of existing estimates of enterprise number and employee number covered by councils extremely difficult. Official statistics as provided by Stats SA only deal with classification level 1 since the last Manufacturing census. This makes the disaggregation of the most recent data to subsectors to enable verification. Disaggregation of these sectors at a geographical level is even more challenging.

Furthermore, it also impairs a comprehensive analysis of the relationships between bargaining and statutory councils and other forms of centralised and company bargaining prevalent in various subsectors. Forms of centralised bargaining were particularly prevalent in the Mining and Automotive sectors, while the Food Processing, Banking, Telecommunications and Retail sectors experienced high company-level bargaining levels. The lack of disaggregated sectors therefore compounds the conduct of a comprehensive assessment about the extent to which progress has been made in the pursuit of the LRA's regulatory objectives.

Stats SA, focusing on total manufacturing and major groups that was released in October 1998, last conducted a census of Manufacturing in 1996. Three provinces were broadly surveyed: Gauteng (45.4%), KwaZulu-Natal (20.2%) and the Western Cape (18.4%), with the balance presumably made up by the other provinces. A *Large sample survey of the Manufacturing industry* was subsequently conducted every five years that contributes to the national accounts (e.g. GDP, fixed capital formation, supply and use tables and changes in inventories). This survey, which was last conducted in 1986, and was updated in October 1998, has subsequently not been updated; it is therefore of limited use. The *Manufacturing: Utilisation of production capacity* survey has a sample of about 980 large enterprises in South Africa. It is done quarterly. The latest one, in August 2013, is used in the Composite Coincident Business Cycle indicator to analyse movements in gross fixed capital formation in the national accounts.

The afore-mentioned Manufacturing surveys primarily address the national picture and national accounts and are not suitable for disaggregated lower-level application. A similar exercise could be done for Agriculture and Mining, to illustrate the status quo of data and information currently in South Africa, especially when data is required at the lower geographical levels within a sector. Thus, broad strokes could only be taken, given the existing circumstances on concerning data in South Africa.

The deficiencies in existing data sources and quality should underline the need for a comprehensive review of data, which should focus on data ranging from mainstream data, inclusive of official data sets across a wide spectrum, notably sectors in the economy and impacts on the labour market, its effectiveness and relevance. In-house data sets residing within government need to be explored, interrogated and quality assured – ultimately for application in general with the necessary norms and standards in place. The private sector, whose data and information comes at a premium, needs to be engaged. A suite of standards needs to be in place to assess its relevance, integrity and methodological soundness; this is beyond the scope of this project.

For the purpose of this Report, data was sourced from the bargaining councils and other credible sources of data in order to benchmark and validate. The intention is to use definitions of sector and enterprise size that fit the international SIC practices and enable comparison. Furthermore, the study focused on only 43 of the 52 bargaining and statutory councils, largely because they made provision for the exemption of enterprises from the primary agreements. The remaining 7 (predominantly public sector) councils had no such provisions, owing to the prevalence of single public sector employer dominated councils.

(b) Enterprise size

The coverage of enterprises of various sizes by bargaining councils has been significant in shaping the protocol types informing its operations. Large enterprises such as Transnet and the public sector establishments dominate its respective bargaining councils as sole employers. The Local Government and Amanzi bargaining councils also involved public sector employer groups of

municipalities and bulk water utilities with limited provisions for exemptions. A large number of private sector bargaining councils (43) involved sectors where small, medium and large-scale privately owned enterprises are prevalent. This necessitates some co-ordination of interest among these enterprises through employer associations and trade unions when determining minimum wages and employment conditions as well as engaging in dispute resolution. The forging of agreements among them also determined arrangements to enable companies to apply for exemption from certain if not all the provisions of the main agreements. Acts of self-regulation that was required to be sensitive to enterprise size when considering issues such as economic viability, employment levels and employment creation potential.

What is evident is that bargaining and statutory councils tended to use a variety of definitions to determine enterprise size. They tended to differentiate between small, medium and large enterprise sizes by using employee numbers (**employee class size**) as a reference to make this distinction. Although a range of overlapping definitions of employee class size are used as a proxy for enterprise size and can be applied in contrast to one another by different agencies, even in South Africa (e.g. DTI, Stats SA, the Development Bank of Southern Africa), these definitions can have consequences for enterprises. Such consequences are particularly evident when exemptions to bargaining council agreements and provisions result in enterprises bearing similar employee size characteristics being assigned to different enterprise class sizes. In real terms, different enterprise size characteristics can result in exemption policies that (dis)favour the same types of enterprises that are given a different enterprise size designation.

From the responses, 24 of 25 bargaining councils provided definitions of employee class size used to define a small enterprise. But, the number of responses to the employee class sizes used for definitions of medium-sized and large enterprises used by each bargaining council differed, with 20 responses for the definition of medium-sized enterprises and 19 for the definition of large enterprises. The responses reflected a range of size limits to small, medium and large enterprises across bargaining councils.

Table 3: Definitions of enterprise size in relation to employee class sizes used by bargaining councils

SIC Sector	Name of Bargaining Council	Small enterprises	Medium enterprises	Large enterprises
Agriculture, Hunting, Forestry and Fishing	SC for the Squid and Related Fisheries of SA	0-23	0-0	0-0
Manufacturing	National BC for Clothing Manufacturing Industry	0 - 50	51 - 200	201+
	Natonal Textile BC (NTBC)	0 - 50	0 - 50	51+
	BC for the Canvas Goods Industry (Witwatersrand & Pretoria)	0 - 10	11- 50	51+
	National BC for the Leather Industry of SA	1 - 20	21 - 99	100>
	BC for the New Tyre Manufacturing Industry (National)	0 - 49	50 - 199	200 - 2000
	Furniture BC (Eastern Cape)	0 - 49	50 - 199	200+
	BC for the Furniture Manufacturing Industry (KwaZulu-Natal)	1-50	51-150	151+
	Furniture BC (S.W.Districts)	0-3	4-14	15+
	Furniture BC (Western Cape)	0-20	21- 80	80+
	National BC for the Wood & Paper Sector	0 - 150	151-500	501+
	Metal & Engineering Industries BC (National)	0 - 10	11-99	100+
Motor Industry BC (National) (MIBCO)	1-49	50-199	200+	
Transport	National BC for the Road Freight and Logistics Industry (NBCRFLI)	1-19	20-300	301+
Construction	BC for the Civil Engineering Industry	CIDB rating 1-3	CIDB rating 4-6	CIDB rating 7-9
	BC for the Building Industry (Bloemfontein)	1-50	0-0	0-0
	BC for the Building Industry (Kimberley)	0 - 10	20-30	31+
	Building BC (North & West Boland)	1 - 20	21 - 40	0-0
	Building Industry BC (East London)	0-5	6-20.	21+
	Building Industry BC (Southern & Eastern Cape)	0 - 5	6-20.	21 +
	Building Industry BC (Cape of Good Hope)	1 - 9	10 - 49	50+
Wholesale, Retail, Catering and Accommodation	BC for the Food Retail, Restaurant, Catering & Allied Trades	0-7	0-0	0-0
	SC for the Fast Food, Restaurant, Catering & Allied Trades	1-10	0-0	0-0
Community, Social and Personal Services	National BC for the Hairdressing, Cosmetology, Beauty & Skincare Industry	0-0	0-0	0-0
	BC for the Laundry, Cleaning & Dyeing Industry (Kwa Zulu Natal)	0-50	51-200	200+

As shown in Table 3, the Furniture Bargaining Council for the South Western Districts defined a small enterprise as having no more than 3 employees. It defined medium-sized enterprises as having between 4 and 14 employees, and large enterprises as having 15 or more employees. But the Furniture Bargaining Council for the Eastern had a wholly different definition: it a small enterprise as having up to 49 employees, a medium-sized enterprise as having between 50 and 199, and a large enterprise as having 200 or more. Even more confusing was the definition used by the Bargaining Council for the Furniture Manufacturing Industry in KwaZulu-Natal, which classified a small enterprise as having between

1 and 50 employees, a medium-sized enterprise as one with 51 to 150 employees, and a large enterprise as having 151 or more employees. Thus, the definitions used to classify enterprises by size can differ even in the same industry.

There are also contrasting definitions used by bargaining councils in different industries. The Metal and Engineering Industries Bargaining Council, which is among the largest nationally, defines small, medium-sized and large enterprises as respectively having 0 to 10, 11 to 99, and 100 or more employees respectively. A corresponding large bargaining council operating in an ancillary industry such as the Motor Industry Bargaining Council defines a small enterprise as having between 1 and 49 employees, a medium-sized enterprise as one with between 50 and 199, and a large enterprise as one with 200 or more employees. The National Bargaining Council for the Road Freight and Logistics Industry uses definitions that contain even greater thresholds to differentiate between small, medium-sized and large enterprises. Its definition of a small enterprise is perched between that of the Metal and Engineering Industries Bargaining Council and the Motor Industries Bargaining Council. The National Bargaining Council for the Road Freight and Logistics Industry defines small, medium-sized and large enterprises as having between 1 and 19, 20 and 300, and 300 or more employees respectively.

Surprisingly, too, the definitions of enterprise class sizes that are used by the National Bargaining Council for the Clothing Manufacturing Industry also stands in stark contrast to that of the National Textile Bargaining Council (NTBC), which uses a common enterprise class size definition for both small and medium-sized firms. It defines these as both having between 0 and 50 employees, while large enterprises are defined as having more than 51. In contrast, the National Bargaining Council for the Clothing Manufacturing Industry uses definitions of enterprise class size that have a significantly wider range than those used by the National Textile Bargaining Council. According to the National Bargaining Council for the Clothing Manufacturing Industry, small enterprises have between 0 and 50 employees, medium-sized enterprises have between 51 and 200, and large enterprises have more than 200 employees.

Hence, only some bargaining councils use an internationally accepted employment-based definition of enterprise size, where small enterprises employ between 1 and 50 people, medium-sized enterprises between 51 and 200, and large enterprises more than 200 people. Other councils use different enterprise size definitions that are either completely arbitrary or that may contain attributes that those outside of the industry or sector are not aware of but which have implicit significance. We just cannot say for sure, and enterprise employee size is such a blunt measure that further obscures the issue.

Only the Bargaining Council for the Civil Engineering Industry uses a definition of enterprise size derived from that of the Construction Industry Development Board (CIDB); it incorporates additional factors such as turnover. Thus, a CIDB rating would for instance allow an enterprise perceived as small to be constrained from taking on a construction contract values, say, at more than R2 million. Employee sizes on such contracts can also show marked variation. A CIDB rating that falls within say 4 to 6 could for instance contribute to different staff hiring levels to execute the contract. The sizes of permanent staff complements on such contracts can also differ. However, a greater difference would be found in the hiring of limited duration employees (temporary staff): in some instances, this can range from 30% to 40% of the entire staff complement on such a construction or civil engineering assignment.

A more nuanced approach towards defining enterprise size is required. A more discrete measure that contains a combination of elements that can overcome the contrasts recorded above and secure some consistency in the definitions of small, medium-sized and large enterprises. Socio-economic policies designed to support enterprises that fall in different enterprise size classifications are also required.

(c) Bargaining council coverage by enterprise size

Thus, the definition of enterprise size clearly has a bearing on the manner in which the determination of enterprise by size classification is represented. Such size classification determines the distribution of firms within the industries that fall within the sphere of each bargaining council. Because bargaining councils use an

industry-specific enterprise size designation to distinguish between small, medium-sized and large enterprises, we are compelled to replicate this to differentiate between all enterprises by size across all the bargaining councils that responded to our enquiries.

Therefore, being compelled to accept the dilemma around the formal classification of enterprise size, the data at our disposal in Table 4 suggests that 81.6% of all enterprises (57 086), under the auspices of a bargaining council in the return sample was classified as small. As would be expected, even under normal circumstances, 15.2% of all enterprises were designated as medium-sized. The balance – constituting only 3.2% of firms in the sectors and industries that registered a response from a bargaining council – could be classified as large. This is an important observation, because it shows that the bulk of enterprises covered by a bargaining council main agreement were in fact small firms.

Again, if one looks at the aggregate data so that it shows industry concentration across different enterprise size cohorts, the overall picture points to an industry-specific concentration of firms in each size cohort. This also occurs because the relatively large national bargaining councils will have many more firms across all enterprise size cohorts compared to smaller national and regional bargaining councils. The aggregate picture shows that, of the 69 942 firms covered by bargaining councils that formed part of the return sample to the Tridevworx Survey, a high concentration fell under the auspices of just three bargaining councils.

The largest number of firms (32.4%) was under the jurisdiction of the Bargaining Council for the Civil Engineering Industry, 30.9% under the Motor Industry Bargaining Council (National), and 16.9% of all firms in the bargaining council return sample under the Metal and Engineering Industries Bargaining Council (National). Jointly, these three bargaining councils covered 80.2% of all firms in the return sample.

However, there were also bargaining councils that recorded a smaller number of representation of firms, but which were still extremely important for the specific

industries they cover. These smaller but significant players in the bargaining council system in terms of the number and proportion of firms they cover include: the National Bargaining Council for the Road Freight and Logistics Industry (NBCRFLI) (with a coverage of 3 807 firms), the Statutory Council for the Fast Food, Restaurant, Catering and Allied Trades (3 515 firms), and the Bargaining Council for the Food Retail, Restaurant, Catering and Allied Trades (1 686 firms).

Table 4: Total number of enterprises in the sector covered by bargaining councils in 2013

SIC Sector	Name of Bargaining Council	Small enterprises		Medium enterprises		Large enterprises		Total Number of Enterprises	
		Number	%	Number	%	Number	%	Number	%
Agriculture, Hunting, Forestry and Fishing	SC for the Squid and Related Fisheries of SA		0.0	100	0.9		0.0	100	0.1
Manufacturing	National BC for Clothing Manufacturing Industry	626	1.1	174	1.6	55	2.4	855	1.2
	Natonal Textile BC (NTBC)	146	0.3	146	1.4	62	2.8	354	0.5
	BC for the Canvas Goods Industry (Witwatersrand & Pretoria)	17	0.0	22	0.2	2	0.1	41	0.1
	National BC for the Leather Industry of SA	136	0.2	104	1.0	39	1.7	279	0.4
	BC for the New Tyre Manufacturing Industry (National)	0	0.0	1	0.0	4	0.2	5	0.0
	Furniture BC (Eastern Cape)	41	0.1	1	0.0	0	0.0	42	0.1
	BC for the Furniture Manufacturing Industry (KwaZulu-Natal)	90	0.2	132	1.2	4	0.2	226	0.3
	Furniture BC (S.W. Districts)	38	0.1	23	0.2	8	0.4	69	0.1
	Furniture BC (Western Cape)	172	0.3	52	0.5	9	0.4	233	0.3
	National BC for the Wood & Paper Sector	106	0.2	10	0.1	7	0.3	123	0.2
	Metal & Engineering Industries BC (National)	6529	11.4	4538	42.8	732	32.5	11799	16.9
Motor Industry BC (National) (MIBCO)	20672	36.2	654	6.2	292	13.0	21618	30.9	
Transport	National BC for the Road Freight and Logistics Industry (NBCRFLI)	2755	4.8	978	9.2	74	3.3	3807	5.4
Construction	BC for the Civil Engineering Industry	22000	38.5	0	0.0	650	28.8	22650	32.4
	BC for the Building Industry (Bloemfontein)	42	0.1	0	0.0	0	0.0	42	0.1
	BC for the Building Industry (Kimberley)	30	0.1	10	0.1	1	0.0	41	0.1
	Building BC (North & West Boland)	225	0.4	30	0.3	0	0.0	255	0.4
	Building Industry BC (East London)								
	Building Industry BC (Southern & Eastern Cape)								
Wholesale, Retail, Catering and Accommodation	Building Industry BC (Cape of Good Hope)	1236	2.2	527	5.0	114	5.1	1877	2.7
	BC for the Food Retail, Restaurant, Catering & Allied Trades	440	0.8	1246	11.8	0	0.0	1686	2.4
Community and Social Services	SC for the Fast Food, Restaurant, Catering & Allied Trades	1465	2.6	1850	17.5	200	8.9	3515	5.0
	National BC for the Hairdressing, Cosmetology, Beauty & Skincare Industry								
	BC for the Laundry, Cleaning & Dyeing Industry (Kwa Zulu Natal)	321	0.6	3	0.0	1	0.0	325	0.5
	Total for Sectors in Return Sample	57087	100.0	10601	100.0	2254	100.0	69942	100.0
	% Across	81.6		15.2		3.2		100.0	

If one examines each enterprise size cohort, which essentially depicts the number and proportion of firms covered by specific bargaining councils in the return sample that were classified as either small, medium-sized or large firms in 2013, the picture only varies marginally from the aggregate picture discussed above. In the column depicting the specific bargaining council coverage among enterprises classified as small shown in Table 4 above, the Bargaining Council for the Civil Engineering Industry covered 38.5% of small firms, followed by the Motor Industry

Bargaining Council (National) with 36.2%, the Metal and Engineering Industries Bargaining Council (National) with 11.4%, and the National Bargaining Council for the Road Freight and Logistics Industry. Viewed from the perspective of a more overtly industrial classification, this breakdown for small firms tells us that in 2013 almost half (47.6%) of all the small firms in the return sample was located in the Metal, Motor and Engineering industries, while a further 38.5% of small firms were essentially in the Construction sector, a smaller proportion was in the Freight and Logistics sector. Collectively, these four sectors constituted 90.9% of all small firms in the return sample. Naturally, exemption policies that give more favourable conditions for small vs. medium-sized and large enterprises will have high relevance for these sectors in particular, and for the established bargaining councils that operate and administer exemption policies in these.

If one examines the concentration of medium-sized enterprises among bargaining councils in the return sample, almost exactly the same councils are prominent – as observed in the aggregate as well as for small enterprises, although there is a significant variation in the ranking of bargaining councils within the medium-sized and large cohorts compared to that shown for small firms. In the column showing the number of medium-sized enterprises, the largest contributor was the Metal and Engineering Industries Bargaining Council (National), accounting for 42.8% of medium-sized firms, followed by two bargaining councils active in the Food, Restaurant and Catering sector; these are the Statutory Council for the Fast Food, Restaurant, Catering and Allied Trades (making up 17.5% of medium-sized enterprises in the return sample) and the Bargaining Council for the Food Retail, Restaurant, Catering and Allied Trades (11.8% of medium-sized firms). Taken together, these two food and allied trade bargaining councils make up almost one-third (29.3%) of medium-sized enterprises in the return sample.

Firms under the auspices of the National Bargaining Council for the Road Freight and Logistics Industry (NBCRFLI) constitute 9.2% of the share for medium-sized firms of all bargaining councils in the return sample. Although expected, there is nonetheless quite a steep drop in the number of enterprises classified as medium-sized by the Motor Industry Bargaining Council (National), particularly when compared to its proportionate number of small enterprises. Only 6.2% of medium-sized enterprises under the Motor Industry Bargaining Council (National)

made up the medium-sized enterprise cohort, compared to its much larger share (36.2%) of enterprises classified as small.

The distribution of large firms among the respondent bargaining councils paints a similar picture concerning the composition and distribution of large firms. Although in the aggregate, only 3.2% of firms covered by the return sample of bargaining councils were classified as large enterprises in 2013, the specific bargaining councils and industries they incorporated still predominated concerning representation of large firms. Thus, the Metal and Engineering Industries Bargaining Council (National) still accounted for 32.5% of large firms in the return sample, followed by the Bargaining Council for the Civil Engineering Industry (28.8%), the Motor Industry Bargaining Council (National) (13.0%), and the Statutory Council for the Fast Food, Restaurant, Catering and Allied Industries (8.9%). Taken together, these four industries were responsible for 83.2% of large firms in the return sample.

This evidence is extremely significant, because it suggests that if only the roughly six bargaining councils that contributed the most number of firms to each enterprise size cohort (i.e. small, medium-sized and large, as well as for the aggregate), we would not know any less about the relative composition and distribution of firms by size across bargaining councils and the industries these cover. These roughly six bargaining councils in order of rank are: the Bargaining Council for the Civil Engineering Industry, the Motor Industry Bargaining Council (National), the Metal and Engineering Industries Bargaining Council (National), the National Bargaining Council for the Road Freight and Logistics Industry (NBCRFLI), the Statutory Council for the Fast Food, Restaurant, Catering and Allied Trades and the Bargaining Council for the Food, Retail, Restaurant, Catering and Allied Trades. This is because roughly over 85% within each enterprise size cohort were in any case drawn from these roughly six bargaining councils.

(d) Number of employees covered by bargaining councils

Regular bargaining council reports to the Registrar of Labour are required to detail enterprise size by number of employees. This provides some reflection of

the type of information sought to provide insights into enterprise number and size and number of employees covered. Section 1 of the Questionnaires requested the bargaining councils, employer associations and trade unions to address various facets of this matter.

Just as in the preceding section on enterprise profile by size across bargaining councils, we now provide insights into the number of employees engaged in each enterprise size cohort (i.e. for cohorts covering small, medium-sized and large enterprises) across the 25 bargaining councils that returned a completed Questionnaire. But unlike the previous section, which largely sketched a scenario in which significantly more firms were classified as small than medium-sized, and even fewer were classified as large in relation to medium-sized, the process concerning employee numbers is virtually turned upside down.

Despite some missing data, the total number of employees for the 25 bargaining councils is shown in the last row of Table 5; immediately below this is the aggregate breakdown of employees by enterprise size cohort. Just over one-million employees, incorporating both party and non-party members, were covered by bargaining council main agreements in 2013. A more disaggregated breakdown shows that 24.9% of employees under the auspices of bargaining council regulations and conditions worked in small firms. A further 30.7% were engaged in medium-sized firms. The largest proportions of employees (44.4% or just over 500 000) were dispersed across roughly 2 014 large enterprises across the industries covered by the bargaining councils represented in the return sample.

In the aggregate, it is also noticeable that almost two-fifths (36.2%) of employees in the return sample across all enterprise sizes are covered by the Metal and Engineering Industries Bargaining Council (National), followed by 25.4% of employees under the Motor Industry Bargaining Council (National). These two bargaining councils are responsible for three-fifths (61.6%) of all employees represented by bargaining councils in the return sample. In terms of total employee numbers, the remaining bargaining councils had the following rank in the 2013 return sample: National Bargaining Council for the Road Freight and Logistics Industry (NBCRFLI) (10.6%), the Bargaining Council for the Civil

Engineering Industry (6.9%), and the Statutory Council for the Fast Food, Restaurant, Catering and Allied Trades which accounted for 5% of all employees. These five bargaining councils collectively had coverage for 84.1% of all employees in the return sample.

Table 5: Total number of employees in sectors covered by bargaining councils in 2013

SIC Sector	Name of Bargaining Council	Small enterprises		Medium enterprises		Large enterprises		Total Number of Enterprises	
		Number	%	Number	%	Number	%	Number	%
Agriculture, Hunting, Forestry and Fishing	SC for the Squid and Related Fisheries of SA		0.0	24	0.0		0.0	24	0.0
Manufacturing	National BC for Clothing Manufacturing Industry	10754	3.7	17577	4.9	24795	4.8	53126	4.6
	National Textile BC (NTBC)	2330	0.8	2330	0.7	8947	1.7	13607	1.2
	BC for the Canvas Goods Industry (Witwatersrand & Pretoria)	116	0.0	482	0.1	301	0.1	899	0.1
	National BC for the Leather Industry of SA	1205	0.4	4245	1.2	9909	1.9	15359	1.3
	BC for the New Tyre Manufacturing Industry (National)	0	0.0	110	0.0	4346	0.8	4456	0.4
	Furniture BC (Eastern Cape)	386	0.1	51	0.0	0	0.0	437	0.0
	BC for the Furniture Manufacturing Industry (KwaZulu-Natal)	286	0.1	2959	0.8	1101	0.2	4346	0.4
	Furniture BC (S.W.Districts)	100	0.0	212	0.1	208	0.0	520	0.0
	Furniture BC (Western Cape)	1256	0.4	2140	0.6	2062	0.4	5458	0.5
	National BC for the Wood & Paper Sector	16634	5.7	3669	1.0	9246	1.8	29549	2.5
	Metal & Engineering Industries BC (National)	25370	8.8	140314	39.3	255332	49.5	421016	36.2
Motor Industry BC (National) (MIBCO)	191865	66.3	44262	12.4	59678	11.6	295805	25.4	
Transport	National BC for the Road Freight and Logistics Industry (NBCRFLI)	14016	4.8	63385	17.7	46151	8.9	123552	10.6
Construction	BC for the Civil Engineering Industry		0.0		0.0	80000	15.5	80000	6.9
	BC for the Building Industry (Bloemfontein)	1450	0.5	0	0.0	0	0.0	1450	0.1
	BC for the Building Industry (Kimberley)	0	0.0	0	0.0	0	0.0	0	0.0
	Building BC (North & West Boland)	1374	0.5	1614	0.5	0	0.0	2988	0.3
	Building Industry BC (East London)	0	0.0	0	0.0	0	0.0	0	0.0
	Building Industry BC (Southern & Eastern Cape)		0.0		0.0		0.0	0	0.0
	Building Industry BC (Cape of Good Hope)	4723	1.6	10937	3.1	13253	2.6	28913	2.5
Wholesale, Retail, Catering and Accommodation	BC for the Food Retail, Restaurant, Catering & Allied Trades	1939	0.7	18285	5.1	0	0.0	20224	1.7
	SC for the Fast Food, Restaurant, Catering & Allied Trades	13480	4.7	44106	12.4	0	0.0	57586	5.0
Community and Social Services	National BC for the Hairdressing, Cosmetology, Beauty & Skincare Industry	0	0.0	0	0.0	0	0.0	0	0.0
	BC for the Laundry, Cleaning & Dyeing Industry (Kwa Zulu Natal)	2180	0.8	400	0.1	500	0.1	3080	0.3
	Total Employees for Sectors in Return Sample	289464	100.0	357102	100.0	515829	100.0	1162395	100.0
	% Across	24.9		30.7		44.4		100.0	

With merely one exception, all six of the bargaining councils that largely dominated representation in terms of the number of firms covered for all three enterprise size cohorts (small, medium-sized and large). The exception was the comparatively noticeable number of employees in small enterprises under the National Bargaining Council for the Wood and Paper Sector. However within the small enterprise cohort, 66.3% of employment was dominated by the Motor Industry Bargaining Council (National). A rank of the distribution of specific bargaining council concentrations among small enterprise employees in the return sample shows that the remaining councils are the Metal and Engineering Industries Bargaining Council (National) (covering 8.8% of small enterprise employees), the National Bargaining Council for the Wood and Paper Sector (covering 16 634 employees, or 5.7%), the National Bargaining Council for the Road Freight and Logistics Industry (NBCRFLI) (with 4.8%), and the Statutory Council for the Fast Food, Restaurant, Catering and Allied Trades (with 4.7%).

These five bargaining councils had coverage of over 90.3% of all employees covered by the 25 bargaining councils working in small enterprises in 2013.

Within the medium-sized enterprise cohort, the position for the number of employees covered by the Motor Industry Bargaining Council (National) among small enterprises is displaced by the Metal and Engineering Industries Bargaining Council (National). The latter represented the largest proportion of employees (39.3%) who worked in medium-sized enterprises in 2013. This was followed by the National Bargaining Council for the Road Freight and Logistics Industry (NBCRFLI) (17.7%), the Motor Industry Bargaining Council (National) (12.4%, or 44 262 employees), the Statutory Council for the Fast Food, Restaurant, Catering and Allied Trades (12.4%, or 44 106 employees), and the Bargaining Council for the Food Retail, Restaurant, Catering and Allied Trades (5.1%). If one combines the number of employees in the two food and allied related bargaining councils engaged in medium-sized enterprises in 2013, one would notice that the numbers and proportions of employees covered is significantly higher, even though the type of bargaining arrangements between the two different councils are formally distinct. The five councils discussed above collectively account for 86.9% of employees engaged in medium-sized enterprises for which bargaining councils in the return sample held coverage. The National Bargaining Council for the Clothing Manufacturing Industry also has a noticeable showing for the number (17 577) and showing (4.9%) of employees in medium-sized firms. If this is added to the above percentage, six bargaining councils would then collectively have jurisdiction over more than 90% of all employees for all the bargaining councils in the return sample.

A similar scenario in which a few bargaining councils dominate employment numbers is evident even among large enterprises. As noted, 3.2% of enterprises classified as large accounted for the employment of 44.4% of employees covered by bargaining councils that returned a completed Questionnaire. Among large enterprises, employment numbers were dominated by only six bargaining councils, which collectively accounted for 85.5% of employment. At the top of the ranking was the Metal and Engineering Industries Bargaining Council (National), which accounted for 49.5% of employees working in large enterprises, followed by the Bargaining Council for the Civil Engineering Industry (15.5%), the Motor

Industry Bargaining Council (National) (11.6%), and the National Bargaining Council for the Road Freight and Logistics Industry (NBCRFLI) (8.9%).

The scenario sketched above is that employment in large enterprises, particularly if the statement is generalised from the results of the return sample, is largely a phenomenon located in the Metal and Engineering, Civil Engineering, Construction, Motor and Road Freight and Logistics sectors. The evidence from the return sample reinforces this point. But even concerning employment in specific enterprise size cohorts (i.e. small, medium-sized and large) as well as for the aggregate situation, the evidence shows that a relatively small number of bargaining councils dominate the scene with respect to presence, coverage and representation in terms of employee numbers in South Africa.

2.2. Core business, coverage and exemption provisions of bargaining councils

The core business of most bargaining councils is similar. Their constitutions invariably provides for powers and functions to regulate employment conditions, wages and matters of shared interest by concluding and enforcing agreements in a sector and a defined geographical area.

(a) Core business and coverage of bargaining councils

Bargaining councils have developed a capacity to conclude agreements on a number of matters, including conditions of employment and wages – even if unevenly. They promote and establish training and education schemes. They have been pivotal in the establishment and administration of pension, provident, medical aid and sick pay funds. They are critical to the prevention and resolution of labour disputes and the performance of dispute resolution functions. Most of the agreements governing these matters were multi-year agreements for a period of between 3 to 4 years, which provide for a level of predictability. The enforcement of agreements have largely been dependent on ensuring compliance among sector enterprises. An overview of the main collective agreements, the parties thereto, the timeframes and whether they have been

extended to non-parties indicates that bargaining and statutory councils function at various intensity levels (see Table 6).

The coverage of bargaining and statutory councils have largely been informed by a number of factors, such as representativeness of parties in a defined sector and geographical area, the conclusion and enforcement of the agreements reached among the parties involved, and the extension of such agreements to non-parties by the responsible Minister. Together, these factors informed whether exemption processes exist and whether applications were received, as well as the number of applications considered and awarded.

(i) Representativeness of employer associations and trade unions

The Department of Labour regularly updates and makes available a list of the names, contact details and date of registered employer associations and trade unions. There are currently (May 2014) 183 trade unions and 162 employer associations registered with the Department. New associations can be registered and deregistered in accordance with the provisions of Chapter VI, Part A – Registration and regulation of trade unions and employers’ organisations of the LRA. These associations are permitted to participate in the bargaining and statutory system governing identified public and private sectors. There are currently (March 2014) 51 private and public sector bargaining and statutory councils registered with the Department of Labour. The Department regularly updates and makes available a list of the names and contact details of the councils’ officials.

The extent to which a council is representative of the employers and employees in a sector should be considered based on the scope defined by a council’s constitution and, in some cases, the main collective agreement and the representativeness of the employer associations and trade unions. Here, scope is understood to have various dimensions, namely the particular sector and geographical area of operation; it also involves determining the particular categories of employment.

The representativeness concerning number of enterprises and employees that employer associations and trade unions represent in relation to the actual number

of enterprises and employees in the defined scope remains a serious challenge, however. This is primarily owing to the lack of data on employment, number of enterprises and enterprise size in SIC 2 subsectors and their geographical distribution. This is despite the Department of Labour and some councils having developed processes and strategies to verify the representativeness of employer organisations and trade unions. This is particularly important in the case of bargaining councils (> 50%), where representativeness thresholds are higher than those of statutory councils (> 30%).

(ii) The negotiation, extension and enforcement of main collective agreements

Main collective agreements on issues ranging from remuneration and employment conditions to employee benefits have been developed in sectors where effective representation by both employer and employee associations prevailed. While statutory councils do not engage in collective bargaining processes to determine remuneration and employment conditions, it is evident that not all bargaining councils have concluded main collective bargaining agreements. The Minister of Labour is empowered in terms of Section 32 of the Labour Relations Act to extend an agreement to enterprises not party to the agreement made in a bargaining council. This was reinforced by the recent unanimous Labour Appeal Court decision of Kem-Lin Fashions CC v Brunton CC [2001] 1 BLLR 25 (LAC).

“The rationale behind the extension of collective agreements by the Minister of Labour in terms of Section 32(2) is to prevent unfair competition which employers who are not party to collective agreements concluded in a bargaining council may pose to their competitors who are bound by collective agreements. This is because a collective agreement concluded in a bargaining council lays down minimum wages and other terms and conditions of employment to be observed in respect of employees.

If the collective agreement were not extended to non-parties, the non-parties would be able to pay employees at rates, which are lower than those, which their competitors who are party to collective agreements have to pay to their employees. The result of this would be a serious threat to the business of those who are parties to collective agreements. This would seriously discourage orderly collective bargaining in general and collective bargaining at sectoral level in particular, which are part of the primary objects of the Act. If this were allowed, there would be little, if any, point in any employer seeking to be party to a bargaining council. That would be a threat to one of the pillars of the labour relations system in this country”.

Table 6: A synopsis of bargaining councils' core business and coverage in 2013

SIC sector	SIC subsector	Name of bargaining Council	Main agreement		Parties/Non-parties	
			Duration	Extension to non-parties	Employer association	Trade union
Agriculture and Fishing	Fishing	Statutory Council for the Squid & related Fisheries				
		Bargaining Council for the Fishing Industry (National)	<ul style="list-style-type: none"> • 6 August 2012 to 30 June 2013 • Until 31 December 2013 	<ul style="list-style-type: none"> • Agreement extended to non-parties on 27 July 2012 • Agreement extended to non-parties on 28 June 2013 	The South African Fishing Industry Employers Organisation	Trawler & Line Fishermen's Union (TALFU), National Certificated Fishing and Allied Workers Union (NCFAWU); Food and Allied Workers Union (FAWU)

Manufacturing	Chemical	National Bargaining Council for the Chemical Industry	<ul style="list-style-type: none"> Determine a multi-year agreement for a 3-year period 1 July 2012 to 30 June 2014 	No evidence of extension to non-parties	Surface Coatings Industry Employers' Association, National Fast Moving Consumer Goods Employers' Association, Explosives Industry Employers' Association, National Speciality Chemicals Employers' Association, Fertiliser Industry Employers' Association, Glass Industries Employers' Association, Labour Affairs Association of the Pharmaceutical Industry, National Base Chemicals Employers' Association & National Petroleum Employers' Association.	Chemical, Energy, Paper, Printing, Wood and Allied Workers Union, General Industries Workers Union of South Africa, Solidarity, South African Chemical Workers Union
	Clothing	National Bargaining Council for Clothing Manufacturing Industry (NBC)	14 September 2012 to 31 August 2016	Agreement extended to non-parties on 12 April 2013	Apparel Manufacturers of South Africa (AMSA)	SACTWU

	Textile	National Textile Bargaining Council	24 June 2013 to 31 December 2015	Agreement extended to non-parties on 14 June 2013	South African Cotton Textile Processing Employers' Association (SACTPEA), South African Carpet Manufacturing Employers' Association (SACMEA), National Manufactured Fibres Employers' Association (NMFEA), National Association of Worsted Textile Manufacturers (NAWTM), Narrow Fabric Manufacturers' Association (NFMA), South African Wool and Mohair Processors' Employers' Organisation (SAWAMPEO), National Textile Manufacturers' Association (NTMA), South African Home Textiles Manufacturers Employers' Organisation (HOMETEX), South African Blankets Manufacturers Employers' Organisation (SABMEO)	SACTWU
		Bargaining Council for the Canvas Goods Industry (Wits & Pta)	<ul style="list-style-type: none"> • A multi-year agreement for a 3-year period • 1 July 2009 to 30 June 2012 • Current status unclear 	<ul style="list-style-type: none"> • Previous agreement extended to non-parties 	Canvas Employers' Organisation	National Canvas Union of South Africa (NACUSA) & South African Clothing and Textile Workers Union (SACTWU)

	Leather	National Bargaining Council of the Leather Industry of SA			Southern Africa Footwear and Leather Industries Association, South African Tanning Employers Organisation & The Association of SA Manufacturers of Luggage, Handbags and General Goods	SACTWU & National Union of Leather Workers
	New Tyre	New Tyre Bargaining Council			New Tyre Manufacturers Employers Association	National Union of Metalworkers of South Africa (NUMSA) & South African Workers Union
	Furniture Manufacturing	Furniture Bargaining Council, Eastern Cape	22 September 2008 to 30 June 2010	Agreement extended to non-parties on 12 September 2008	Midland Furniture Manufacturers Association	National Union of Furniture and Allied Workers of South Africa
		Bargaining Council for the Furniture Manufacturing Industry, KwaZulu-Natal	<ul style="list-style-type: none"> • A multi-year agreement for a 4-year period • 28 March 2011 to 30 June 2015 	Agreement extended to non-parties on 18 March 2011	KwaZulu-Natal Furniture Manufacturers' Association	National Union of Furniture and Allied Workers of South Africa
		Furniture Bargaining Council SW District	<ul style="list-style-type: none"> • A multi-year agreement for a 3-year period • 25 September 2007 to 30 September 2010 	Agreement extended to non-parties on 14 September 2007	South Western Furniture Manufacturers Association	National Union of Furniture and Allied Workers of South Africa
		Bargaining Council for the Furniture Manufacturing Industry of the Western Cape	<ul style="list-style-type: none"> • A multi-year agreement for a 3-year period • 12 February 2007 to 30 June 2011 	<ul style="list-style-type: none"> • Previous agreement extended to non-parties on 2 February 2007 	Cape Furniture Manufacturers Association	National Union of Furniture and Allied Workers of South Africa
		Bargaining Council for the Furniture Manufacturing Industry	12 November 2012 to 30 June 2013	Agreement extended to non-parties on 2 November 2012	Furniture, Bedding and Upholstery Manufacturing Association for the Greater Northern Region	National Union of Furniture and Allied Workers of South Africa & CEPPWAWU

	Wood and Paper, Publishing and Printing	National Bargaining Council for the Wood, Paper Sector	1 July 2013 to 30 June 2014	No evidence of extension to non-parties	The Employers Association for the Pulp and Paper Industry, Kimberly Clark Corporation SA, Employers Association for the Sawmilling Industry, Fibre and Particle Board Chamber	Solidarity, UASA-the Union, CEPPWAWU, CWAWU
		Statutory Council of the Printing, Newspaper and Packaging Industry of South Africa	No evidence of extension to non-parties	Printing Employers Association, Print Media SA, Independent Packaging Association, Paper Packaging Association	Chemical Energy Paper Printing, Wood and Allied Worker Union (CEPPWAWU) & South African Typographical Union (SATU)	
	Metal and Engineering	MEIBC	<ul style="list-style-type: none"> • A multi-year agreement for a 3-year period • 18 July 2011 to 30 June 2013 	Previous agreement extended to non-parties on 12 April 2013	Steel and Engineering Industries Federation of South Africa (SEIFSA), National Employers Association of South Africa (NEASA), Federated Employers Organisation of South Africa (FEOSA)	National Union of Metalworkers of South Africa (NUMSA), SOLIDARITY, Chemical Energy Paper Printing Wood and Allied Workers Union (CEPPWAWU), Metal and Electrical Workers Union of South Africa (MEWUSA), UASA-The Union & South African Equity Workers Association (SAEWA)
	Manufacture, Servicing, Repair and Retail of transport equipment	Motor Industry Bargaining Council	<ul style="list-style-type: none"> • Determine a multi-year agreement for a 3-year period • 7 February 2011 to 31 August 2013 • September 2013 to August 2015 	<ul style="list-style-type: none"> • Previous agreement extended to non-parties • Awaiting Ministerial promulgation, including the extension of the new main agreement for 2013 to 2015 to non-parties 	Retail Motor Industry Organisation (RMI) & Fuel Retailers Association of South Africa	National Union of Metalworkers of South Africa (NUMSA) & MISA

	Food Processing	Bargaining Council for the Grain Industry (National)			Employers Organisation for the Grain Industry	Food and Allied Workers Union (FAWU), National Union of Food, Beverage, Wine, Spirits and Allied Workers Union and SOLIDARITY
		National Bargaining Council for the Sugar Manufacturing and Refining Industry			Sugar Manufacturing and Refining Employer Association	FAWU, UASA, National Industrial and Commercial Workers Union, South African Electrical Workers Union & Sugar Manufacturing and Refining Employees Union
	Other Manufacturing	Bargaining Council for the Diamond Cutting Industry (SA)			Master Diamond Cutters Association of SA	UASA-The Union
		Bargaining Council for the Jewellery and Precious Metal Industry (Cape)			The Cape Jewellery Manufacturers Association	The Jewellers and Goldsmiths Union
Transport	Land Transport, Transport via Pipelines, Water Transport, Air Transport and Supporting & Auxiliary Transport Activities	Bargaining Council for the Road Freight & Logistical (NBCRFLI)	16 January 2012 to 28 February 2013 1 March 2013 to 29 February 2016	Agreement extended to non-parties on 28 December 2012	Road Freight Employers Association (RFEA)	Motor Transport Workers Union (MTWU), Professional Transport and Allied Workers Union of SA (PTAWU), South African Transport and Allied Workers Union (SATAWU) & Transport and Allied Workers Union (TAWU)
		Motor Ferry Industry Bargaining Council of South Africa (National)	Until 31 December 2014	No evidence of extension to non-parties	South African Motor Ferry Association	SATAWU, TAWU & THOR
		South African Road Passenger Bargaining Council (SARPBAC)	1 April 2013 to 30 June 2014	South African Transport and Allied Workers Union (SATAWU) & Transport and Omnibus Workers Union (TOWU)	South African Bus Employers Association (SABEA) & Commuter Bus Employers Organisation (COBEO)	South African Transport and Allied Workers Union (SATAWU) & Transport and Omnibus Workers Union (TOWU)

Construction	Electrical	National Bargaining Council for the Electrical Industry	15 July 2013 to 31 January 2014	Agreement extended to Non-parties on 12 July 2013	Electrical Contractors' Association (South Africa)	South African Equity Workers Association (SAEWA)	
	Civil Engineering	Bargaining Council for the Civil Engineering Industry					
	Building	Bargaining Council for the Building Industry, Kimberley	<ul style="list-style-type: none"> • A multi-year agreement for a 3-year period • 17 August 1998 to 16 August 2003 • 9 September 2002 to 30 April 2006 (electrical installation) 	<ul style="list-style-type: none"> • Agreement extended to non-parties on 7 August 1998 • Agreement extended to non-parties on 30 August 2002 (electrical installation) 	Noord Kaap Meestersbouersvereniging en Aanverwante Bedywe	Amalgamated Union of Building Trade Workers of South Africa, Construction and Allied Workers Union (CAWU) & Metal and Electrical Workers Union of South Africa (MEWUSA)	
		Building Industry, Southern & Eastern Cape					
		Building Industry, East London					
		Bargaining Council for the Building Industry, Bloemfontein				Master Builders and Allied Trades Association (Free State)	Amalgamated Union of Building Workers of South Africa; National Union of Mine Workers (NUM) & Noordelike Bouwerkers Vakbond
		Building Industry Bargaining Council (Cape of Good Hope)	<ul style="list-style-type: none"> • A multi-year agreement for a 3-year period • 27 December 2010 to 31 October 2013 	Agreement extended to non-parties on 17 December 2010	Boland Meesterbouers en Verwante Bedywe Vereniging Master Builders and Allied Trades' Association, Cape Peninsula	Building, Construction and Allied Workers' Union Building, Wood and Allied Workers' Union of South Africa Building Workers' Union & National of Mineworkers (NUM)	

		Building Bargaining Council (North and West Boland)	<ul style="list-style-type: none"> • A multi-year agreement for a 4-year period • 8 August 2011 to 31 December 2015 	Agreement extended to non-parties on 5 August 2011	Master Builders Association North Boland & Master Builders Association West Boland	Building Workers Union
Utilities: Electricity, Gas and Water Supply	Water	Amanzi Bargaining Council	Recently established No agreement		South African Association of Water Utilities (SAAWU)	SAMWU, NEHAWU, UASA-The Union
Wholesale, Retail; Catering and Accommodation	Catering and Accommodation	Bargaining Council for the Food Retail, Restaurant, Catering & Allied Trades	Until 31 July 2013	Extended to non-parties on 27 July 2012	<ul style="list-style-type: none"> • Professional Caterers Association • The Restaurant and Food Services Association of South Africa (CATRA) 	<ul style="list-style-type: none"> • South African Commercial, Catering and Allied Workers' Union (SACCAWU) • Care Centre, Catering, Retail and Allied Workers' Union of South Africa (CCRAWUSA)
		Statutory Council for Fast Food, Restaurant, Catering & Allied Trades	<ul style="list-style-type: none"> • Determine a multi-year agreement for a 3-year period • 1 September 2013 to 31 August 2016 	No evidence of extension to non-parties	<ul style="list-style-type: none"> • Professional Caterers Association • The Restaurant and Food Services Association of South Africa (CATRA) 	South African Commercial Catering and Allied Workers Union (SACCAWU), Hotel, Liquor, Catering, Commercial and Allied Workers Union (HOTELICCA), Industrial Commercial and Allied Workers Union (ICAWU), Democratic Union of Security Workers (DUSWO) & Future of South African Workers Union (FOSAWU)

		Bargaining Council for the Restaurant, Catering and Allied Trades	17 October 2011 to 31 August 2014	Extended to non-parties on 14 October 2011	The Restaurant and Food Services Association of South Africa (CATRA)	Future of South African Workers Union (FOSA WU); South African Commercial Catering and Allied Workers Union (SACCAWU); Hotel, Liquor, Catering, Commercial and Allied Workers Union (HOTELICCA); Industrial Commercial & Allied Workers' Union (ICA WU) and Socialist Organised Workers Union (SOWU)
	Retail (Meat trade)	Bargaining Council for the Meat Trade, Gauteng	15 August 2011 to 30 June 2014	Extended to non-parties on 5 August 2011	Meat Traders Association Gauteng	Meat and Allied Workers Union & Gauteng Meat Traders Employees Union
Community and social services	Local Government	South African Local Government Bargaining Council	1 May 2007 to 30 June 2012	No evidence of extension to non-parties	SALGA	IMATU & SAMWU
Community, social and personal services	Cleaning	Bargaining Council for the Contract Cleaning Services Industry (Kwazulu-Natal)	<ul style="list-style-type: none"> A multi-year agreement for a 3-year period 9 May 2011 to 28 February 2014 	Agreement extended to non-parties on April 2011	The National Contract Cleaners Association (KZN)	South African Transport and Allied Workers Union (SATAWU) National General Workers Union (NAGEWU) Health & Other Service Personnel Trade Union of SA (HOSPERSA)
	Hairdressing and other beauty treatment	Semi-National Bargaining Council for the Hairdressing, Cosmetology, Beauty & Skincare Industry	<ul style="list-style-type: none"> 27 May 2013 to 31 December 2013 1 January 2013 to 31 December 2015 	<ul style="list-style-type: none"> Previous agreement extended to non-parties on 7 May 2013 No evidence of extension to non-parties 	Employers' Organisation for Hairdressing, Cosmetology and Beauty	UASA-The Union
		Bargaining Council for the Hairdressing Trade, Cape Peninsula	<ul style="list-style-type: none"> 1 January to 31 December 2013 1 January to 31 December 2014 	<ul style="list-style-type: none"> Previous agreement extended to non-parties on February 2013 No evidence of extension to non-parties of the new agreement 	Employers' Organisation for Hairdressing, Cosmetology and Beauty	UASA-The Union

		Bargaining Council for the Hairdressing, Cosmetology, Beauty and Skincare	25 February 2013 to 31 December 2013	Agreement extended to non-parties on 15 February 2013	Employers' Organisation for Hairdressing, Cosmetology and Beauty	UASA-The Union
		Hairdressing and Cosmetology Bargaining Council KwaZulu-Natal	<ul style="list-style-type: none"> • A multi-year agreement for a 3-year period • 1 January 2010 to 31 December 2015 	Agreement extended to non-parties on 12 July 2013	Employers' Organisation for Hairdressing, Cosmetology and Beauty	UASA-The Union
	Washing and dry cleaning of textiles and fur products	Bargaining Council for the Laundry, Cleaning and Dyeing Industry (Cape)	<ul style="list-style-type: none"> • 1 November 2007 to 31 October 2010 • 1 November 2012 to 31 October 2016 	No evidence of extension to non-parties	Cape Town and District Laundry, Cleaners' and Dyers' Association	Laundry and Allied Workers' Union of South Africa
		Bargaining Council for the Laundry, Cleaning and Dyeing Industry (KwaZulu-Natal)	Until 31 December 2020	No evidence of extension to non-parties	KwaZulu-Natal Laundry, Dry Cleaning and Dyers Employers Association	Southern African Clothing and Textile Workers Union (SACTWU)

Agreements are enforced by bargaining councils that employ personnel to ensure compliance in both party and non-party enterprises where agreements have been extended by the Minister.

(b) Exemption provisions

Bargaining councils have developed exemption systems to facilitate remedial measures for specific challenges that enterprises face periodically. Exemption applications must contain standard information and must comply with criteria that are generally the same for all bargaining councils. Most councils entertain applications for exemption from an agreement as a whole or from specific clauses in a main agreement. Some bargaining councils have specific arrangements for wages and benefits such as pension/provident funds. All bargaining councils have a requirement that an applicant must specify the specific clause/s exemption is being sought from.

Closer scrutiny of these councils reveals the existence of different types of systems. The larger bargaining councils tend to have a decentralised system where applications can be made at specified regional offices. Both party and non-party applications then get processed by a council's designated regional structures. The withdrawal of exemptions and appeals against the awarding of exemptions is then dealt with by an independent structure established to deal with exemptions. Some bargaining councils have a simpler procedure where an application is lodged with the bargaining council and processed and finalised, or it is lodged with an independent committee that makes final and binding decisions. While it is generally accepted that 30 days constitute the period within which bargaining councils must adjudicate on exemption applications, varying timeframes exist for the lodging, deliberation and communication of decisions of both a council and independent bodies.

Table 7 provides a brief overview of the key features of the exemption process of bargaining councils that are integral to considering an outcome's procedural fairness. The process that an applicant must navigate includes the council and its structures and whichever independent bodies have been established to consider an application.

(i) Exemption criteria

The criteria used when assessing applications and provisions for timeframes required for decision-making are similar for almost all the bargaining councils. Criteria most frequently cited included, among others:

- The extent of consultation with and the petition for or against granting the exemption as provided by employers or employees to be affected by the exemption, if granted;
- The infringement of basic employment conditions rights;
- That a competitive advantage is not created by an exemption;
- The viewing of the exemption from any employee benefit fund or training provision in relation to the alternative comparable bona fide benefit or provision, including the cost to the employee, transferability, administration management and costs, growth and stability;
- The extent to which it undermines collective bargaining and labour peace in an industry;
- Any existing special economic or other circumstances;
- Cognisance of the Report of the Presidential Commission to investigate labour market policy.

The exemption process is designed to assist with unexpected economic hardships and to prevent job losses during an agreement and to make a material difference to an establishment's viability. It should be fair to both an employer, their employees and other employees in the sector without undermining collective bargaining and peace in the sector. The provisions in all the councils that dealt with exemptions involved considering some level of downward variation.

Table 7: A synopsis of exemption provisions in 2013

SIC sector	SIC subsector	Bargaining council name	Process	Turnaround time
Agriculture and Fishing	Fishing	Statutory Council for the Squid & related Fisheries		
		Bargaining Council for the Fishing Industry (National)	<ul style="list-style-type: none"> ▪ Detailed exemption procedures negotiated and outlined in the Main Agreement and Constitution ▪ All applications (party and non-party) made for consideration by the Council's Exemption Committee 	<ul style="list-style-type: none"> ▪ Exemptions Committee will issue its decision within 14 days after the conclusion of its deliberations <p>All exemptions have limited duration of 12 months</p>
Manufacturing	Chemical	National Bargaining Council for the Chemical Industry	<ul style="list-style-type: none"> • Detailed exemption procedures negotiated and outlined in the Constitution May 2003, amendments R2 of 2006 and the Collective Agreement on Dispute Resolution Levy and Registration of Employers in the Gauteng Province, October 2005 • All applications to be considered by the National Exemptions Committee, which consists of people not involved in the industry • Applications for Exemption of DRLREG to be considered by the Variations Committee 	Relationship between the provisions for the National Exemptions Committee and the DRLREG needs to be clarified
	Clothing	National Bargaining Council for Clothing Manufacturing Industry (NBC)	<ul style="list-style-type: none"> • Detailed exemption procedures negotiated and contained in the National Main Collective Agreement and the Council's Fund Agreements ▪ All applications (party and non-party) made to the Regional/National Secretary for consideration by the Exemptions Committee ▪ All companies employing 5 and less workers are exempt from main agreement ▪ All appeals to be considered by the Independent Exemptions Body (Exemptions Board) 	<ul style="list-style-type: none"> ▪ The Exemptions Committee shall consider and determine the application within 45 days from the date of lodging ▪ The Exemptions Committee shall notify the applicant of its decision within seven days thereof ▪ Appeals shall be lodged with the Exemptions Board within not more than 30 days of the applicant's being notified of the Exemptions Committee's decision

	Textile	National Textile Bargaining Council	<ul style="list-style-type: none"> Detailed exemption procedures negotiated and outlined in the Constitution and Main Agreement February 2007 All applications to be considered by an exemption committee An independent exemptions committee will consider all appeals and withdrawals 	<ul style="list-style-type: none"> Applicant to be informed of the decision 45 days after receipt of application Applicants to lodge an appeal with the Independent Exemptions Committee within 30 days after the receipt of outcome
		Bargaining Council for the Canvas Goods Industry (Wits & Pta)	<ul style="list-style-type: none"> Detailed exemption procedures negotiated and outlined in the Main Agreement and Constitution All applications (party and non-party) to be made to the Council All appeals (party and non-party) to be made to the Exemptions and Arbitration Board 	<ul style="list-style-type: none"> All applications to be considered within 30 days by the Council Applications not considered in 30 days by the Council will be referred to the Exemptions and Arbitration Board The Exemptions and Arbitration Board to consider appeals within 30 days
	Leather	National Bargaining Council of the Leather Industry of SA	<ul style="list-style-type: none"> Detailed exemption procedures negotiated and outlined in the Constitution 2003 and Main Agreement November 1998 All applications to be considered by the National Exemptions Committee or District Committee All appeals to be considered by the Independent Exemptions Appeal Body, whose decision will be final and binding 	The Independent Exemptions Appeal Body to advise the applicant of its decision within 14 days thereof
	New Tyres	New Tyre Bargaining Council	<ul style="list-style-type: none"> Detailed exemption procedures negotiated and outlined in the Constitution April 2000 All party applications to be considered by the Council All non-party applications and party appeals to be considered by the Independent Exemptions Body, deemed to be the CCMA, whose decisions are considered final and binding 	<ul style="list-style-type: none"> Independent Exemptions Body to communicate its decision to applicants within 14 days of making its decision. Council may give a party applicant 1 week's notice of the withdrawal of the license of exemption or apply to the independent Exemptions Body to withdraw the license of a non-party applicant

Furniture Manufacturing	Furniture Bargaining Council, Eastern Cape	<ul style="list-style-type: none"> All applications should be lodged with the Secretary for decision by the Council All appeals will be considered by an independent exemptions board 	The Independent Exemptions Board shall advise the Secretary to issue a certificate and advise applicants within 14 days of the date of its decision
	Bargaining Council for the Furniture Manufacturing Industry, KwaZulu-Natal	<ul style="list-style-type: none"> Detailed exemption procedures negotiated and outlined in the Main Agreement ending 30 June 2015 Council to consider all applications All non-party appeals to be considered by the Exemptions Appeal Board established by the Council 	<ul style="list-style-type: none"> Holder of an exemption can be given 30 days' notice of withdrawal Applications to the Exemptions Appeal Board to be lodged with the Secretary within 6 weeks of the date of the delivery of the Council's decision Heads of argument to be filled 7 days before the Board is convened All applicants must pay a R1 000 processing fee and are required to attend
	Furniture Bargaining Council, SW District	<ul style="list-style-type: none"> All applications should be lodged with the Secretary for decision by the Council All appeals will be considered by an independent body 	The Secretary must issue a certificate and must advise the applicants of the decision of the Council or independent body
	Bargaining Council for the Furniture Manufacturing Industry of the Western Cape	<ul style="list-style-type: none"> All employers/associations and employees can make application for exemption to the Council Non-parties can make application to an independent body established by the Council The secretary must refer all appeals to the independent body for deliberation Appropriate documentary proof must be provided to the Council or the independent body in the event of applications for exemption from the minimum wages or contributions 	<ul style="list-style-type: none"> Council to advise the applicants within 30 days of the receipt of its application of its decision Council to advise the applicants within 30 days of the receipt of its application of the independent body's decision Council can give the successful applicant one week's notice of its intension to withdraw the exemption license

		Bargaining Council for the Furniture Manufacturing Industry	<ul style="list-style-type: none"> • Detailed exemption procedures negotiated and outlined in the Constitution April 2006 and Main Collective Agreement ending 30 June 2013 • All exemption applications to be considered by an exemptions body • All exemption appeals and withdrawals to be considered by an independent appeal body 	<ul style="list-style-type: none"> • No timeframes could be discerned from the Constitution and Main Collective Agreement for the exemption application and appeal process • The Council must provide the holder of an exemption 30 days' notice of its intention to apply to the Independent Appeal Body to withdraw the exemption.
	Wood and Paper, Publishing and Printing	National Bargaining Council for Wood, Paper Sector	<ul style="list-style-type: none"> • Detailed exemption procedures negotiated and outlined in the Constitution October 2003 and Collective Agreement October 2005 • All applications to be considered by the National Exemptions Committee, which consists of people not involved in the industry • All appeals will be considered by the National Exemptions Appeal Committee 	<ul style="list-style-type: none"> • Appeal applications to be lodged with the National Exemptions Appeal Committee within 15 days after receiving notice of the National Exemptions Committee's decision • Parties opposing the application must serve notice within 5 days of receiving the application
		Statutory Council of the Printing, Newspaper and Packaging Industry of South Africa	<ul style="list-style-type: none"> • Applications to be lodged with the Secretary for consideration by the Executive Committee of the Council or the delegated Joint Managing Executive Committee members of the Council • The Council to consider all appeals and its decision is final and binding 	<ul style="list-style-type: none"> • The Secretary to forward applications to the Executive Committee for consideration at its next meeting • Written appeals can be submitted within 14 days of having been notified of the refusal of the application for consideration by the Council at its next meeting
	Metal and Engineering	MEIBC	<ul style="list-style-type: none"> • Detailed exemption procedures negotiated and outlined in the Main Collective Agreement ending 30 June 2014 • All exemption applications to be lodged with the secretary for consideration by the Council • Urgent applications can be considered by the Council or its Chairperson and Vice-Chairperson • All exemption appeals and withdrawals to be considered by an independent exemptions appeal board, and its decisions are final and binding 	Applications for exemptions in respect of wage increases must be lodged with the Bargaining Council on or before 31 July each year

	Manufacture, Servicing, Repair and Retail of Transport Equipment	Motor Industry Bargaining Council	<ul style="list-style-type: none"> ▪ Detailed exemption procedures negotiated and outlined in the Main Agreement ▪ All applications (party and non-party) made to the Regional/National Secretary for consideration by the Regional Council ▪ All party appeals to be considered by the National Council ▪ All non-party appeals made to the Independent Exemptions Board 	<ul style="list-style-type: none"> ▪ 30 days since application lodged for exemption from any clause in MA ▪ Wage exemption application must be lodged within 21 days after receipt of revised wage adjustments ▪ 30 days for appeal applications to be considered by the Exemptions Board, which has 14 days to communicate its decision <p>Within 6 months for exemptions from retirement fund provisions</p>
	Food Processing	Bargaining Council for the Grain Industry (National)	<ul style="list-style-type: none"> • Detailed exemption procedures negotiated and outlined in the Constitution: September 2011 • Establish a National Exemptions Committee that must determine its procedures and admin support • Members must not be parties to the Council or employers/employees in the scope of the industry • All decisions shall be binding and final • Review can only be made to the Labour Court 	No timeframes could be discerned from the Constitution
		National Bargaining Council for the Sugar Manufacturing and Refining Industry	<ul style="list-style-type: none"> • Exemption procedures negotiated and outlined in the Constitution September 2003 • All applications to be lodged with the Secretary for consideration by the Council • All appeals by non-parties to be considered by an independent body 	
	Other Manufacturing	Bargaining Council for the Diamond Cutting Industry (SA)	<ul style="list-style-type: none"> • Council grants exemption by two-thirds majority • An appeal board will consider the granting of appeals to exemptions by non-parties or withdrawal of exemptions 	<ul style="list-style-type: none"> • Withdraw an exemption after 30 days' notice • Wage and wage-related exemption may only be granted for the period of the duration of the agreement
		Bargaining Council for the Jewellery and Precious Metal Industry (Cape)	<ul style="list-style-type: none"> • All party applications to be lodged with the Secretary for consideration by the Council • All non-party applications to be considered by an independent exemptions body 	No timeframes could be discerned from the Constitution

Transport	Land Transport; Transport via Pipelines, Water Transport, Air Transport and Supporting & Auxiliary Transport Activities	Bargaining Council for the Road Freight & logistical(NBCRFLI)	<ul style="list-style-type: none"> • Detailed Exemption and Dispute Resolution procedures negotiated and published in the Government Gazette 7 December 2007 • Establish an exemptions body to consider all applications • Establish an independent body to consider non-party appeals and withdrawals 	Exemptions Body and the Independent Body must decide on the application within 14 days of the last date of hearing Applicant must be informed within 30 days of the decision
		Motor Ferry Industry Bargaining Council of South Africa (National)	<ul style="list-style-type: none"> • Detailed exemption procedures negotiated and outlined in the Constitution 2003 and the Main Collective Agreement ending 31 December 2014 • All exemption applications to be lodged with the Secretary for consideration by the Council • All exemption appeals and withdrawals to be considered by an independent appeal board, and its decisions are final and binding 	<ul style="list-style-type: none"> • All applications to be tabled at the next regular meeting of the relevant body • Applicant must notify the Council of its intention to appeal within 14 days • A written appeal with supporting documentation must be lodged with the Independent Appeal Board within 90 days of receipt of Councils decision of refusal of exemption • All appeal documentation involving the employer and employee must be submitted to the Independent Appeal Board within 60 days • The Independent Appeal Board will advise all applicants within 10 days of the date of its decision

		South African Road Passenger Bargaining Council (SARPBC)	<ul style="list-style-type: none"> • Detailed exemption procedures negotiated and outlined in the Constitution February 2013 • All exemption applications to be lodged with the General Secretary for consideration by Exemptions Authority • All exemption appeals and withdrawals to be considered by an independent exemptions appeal authority, and its decisions are final and binding 	<ul style="list-style-type: none"> • Application must be made within 45 days after the conclusion of the collective agreement • Trade unions are entitled to make submissions within 14 days of receiving notice of the application • The Exemptions Authority must make a decision and inform the applicant within a 60-day period after the application has been made • The General Secretary shall within 7 days inform applicants and all parties of the decision • The Council shall within 15 days issue a certificate • Appeals should be made within 15 days after receiving notice of the decision
Construction	Electrical	National Bargaining Council for the Electrical Industry	<ul style="list-style-type: none"> • Detailed exemption procedures negotiated and outlined in the Main Collective Agreement July 2013 • All applications to be lodged with the Secretary for consideration by the Council • All appeals by non-parties to be considered by an independent appeals body 	<ul style="list-style-type: none"> • The Council will consider the application at its next meeting • The Secretary will advise all successful and unsuccessful applicants within 14 days of the date of the Council's decision and issue a certificate where appropriate • Appeals should be lodged within 14 days after notification of the Council's decision • The Independent Appeals Body will advise all successful applicants within 14 days of the date of its decision • The Independent Appeals Body will advise all unsuccessful applicants within 10 days of the date of its decision
	Civil Engineering	Bargaining Council for the Civil Engineering Industry		

	Building	Bargaining Council for the Building Industry, Kimberley	<ul style="list-style-type: none"> Detailed exemption procedures negotiated and outlined in the Constitution June 1998 and Main Collective Agreements ending August 2003 and April 2006 (electrical installation). All applications to be considered by the Council All appeals and non-party applications to be considered by an independent exemptions board 	<ul style="list-style-type: none"> The Council will advise all applicants within 14 days of the date of its decision The Exemption Board will advise all applicants within 14 days of the date of its decision
		Building Industry, Southern & Eastern Cape		
		Building Industry, East London		
		Bargaining Council for the Building Industry, Bloemfontein	<ul style="list-style-type: none"> Council to consider all party and non-party applications An exemption board to consider all non-party appeals and exemption withdrawals 	<ul style="list-style-type: none"> Must receive application not less than 5 days prior to the Council meeting Applicant to be advised within 5 working days of the Council decision All applications to lapse on 31 October each year All appeals to be lodged within 14 days of the receipt of the Council's decision with the Secretary The Exemptions Board to issue a certificate within 10 working days of its decision
Building Industry Bargaining Council (Cape of Good Hope)	<ul style="list-style-type: none"> Detailed exemption procedures negotiated and outlined in the Constitution and Main Collective Agreement ending 31 October 2013 All applications to be considered by the Council All appeals and withdrawals to be considered by an independent exemptions board 	<ul style="list-style-type: none"> The Council will advise all applicants within 14 normal working days of the date of its decision All appeals to be lodged within 14 consecutive days of the receipt of the Council's decision The Exemption Board will advise all applicants within 10 normal working days of the date of its decision 		

		Building Bargaining Council (North and West Boland)	<ul style="list-style-type: none"> Detailed exemption procedures negotiated and outlined in the Constitution February 2009 and Main Collective Agreement October 2007 All party applications to be considered by the Council All non-party applications and exemption withdrawals to be considered by the Independent Exemptions Board 	<ul style="list-style-type: none"> All applications to be tabled by the Secretary at the next Council meeting, provided it has not been lodged within 5 working days of the meeting All applicants will be advised of the decision within 5 working days after its meeting All exemptions granted shall lapse on 31 October of each year Unsuccessful non-party applicants can lodge an appeal to the Secretary for tabling at the Exemptions Board within 14 consecutive days of the Council decision The Exemption Board will advise all applicants within 10 working days of the date of its decision
Utilities: Electricity, Gas and Water Supply	Water	Amanzi Bargaining Council	Recently established; no agreement	
Wholesale, Retail; Catering and Accommodation	Catering and accommodation	Bargaining Council for the Food Retail, Restaurant, Catering & Allied Trades	<ul style="list-style-type: none"> All applications will be lodged with the Secretary, who will place the matter on the agenda of the Council's Executive Committee All applications will be referred to the Exemptions Board established by the Council for decision 	The Exemptions Board to advise applicants of the outcome within 14 days of its decision
		Statutory Council for Fast Food, Restaurant, Catering & Allied Trades	<ul style="list-style-type: none"> Detailed exemption procedures negotiated and outlined in the Collective Agreement of 3 September 2013 All applications to be considered by the Council's Exemptions Committee All appeals to be considered by the Independent Exemptions Appeal Board 	<ul style="list-style-type: none"> The Exemption Committee will inform the applicant within 14 days of its decision Appeals against the decisions of the Exemption Committee must be lodged within 30 days after being notified by the Council of its decision

		Bargaining Council for the Restaurant, Catering and Allied Trades	<ul style="list-style-type: none"> • Detailed exemption procedures negotiated and outlined in the Constitution April 1999 • All applications (party and non-party) to be made to the Council for consideration by its Exemption Committee • All party and non-party appeals can be made to an independent exemptions board 	<ul style="list-style-type: none"> • The Secretary shall advise the Council's Executive Committee of applications made at its next meeting and shall elicit comment • The Exemptions Committee will be advised of all applications together with the Executive Committee comments by the Secretary • All successful and unsuccessful applicants to be advised by the Exemptions Committee within 14 days after a decision has been made
Retail (Meat Trade)		Bargaining Council for the Meat Trade, Gauteng	<ul style="list-style-type: none"> • Detailed exemption procedures negotiated and outlined in the Constitution April 1999 • All applications (party and non-party) to be made to the Council for consideration by an independent body • All party and non-party appeals can be made to an independent exemptions body 	<ul style="list-style-type: none"> • The Secretary shall advise the Council of applications made at its next meeting for comment • All successful and unsuccessful applicants to be advised by the Independent Body within 14 days after decision has been made • The secretary shall issue a certificate to all successful applicants within 14 days of the receipt of the Independent Body's decision • The secretary shall advise all successful applicants within 14 days of the receipt of the Independent Body's decision • Appeals should be submitted to the Council for consideration by an independent exemption body as soon as possible.
			<ul style="list-style-type: none"> • Detailed non-wage exemption procedures negotiated and outlined in the Main Agreement June 2007 • The National Exemptions Committee to consider all applications 	<ul style="list-style-type: none"> • All applications to be lodged with the Secretary of the Council and affected parties to be informed and afforded 15 days to respond • Applicant can respond within 10 days to responses of affected parties

Community and Social Services	Local Government	South African Local Government Bargaining Council	<ul style="list-style-type: none"> All appeals will be considered by the Independent Exemptions Board 	<ul style="list-style-type: none"> The National Exemptions Committee shall advise the parties of its decision within 15 days Appeals to its decision should be submitted within 15 days after having received the written ruling Affected parties can respond within 15 days to the notice and grounds for appeal <p>The appellant has a further 10 days to respond to the respondent</p>
Community, Social and Personal Services	Cleaning	Bargaining Council for the Contract Cleaning Services Industry (KwaZulu-Natal)	<ul style="list-style-type: none"> Detailed exemption procedures negotiated and outlined in the Main Agreement and Constitution All applications (party and non-party) made for consideration by the Council <p>All party and non-party appeals made to the Independent Exemptions Board</p>	<ul style="list-style-type: none"> Must receive application not less than 5 days prior to Council meeting Applicant advised 5 days since application was considered for exemption from any clause in MA Appeal applications to be considered by the Exemptions Board to be lodged within 14 days after the Council decision Exemptions Board to be issues a decision within 10 days after decision made All exemptions shall lapse on 28 February each year unless extended
	Hairdressing and Other Beauty Treatment	Semi-National Bargaining Council for the Hairdressing, Cosmetology, Beauty & Skincare Industry	<ul style="list-style-type: none"> Detailed exemption procedures negotiated and outlined in the Constitution August 2013 and Main Collective Agreement ending December 2016 All exemption applications to be lodged with the Secretary for consideration by the Council All exemption appeals and withdrawals to be considered by an independent body, and its decisions are final and binding 	<ul style="list-style-type: none"> The Council will consider the application at its next meeting The Secretary will advise all successful and unsuccessful applicants within 14 days of the date of Council's decision and shall issue a certificate where appropriate <p>The Independent Body will advise all applicants within 14 days of the date of its decision</p>

		<p>Bargaining Council for the Hairdressing Trade, Cape Peninsula</p>	<ul style="list-style-type: none"> ▪ Detailed exemption procedures negotiated and outlined in the Main Agreement concluded for January to December 2014 ▪ All applications (party and non-party) made for consideration by the Council ▪ All party and non-party appeals made to the Independent Appeal Board (IAB), which consists of three people 	<ul style="list-style-type: none"> ▪ All applications to be submitted to the Secretary for consideration by the Council at its next meeting ▪ Council to issue a certificate within 7 days after its decision ▪ Appeals to an Independent Appeals Board (IAB) must be lodged with the secretary within 5 working days of notification of the Council's decision ▪ The secretary is to convene the IAB within 7 days after an application has been lodged ▪ The IAB must issue a final and binding decision within 14 days after the conclusion of its deliberations
		<p>Bargaining Council for the Hairdressing, Cosmetology, Beauty and Skincare</p>	<ul style="list-style-type: none"> • Detailed exemption procedures negotiated and outlined in the Constitution: November 2013 and Main Collective Agreement February 2013 • All applications to be lodged with the Secretary for consideration by the Council • All appeals to be dealt with by Independent Body, whose decisions shall be final and binding 	<ul style="list-style-type: none"> • Applications to be tabled by the Secretary at the next Council meeting • The Council is to communicate its decision to applicants within 14 days of making its decision • The Independent Body is to communicate its decision within 14 days to all appeal applicants

		Hairdressing and Cosmetology Bargaining Council KwaZulu-Natal	<ul style="list-style-type: none"> • Detailed exemption procedures negotiated and outlined in the Constitution April 2008 and Main Collective Agreement ending December 2015 • All exemption applications to be lodged with the Secretary for consideration by the Council • All exemption appeals and withdrawals to be considered by an independent appeal board 	<ul style="list-style-type: none"> • The Council will consider the application within 30 days or at its next Executive Committee meeting • The Secretary will advise all successful applicants within 14 days of the date of the Council's decision and will issue a certificate • The Secretary will advise all unsuccessful applicants within 7 days of the date of Council's decision and its right to appeal • The Council may withdraw on 1 week's notice any exemption granted to an applicant • Appeals must be lodged with the Secretary within 5 working days from the date of notification of the Council's decision • The Secretary must within 5 days from the date of the appeal application convene a meeting of the Independent Appeal Board • The Independent Appeal Board must issue a decision within 14 days of the conclusion of the proceedings
	Washing and Dry cleaning of Textiles and Fur Products	Bargaining Council for the Laundry, Cleaning and Dyeing Industry (Cape)	<ul style="list-style-type: none"> • Detailed exemption procedures negotiated and outlined in the Main Agreement concluded for November 2007 • All applications (party and non-party) made for consideration by the Council • All party and non-party appeals can be made to an independent body 	<ul style="list-style-type: none"> ▪ All applications to be submitted to the Secretary for consideration by the Council at its next meeting <p>Council to issue a certificate within 14 days after its decision or to advise the applicant about its refusal and the reasons therefor</p>

		<p>Bargaining Council for the Laundry, Cleaning and Dyeing Industry (KwaZulu-Natal)</p>	<ul style="list-style-type: none"> • Detailed exemption procedures negotiated and outlined in the Main Collective Agreement – until 31 December 2020 • All applications to be considered by the Council's Exemptions Committee • All appeals to be considered by the Independent Exemptions Body 	<ul style="list-style-type: none"> • Applications to be tabled by the Secretary at the next Council Executive Committee meeting • All applications for exemption will be considered within 45 days after it has been lodged with the Secretary • The Council is to communicate its decision to applicants within 14 days of making its decision • If Council has not considered application within 30 days, then the matter must be referred to the Independent Exemptions Body • The Independent Exemptions Body to communicate its decision to applicants within 14 days of making its decision
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(ii) Exemption process

All applications had to specify the areas in the main agreement from which exemption is being sought. This also enables a bargaining council to grant full, partial or conditional wage exemptions or exemptions only on actual and/or guaranteed wage increases and not minimums in certain instances. All exemptions granted only had a limited lifespan of not more than a year or for the duration of the agreement, while some could be withdrawn. Reasons had to be provided in cases where exemption was refused. Opportunities were permitted for the applicants and affected parties to make written and verbal submissions. Bargaining and statutory councils can nevertheless be grouped into four categories in terms of their response to exemption provisions in the LRA.

Single-employer-dominated bargaining councils

Five public sector bargaining councils – namely the Education Labour Relations, General Public Service, Public Health and Social Development, Public Service Co-ordinating and the Safety and Security Sectoral Bargaining Councils – are dominated by a single employer. Similarly, the Transnet Bargaining Council only involves Transnet. Hence, no provision for exemptions as provided for in the LRA are required.

The remaining public sector councils such as the Local Government and Amanzi Bargaining Councils that involved multiple employers but single-employer associations such as SALGA and the South African Association of Water Utilities only made provision for non-wage exemptions.

Bargaining councils with a main collective agreement, extended to non-parties with a high compliance level

Most of the private sector bargaining councils made provision for exemptions, and a large number have regularly received applications from both party and non-party enterprises. The Metal and Engineering Industries Bargaining Council and the Motor Industry Bargaining Council, which are significant components of the manufacturing sector, registered the highest number of exemption applications from both party and non-party employers. They, together with the National Bargaining Council for Clothing Manufacturing Industry (NBC) and the Bargaining Council for the Road Freight & Logistical Industry (NBCRFLI), registered the bulk

of the applications. The level of exemption application and litigation also reflected their capacity to enforce compliance with their main collective agreements.

Bargaining councils in the process of establishment and development of a main collective agreement

The Hairdressing and Civil Engineering sectors have recently formed bargaining councils, the former as a result of the amalgamation of regional bargaining councils, while the latter has been developed linked to the centralisation of enterprise-level collective bargaining processes. They are in the process of developing the organisational infrastructure to ensure greater compliance with main collective agreements and the facilitation of disputes and peace in their sector. Although the building industry has historically had a number of bargaining councils operative in various regions, only some regions – namely the Cape of Good Hope and the North Boland – have forged main collective agreements, while other such as the East London and Eastern Cape councils have recently struggled to develop such agreements. The former has developed the capacity to ensure some level of compliance. However, there is no clear indication of movement towards the development of a national bargaining council.

The lack of a main collective agreement and its extension to non-parties

The lack of a main collective agreement is primarily informed by a level of representation among employers and/or trade unions that is below the threshold of 50% representation. While statutory councils are obvious candidates with their low thresholds, some bargaining councils are currently in a similar situation. A few bargaining councils have reverted to the administration of benefits primarily owing to the absence of a main collective agreement that has been extended to non-parties throughout a sector.

All the centralised collective bargaining initiatives in the Mining and Automotive sectors as well as Pelagic Fishing have never had their main collective agreements extended by the Minister because they are not formally registered with the Registrar of Labour Relations in terms of the LRA. The domination of large enterprises in these sectors and the consideration that they are party to the agreements has informed an approach that the conferring of statutory status is not essential to the success of this form of centralised bargaining. A similar

arrangement applies to the Finance, Retail and Wholesale sectors, where highly evolved company bargaining levels prevail.

Labour market advocacy, exemptions and litigation

The extension of collective agreements to non-parties in terms of Section 32 of the LRA remains the subject of litigation. Various employer organisations engaged the Minister and MEIBC and NBC bargaining councils through the Labour and High Courts not to extend the agreements to non-parties in the relevant sectors. The National Employers' Association of South Africa v Minister of Labour (2012) 2 BLLR 198 (LC) and Valuline CC & Others v Minister of Labour & Others [2013] 6 BLLR 614 (KZP) (Unreported 5642/2011) challenged the extension of bargaining council agreements to non-party companies by the Minister of Labour and also highlighted the efficacy of the bargaining councils' exemption processes in bringing relief to affected parties.

However, the Free Market Foundation v Minister of Labour & Others (JR 13762/2013) is challenging the constitutionality of Section 32 of the LRA. Such litigation potentially has far-reaching implications for all bargaining councils and its regulation of minimum conditions of employment, medical aid and pension schemes as well as training. A central feature of the process is the extent of self-regulation. Other foundations, lobbyists and academics such as Nicoli Nattrass and Jeremy Seekings²¹ have reinforced such litigation when it alleges that the bargaining council system undermines South Africa's ability to compete globally against low-price-producing countries. However, we examine labour market flexibility by means of questions in the Questionnaires from the perspectives of the economic and financial dimensions of the exemption systems, with particular reference to identifying the most critical economic and financial issues, ascertaining competitive advantages for firms, and the impacts of other economic policy instruments.

²¹ Nicoli Nattrass and Jeremy Seekings: Job destruction in the South African clothing industry: *How an alliance of organised labour, the state and some firms is undermining labour-intensive growth*, CDE Focus, January 2013.

2.3 Levels of self-regulation?

However, what is evident is that a tentative typology of collective bargaining arrangements can be developed, informed by an overview of levels of collective bargaining, geographical and sector trends, bargaining councils' scope, core business, coverage and exemption provisions. This, together with the need to establish common conditions of employment and wages at sectoral level, employment and employment representativeness, and institutional capacity contributes to discerning various levels of intensity of a self-regulated collective bargaining system that is multidimensional and multi-layered.

It regulates the determination of income and employment conditions, informed by a developed human rights regime that upholds various forms of corporate and occupational citizenship. These collective bargaining forums are underpinned by the associational life of employers and employees, who concede their individual rights to associations to represent their interests. It purports to facilitate the engagement of employer associations and trade unions to determine income and employment conditions in circumstances where both employer and employee associations are mandated by individual enterprises and their employees.

Both private and public sector bargaining councils as well as non-statutory forms of centralised bargaining and company-level bargaining can be grouped into categories that reflect a typology of collective bargaining that in turn reflects the self-regulation level of the labour market in particular sectors. It does not include sectoral determinations that have been developed, as facilitated by the BCEA, to establish minimum employment conditions and wages for the most vulnerable workers in designated sectors. Areas where the self-regulation level reflects a weak organisation level with a particular focus on labour relations, while trade union organisation has not reached an acceptable threshold to facilitate collective bargaining arrangements.

The central factors that inform an assessment of the level of self-regulation involves:

- Levels of organisation and geographical representation of associational life of an industry;

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- Prevalence of a main collective agreement and the compliance level therewith;
 - Range of services offered to party and non-party members, including involvement in dispute resolution and sector policy development and support initiatives.

A **high level of self-regulation** involves national councils that dominate an industry with high levels of employer and union organisation and representation. The bargaining council has evolved a sophisticated institutional infrastructure to enable the execution of its constitutional function. This involves the effective self-regulation of the sector through the provision of services ranging from dispute resolution to the administration of employee benefits. The extension of the main collective agreement to non-parties by the Minister of Labour has also meant the establishment of capacities by some councils to ensure a high compliance level. Where applicable, some bargaining councils have also displayed a sophisticated exemption system. Some bargaining councils have also started initiatives that affect a sector through the establishment of policy forums, including the referral of issues for consideration by NEDLAC.

It is in this context that collective bargaining councils in the manufacturing (e.g. the Chemical, Metal and Engineering, Motor, Clothing, Furniture, Textiles and Leather sectors) and transport sectors (e.g. Road Passenger, Road Freight and Logistics, Motor Ferry, and Transnet) have displayed very intense levels of self-regulation. Similarly, public sector bargaining councils (e.g. the Education, Public Health and Social Development, General Public Service, Public Service Co-ordination, Safety and Security, and Local Government sectors) are highly self-regulated. It also includes non-statutory forums covering the Mining and Automotive sectors that are well organised and regulate a range of issues, similar to bargaining councils.

A **medium level of self-regulation** involves councils that are geographically disparate but dominant in their sector; it refers to regionally based sector bargaining councils that have involved a level of national co-ordination through the activities of the bargaining councils or/and the parties. The parties involved in these bargaining councils are deemed sufficiently representative of the sector and

the main collective bargaining agreements reached have been extended by the Minister. They tend not to enforce compliance in the entire sector but in areas determined by its scope, subject to capacity. They tend to process the least number of exemption applications or none, while having the provisions to do so. It also includes the newly established national councils that are developing their codes and infrastructure. Similarly, statutory councils that exclude deliberations about wages and employment conditions from agreements reached can also be considered as a sector with a medium level of self-regulation.

Some sectors are also involved in a medium level of self-regulation through company-level collective bargaining that significantly influences conditions in the sector. Bargaining at companies such as Pick n Pay, Shoprite-Checkers, Woolworths and SAB impacts on the Retail sector, while company-level bargaining at all the major banks and financial institutions has significantly influenced conditions in the Financial Services sector.

A low level of self-regulation was prevalent in sectors in geographical areas where no main collective agreement exists and where sectoral determination set the minimum conditions of employment. Levels of employer and or/ trade union organisation is below the recognised thresholds. It also involves regional bargaining councils that are concentrated in a geographical area without a national presence being established through co-ordination with other similar regional councils or through its parties. Company-level bargaining in medium-sized enterprises that have established actual wages and employment conditions above the minimum specified by sectoral determination but do not have a significant influence on changing conditions or employment and wages in the sector have a low level of self-regulation. Borat, et. al. have argued that the highest level of wage violations usually occurs in these sectors. “We find that 45% of covered workers get paid wages below the legislated minimum, whilst the average depth of shortfall is 36% of the minimum wage. Around this average, violation is most prevalent in the Security, Forestry and Farming Sectors”²².

²² Borat, Haroon; Kanbur, Ravi and Mayet, Natasha: Minimum Wage Violation in South Africa, Development Policy Research Unit, September 2010, p2.

Table 8: Self-regulation levels among bargaining councils and forums

Self-regulation level	Industry/Sector		Distribution of Centralised Bargaining Forums		
High self-regulation level	Primary sector	Subsector	Bargaining Councils	Non-statutory forums	
	Mining	Mining: Gold, Coal		BF	
	Manufacturing	Auto			National Bargaining Forum (NBF) for the automotive industry
		Manufacture, servicing, repair and retail (63) of transport equipment (including new tyres-33)	1 – Motor Industry Bargaining Council (MIBCO) 1 – Bargaining Council for the New Tyre Manufacturing Industry (National)		
		Metal and Engineering	1 – Metal and Engineering Industries Bargaining Council (MEIBC)		
		Clothing	1 National Bargaining Council for Clothing Manufacturing Industry (NBC)		
		Textiles	1 – National Textile Bargaining Council		
		Leather	1 – National Bargaining Council of the Leather Industry of South Africa		
		Chemical	1 – National Bargaining Council for the Chemical Industry		
	Transport	Land Transport; Transport via Pipelines, Water Transport, Air Transport and Supporting and Auxiliary Transport Activities	4 – Transnet Bargaining Council (TBC), Motor Ferry Industry Bargaining Council of South Africa (National); National Bargaining Council for the Road Freight and Logistics Industry (NBCRFLI); South African Road Passenger Bargaining Council (SARPBAC)		
	Community and Social Services	Education	1 – Education Labour Relations Council		
		General Public Service	2 – General Public Service Sectoral Bargaining Council & Public Service Co-ordinating Bargaining Council		
		Health and Social Welfare	1 – Public Health and Social Development Sectoral Bargaining Council		
		Safety and Security	1 – Safety and Security Sectoral Bargaining Council		
Local Government		1 – South African Local Government Bargaining Council			
Agriculture and Fishing	Fishing	1 – Bargaining Council for the Fishing Industry (National) 1 – Statutory Council for the Squid and Related Fisheries of South Africa		Pelagic Fishing forum	

Medium Self-regulation	Construction	Building	6 – Bargaining Council for the Building Industry (Bloemfontein); Building Bargaining Council (North and West Boland); Building Industry Bargaining Council (Kimberley); Building Industry Bargaining Council (Cape of Good Hope); Building Industry Bargaining Council (East London); Building Industry Bargaining Council (Southern and Eastern Cape)	
		Civil Engineering	1 – Bargaining Council for the Civil Engineering Industry	
		Electrical	1 – National Bargaining Council for the Electrical Industry of South Africa	
	Financial	Finance		Company level bargaining exist with major institutions such as Standard Bank, ABSA, Nedbank, Reserve Bank
	Manufacturing	Food processing	1 – Bargaining Council for the Grain Industry (National) 1 – National Bargaining Council for the Sugar Manufacturing and Refining Industry	Company-level collective bargaining exists in other industries such as dairy, deciduous fruit and breweries.
Furniture Manufacturing		4 – Bargaining Council for the Furniture Manufacturing Industry of the Western Cape; Bargaining Council for the Furniture Manufacturing Industry of the Eastern Cape; Bargaining Council for the Furniture Manufacturing Industry of the South Western Districts; Bargaining Council for the Furniture Manufacturing Industry, KwaZulu-Natal & Furniture Bargaining Council		
Wood and Paper, Publishing and Printing		1 – National Bargaining Council for the Wood and Paper Sector 1 – Statutory Council of the Printing, Newspaper and Packaging Industry of South Africa		
Other Manufacturing		2 – Bargaining Council for the Diamond Cutting Industry (SA), Bargaining Council for the Jewellery and Precious Metal Industry (Cape)		
Medium self-regulation level	Wholesale, Retail; Catering and Accommodation	Retail		Company level agreements with retailers such as Shoprite-Checkers, Pick n Pay, Woolworths, Edgars

		Catering and Accommodation	2 – Bargaining Council for the Restaurant, Catering and Allied Trades & Bargaining Council for the Food Retail, Restaurant, Catering & Allied Trades 1 – Statutory Council for the Fast Food, Restaurant, Catering and Allied Trades	
	Utilities: Electricity, Gas and Water Supply	Water	1 – Amanzi Bargaining Council	
		Energy		Company level bargaining -ESKOM
	Community, Social and Personal Services	Hairdressing and Other Beauty Treatments	4 – Bargaining Council for the Hairdressing Trade, Cape Peninsula; Bargaining Council for the Hairdressing, Cosmetology, Beauty and Skincare; Hairdressing and Cosmetology Bargaining Council KwaZulu-Natal; Hairdressing and Cosmetology Services Bargaining Council (Semi-National)	
		Washing and Dry-cleaning of Textiles and Fur Products	2 – Bargaining Council for the Laundry, Cleaning and Dyeing Industry (Cape); Bargaining Council for the Laundry, Cleaning and Dyeing Industry (KwaZulu-Natal)	
Low self-regulation level	Manufacturing	Textiles: Canvas	1 – Bargaining Council for the Canvas Goods Industry (Witwatersrand & Pretoria)	
	Wholesale, Retail; Catering and Accommodation	Retail (Meat Trade)	1 – Bargaining Council for the Meat Trade, Gauteng	
	Community, Social and Personal Services	Cleaning	Bargaining Council for the Contract Cleaning Services Industry (KwaZulu-Natal)	

3

**MEASURING THE IMPACT OF
THE REGULATORY
FRAMEWORK
FOR BARGAINING COUNCIL
EXEMPTIONS**

The regulatory framework, as facilitated by the LRA, provides the space for exploring a range of options concerning the granting of exemptions. Most bargaining councils have adopted procedures that have led to the processing of the exemption applications of both party and non-party applications by a council. What has been frequently advocated is the establishment of an independent board that must process applications, and appeals in particular. While provision for an independent board has been made in the recent amendments, bargaining councils remain responsible for the front-line processing of exemption applications. Furthermore, some bargaining councils²³ have implemented a graded system of awarding accreditation for compliance by exempting enterprises from paying the required minimums and related levies in relation to industry challenges it has recently faced.

The extent to which exemption provisions have been implemented have only been assessed by a survey of bargaining councils in 2004.²⁴ It measured the number and type of party and non-party applications that were successful and were refused between 2000 and 2004. The Department of Labour augmented the study with its own assessment of applications processed in 2009. Information provided during the course of the current study indicated the extent to which bargaining councils has processed exemption applications between 2010 and 2013.

Only bargaining councils where single employers prevailed had no exemption provisions. This is illustrated by the constitutions or/and main collective agreements of the public sector bargaining councils and the Transnet Bargaining Council. The remaining 45 bargaining councils have processed exemption applications pending the self-regulation level that prevailed in the sector. Sectors where a high self-regulation level prevailed processed the bulk of the exemption applications. This involved sectors where a main collective agreement has been concluded, extended to non-parties in the sector, and where compliance has been significantly enforced. This is particularly the case in the Metal and

²³ See Grawitzky, Renee: *Collective bargaining in times of crisis: A case study of South Africa*, Working Paper 32, ILO, December 2011.

²⁴ See Godfrey, Shane, Maree, Johann and Theron, Jan: *Conditions of employment and small business: Coverage, compliance and exemptions*, Working Paper 06/106, Development Policy Research Unit, UCT, March 2006.

Engineering industries, the Motor industry, the Clothing, Textile, Leather and Footwear industries and the Transport sectors. A large number of bargaining councils did not receive and process a significant amount or any exemption applications, either owing to the low compliance level or non-existence of a main collective agreement, its non-extension to non-parties. Bargaining councils in the Building, Furniture Manufacturing, Food, Retail, Restaurant, Catering, Hairdressing, Cosmetology and Beauty Care – sectors that are experiencing a medium to low self-regulation levels.

3.1. A brief history of the extent, failure and success rates of exemption applications: 2002 to 2012

Godfrey et al. (2006) indicated that the majority of the applications received between 2000 and 2004 were successful when it assessed the exemption system of statutory bargaining councils.²⁵ The authors attempted to ascertain the procedure and criteria used, the number of applications received, successes in relation to enterprise size, and impacts on the sector by both parties and non-parties (see Tables 14, 16 and 17). However, this does not comprehensively reflect the extent to which companies are applying for exemptions and the reasons for application.

Although these applications do reflect on the number of enterprises and employees affected by exemptions, its relationship to the total number of enterprises and employees in the sector or subsector is unclear. Although it can be examined through a number of primary sources such as census data, the Labour Force Survey, and data generated by the bargaining councils and other institutions; however, these sources do not provide data in a sufficiently disaggregated form to enable an examination of trends more accurately and over time.

The literature also does not provide comprehensive reasons for the approval and refusal of applications and, importantly, whether procedural fairness prevailed. Reasons that would indicate the stresses and strains an industry or its subsectors are subjected to, can provide early warning signals of the types of problems that

²⁵ Ibid.

an industry may generally be experiencing in its efforts to comply with collective bargaining agreements. How stakeholders respond to distress, as facilitated by the bargaining councils, an exemption system and related support measures can also not be ascertained. These factors shaped the Questionnaires we used in this study as the central survey tool to gather information essential to ascertaining rates of success of bargaining councils' exemption systems.

(a) Trends in exemption applications

Among the challenges we confront concerning the examination of bargaining councils' exemption systems and the incidence of the exemption process over the past decade is that, besides the paucity of comprehensive data sets, there is also a poorly developed set of indicators to benchmark the exemption process over this period. The data for the earlier period (2000 to 2004) provides fragmentary evidence of exemptions systems in bargaining councils. To contain these limitations, we have made use of three sources of data to provide a more holistic commentary on the exemption processes within bargaining councils since 2000. The first source of data used is that provided in a survey by Godfrey et al. (2006) that covers 2000 to 2004. While the coverage provided by Godfrey et al. (2006) was shaped by the size of the return sample to their survey, it is still an important source, to add to the overall picture, because it signals the process and scope of exemption applications within bargaining councils that was available to firms in 2000 to 2004.

The second source of data, which is relevant for 2009, is administrative data submitted by all registered bargaining councils in South Africa; it was subsequently consolidated and provided to Tridevworx by the Department of Labour in 2013. This data records exemption applications from parties and non-parties in 31 bargaining councils. In constructing the picture of the bargaining council exemption process over the past 12 years, our analysis will draw on this data through a commentary we will now provide.

Finally, the third source of data and evidence that will be used to deepen the analysis of bargaining council exemption trends in South Africa is drawn through the results of a three-pronged Tridevworx survey into the exemption process,

which is built on responses obtained from bargaining councils (using a bargaining council survey), firms (using a firm survey) and business associations and trade unions (using an employer association survey and a trade union survey). These three sources of data substantiate the analysis, which we now provide.

The survey by Godfrey and colleagues

Table 9 provides an overview of exemption applications to bargaining councils for the 10-year period 2000 to 2009. The data for 2000 to 2004 is derived from Godfrey et al.’s (2006) survey and pertains to 17 bargaining councils that completed and returned a Questionnaire. In Godfrey et al.’s (2006) study, there were a large number of bargaining councils that submitted information for 2004 only. It appears that these 2004-only responses were excluded from the final tabulations that they provided in their report. Consequently, for the five-year period 2000 to 2004, the total number of applications made for an exemption was pegged at 494 in 2000, increasing to 708 in 2002, while declining marginally to 649 in 2004. If they had not maintained a consistency between the bargaining councils that responded specifically for the three points in time (2000, 2002 and 2004) and, instead, tabulated all the responses received from bargaining councils for 2004 as well, their data would have generated inconsistencies and skewedness and resulted in a count of 2 783 exemption applications in 2004. This is far higher even than the 1 876 applications for exemption that was made in an official count of 31 bargaining councils that submitted data to the Department of Labour in 2009. If we bear these discrepancies in mind, we therefore must take note that the data of the trend in bargaining council exemptions for 2000 to 2004 shown in Tables 9 and 10 is based on a survey of 17 bargaining councils while the data for 2009, as contained in Tables 11 and 12, is based on official returns from 31 bargaining councils, 21 of which had processed applications for exemption from party and non-party members in 2009.

Table 9: Trends in bargaining council exemptions: 2000 to 2004

	2000	2002	2004	% Change: 2000-2004	2009	% Change: 2000-2009
Total applications made	494.0	708.0	649.0	31.4	1876.0	279.8
Total exemptions granted	387.0	523.0	504.0	30.2	1309.0	238.2
% granted	78.3	73.9	77.7		69.8	
Total exemptions refused	135.0	185.0	145.0	7.4	389.0	188.1
% refused	27.3	26.1	22.3		20.7	
Source: Godfrey et.al (2006: 70)						

Looking at Table 9 above, we can see that exemption applications to bargaining councils rose steeply over the three-year period 2000 to 2002. However, from 2002 to 2004, there was a marginal decline in exemption applications. Taking the five-year period 2000 to 2004 as a whole shows, however, that there generally was an increase of 31.4% in total exemption applications for this period. Similarly, the trend is also reflected in the total number of exemptions granted, but also in the total number of exemptions refused.

If one extends the period of the analysis from 2000 to 2009, it is noticeable that more than 70% of exemption applications were successfully granted for 2000 to 2004, but this fell to just below 70% in 2009. Although there are slight discrepancies, the data appears to show a consistent pattern whereby the proportion of exemptions refused from 2000 to 2009 actually shows a downward trend. In 2000, 27.3% of exemption applications resulted in refusals, whereas by 2009, the percentage of refusals had decreased even further to 20.7%.

What was the picture shown for 2000 to 2009 concerning the differentiation between party and non-party applications for exemption? We could add to this question and also ask about the differentials that were discernible in the type of request for exemption from applicants. In the latter instance, the type of request distinguished between exemption from the entire main agreement, exemption from benefit funds as well as other types that were not specified. The evidence that provides insights into these differential categories is captured in Table 10. Data that distinguishes between party and non-party applicants for exemption stretches from 2000 to 2009.

Table 10: Party and non-party applications and number of applications by type of request: 2000 to 2004

		2000	%	2002	%	2004	%	2009***	%
Party/Non-party*	Party	38	22.5	39	20.1	39	12.7	1017	54.2
	Non-party	131	77.5	155	79.9	269	87.3	859	45.8
	Total	169	100.0	194	100.0	308	100.0	1876	100.0
Number of applicants by type of request**	Entire Main Agreement	10	5.8	11	5.0	8	2.5		
	Wages	44	25.4	52	23.6	40	12.4		
	Benefit funds	56	32.4	101	45.9	263	81.7		
	Other	63	36.4	56	25.5	11	3.4		
	Total	173	100.0	220	100.0	322	100.0		
* 11 Councils **12 Councils ***31 Councils									
Source: Godfrey et.al. (2006). Data for 2009 supplied by Ian Macun at the DoL									

In the five-year period between 2000 and 2004, non-party applications for exemption hovered around the three-quarter mark and in fact showed an increase from 77.5% in 2000 to 87.3% in 2004. If one were to assess the split between party and non-party applications for exemption from aspects of bargaining council agreements and conditions, it would have been correct to assume that application for exemption was largely a non-party affair. Only 12.7% of applications for exemption were party members in 2004. Between 2004 and 2009, a five-year gap in the data trend occurs, as argued above. While one would have expected the proportionate split between party and non-party applications to have continued, however, this was not the case. A significant reversal in 2009 can be observed, with the proportion of party applications increasing to 54.2%, and constituting the majority of applications in 2009, while non-party applications fell by almost half, decreasing from a high of 87.3% in 2004 to 45.8% in 2009. By 2009, party members to bargaining councils had started to make much greater use of the bargaining council exemption system compared to 10 to 5 years earlier.

While the survey by Godfrey et al. (2006) only provides an indication of responses from 12 bargaining councils, it nonetheless provides insights into the distribution of exemption applications to bargaining councils by request type. The information from Godfrey et al. (2006) makes provision for four exemption request types: main agreement, wages, benefit funds, and other. In 2000, the percentage distribution in terms of applications for the exemption type between these four categories was respectively: 5.8%, 25.4%, 32.4% and 36.4%. Over the five-year period from 2000 to 2004, this distribution shifted dramatically. Except for the more than two-fold rise in applications for benefit funds from 32.4% in 2000 to 81.7% in 2004, each of the other categories experienced declining application requests. Thus, by 2004, roughly four-fifths (81.7%) of exemption applications that were submitted to bargaining councils in South Africa specifically concerned some aspect of exemption from prevailing benefit fund conditions or statutory requirements.

Administrative data on bargaining councils provided by the Department of Labour

Table 11 consists of data supplied by the Department of Labour and shows the number of bargaining councils which made use of an exemption process in 2009. Of the 31 bargaining councils, 21 (roughly two-thirds) dealt with applications for exemption from both party and non-party members to bargaining councils. Effectively, 10 bargaining councils did not receive a single application for an exemption in 2009. In many instances, the number of applications for exemption received by the remaining 21 bargaining councils was widely dispersed: some bargaining councils received extremely small numbers of application for exemption in 2009, while a few constituted the bulk of overall exemption applications received. To make it much easier to differentiate the differences in numbers, we have converted each into a specific percentage value in relation to the overall percentage and have depicted this data in Table 12.

Table 11: Exemption applications according to party and non-party members: 2009 (numerical values)

SIC Sector	Name of the council	All applications			Granted			Refused			Under consideration		
		Party members	Non-party	Total	Party members	Non-party	Total	Party members	Non-party	Total	Party members	Non party	Total
Agriculture	Fishing Industry	0	0	0	0	0	0	0	0	0	0	0	0
Manufacturing	Chemical Industry	0	0	0	0	0	0	0	0	0	0	0	0
	National Textile	8	22	30	3	11	14	1	3	4	3	8	11
	Canvas Goods Industry – Witwatersrand	1	0	0	0	0	0	0	0	0	0	0	0
	Leather- South Africa	7	6	13	6	5	11	1	0	1	0	1	1
	Furniture – Eastern Cape	3	34	37	2	28	30	1	1	2	1	5	7
	Furniture-KZN	0	0	0	0	0	0	0	0	0	0	0	0
	Furniture South Western District	4	0	0	2	0	2	2	0	2	0	0	0
	Furniture-Western Cape	5	8	13	5	3	8	0	5	5	0	0	0
	Furniture –Semi-National	22	86	108	7	34	41	15	52	67	0	0	0
	Wood & Paper	0	0	0	0	0	0	0	0	0	0	0	0
	Metal & Engineering BC-National	264	322	586	155	218	373	72	61	133	57	53	90
Sugar Manufacturing & Refine	0	0	0	0	0	0	0	0	0	0	0	0	
Diamond Cutting SA	1	0	1	0	0	0	0	0	0	0	0	0	
Transport	Road Freight	420	125	545	393	67	460	22	30	52	5	21	26
	SA Road Passenger	0	0	0	0	0	0	0	0	0	0	0	0
Construction	Electrical – SA	34	19	53	15	7	22	18	12	30	1	0	1
	Building Industry – Bloemfontein	0	0	0	0	0	0	0	0	0	0	0	0
	Building Industry – Cape of Good Hope	5	21	26	2	4	6	3	9	12	0	8	8
	Building Industry – Cape of North & West Boland	0	0	0	0	0	0	0	0	0	0	0	0
	Building Industry – East London	0	0	0	0	0	0	0	0	0	0	0	0
	Building Industry – South & Eastern Cape	0	0	0	0	0	0	0	0	0	0	0	0
Wholesale, retail, catering and accommodation	Restaurant Catering & Allied Trade - Braamfontein	1	4	5	0	1	1	1	3	4	0	0	0
	Tearoom, Restaurant & Catering –Pretoria	3	8	11	3	8	11	0	0	0	0	0	0
	Meat Trade – Gauteng	104	78	182	78	60	138	26	18	44	0	0	0
Community, social and personal services	Hairdressing-Cape Peninsula	23	26	49	20	18	38	0	6	6	3	2	5
	Hairdressing & Cosmetology KZN	31	7	38	30	7	37	0	0	0	1	0	1
	Hairdressing & Cosmetology Pretoria	40	26	45	21	9	30	8	7	15	0	0	0
	Hairdressing & Cosmetology – Semi-National	15	6	21	5	4	9	0	2	2	10	0	10
	Contract Cleaning Services	12	8	20	10	2	12	2	6	8	0	0	0
	Laundry, Cleaning & Dyeing – Natal	14	53	67	13	53	66	2	0	2	0	0	0
	TOTAL	1017	859	1850	770	539	1309	174	215	389	81	98	160

Table 12: Exemption applications according to party and non-party members: 2009 (percentage values)

SIC Sector	Name of the council	All applications			Granted			Refused			Under consideration		
		Party members	Non-party	Total	Party members	Non-party	Total	Party members	Non-party	Total	Party members	Non party	Total
Agriculture	Fishing Industry	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Manufacturing	Chemical Industry	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	National Textile	0.8	2.6	1.6	0.4	2.0	1.1	0.6	1.4	1.0	3.7	8.2	6.9
	Canvas Goods Industry – Witwatersrand	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Leather- South Africa	0.7	0.7	0.7	0.8	0.9	0.8	0.6	0.0	0.3	0.0	1.0	0.6
	Furniture – Eastern Cape	0.3	4.0	2.0	0.3	5.2	2.3	0.6	0.5	0.5	1.2	5.1	4.4
	Furniture-KZN	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Furniture South Western District	0.4	0.0	0.0	0.3	0.0	0.2	1.1	0.0	0.5	0.0	0.0	0.0
	Furniture-Western Cape	0.5	0.9	0.7	0.6	0.6	0.6	0.0	2.3	1.3	0.0	0.0	0.0
	Furniture –Semi-National	2.2	10.0	5.8	0.9	6.3	3.1	8.6	24.2	17.2	0.0	0.0	0.0
	Wood & Paper	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Metal & Engineering BC-National	26.0	37.5	31.7	20.1	40.4	28.5	41.4	28.4	34.2	70.4	54.1	56.3
Sugar Manufacturing & Refine	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
Diamond Cutting SA	0.1	0.0	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
Transport	Road Freight	41.3	14.6	29.5	51.0	12.4	35.1	12.6	14.0	13.4	6.2	21.4	16.3
	SA Road Passenger	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Construction	Electrical – SA	3.3	2.2	2.9	1.9	1.3	1.7	10.3	5.6	7.7	1.2	0.0	0.6
	Building Industry – Bloemfontein	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Building Industry – Cape of Good Hope	0.5	2.4	1.4	0.3	0.7	0.5	1.7	4.2	3.1	0.0	8.2	5.0
	Building Industry – Cape of North & West Boland	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Building Industry – East London	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Building Industry – South & Eastern Cape	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Wholesale, retail, catering and accommodation	Restaurant Catering & Allied Trade - Braamfontein	0.1	0.5	0.3	0.0	0.2	0.1	0.6	1.4	1.0	0.0	0.0	0.0
	Tearoom, Restaurant & Catering –Pretoria	0.3	0.9	0.6	0.4	1.5	0.8	0.0	0.0	0.0	0.0	0.0	0.0
	Meat Trade – Gauteng	10.2	9.1	9.8	10.1	11.1	10.5	14.9	8.4	11.3	0.0	0.0	0.0
Community, social and personal services	Hairdressing-Cape Peninsula	2.3	3.0	2.6	2.6	3.3	2.9	0.0	2.8	1.5	3.7	2.0	3.1
	Hairdressing & Cosmetology KZN	3.0	0.8	2.1	3.9	1.3	2.8	0.0	0.0	0.0	1.2	0.0	0.6
	Hairdressing & Cosmetology Pretoria	3.9	3.0	2.4	2.7	1.7	2.3	4.6	3.3	3.9	0.0	0.0	0.0
	Hairdressing & Cosmetology – Semi-National	1.5	0.7	1.1	0.6	0.7	0.7	0.0	0.9	0.5	12.3	0.0	6.3
	Contract Cleaning Services	1.2	0.9	1.1	1.3	0.4	0.9	1.1	2.8	2.1	0.0	0.0	0.0
	Laundry, Cleaning & Dyeing – Natal	1.4	6.2	3.6	1.7	9.8	5.0	1.1	0.0	0.5	0.0	0.0	0.0
	TOTAL	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Right at the top, the most exemption applications to bargaining councils were received in only four councils. In terms of rank, these bargaining councils registering the largest number of applications in 2009 were: Metal and Engineering (National) (31.7% of all exemption applications), Road Freight (29.5%), Meat Trade (Gauteng) (9.8%) and Furniture (Semi-National) (5.8%). These four collectively accounted for more than three-quarters (76.8%) of all applications for exemption from bargaining councils in South Africa in 2009. If a further five bargaining councils – Building Industry (Cape of Good Hope), Furniture (Eastern Cape), Laundry, Cleaning and Dyeing (Natal), Electrical (SA) and National Textile – are added to this aggregate ‘three-quarters’, plus a constellation of three regional and one semi-national Hairdressing and Cosmetology bargaining councils (i.e. four Hairdressing and Cosmetology bargaining councils) are added to this, it then shows that in 2009, roughly 13 out of 31 (two-fifths) of the bargaining councils for which administrative data was supplied by the Department of Labour accounted for 96.5% of all exemption applications in 2009.

While some of these bargaining councils have gone through a consolidation process since 2009, the Tridevworx survey of the bargaining council exemption system explores continuities between the 2009 and 2013 period, which the subsequent survey was designed to measure. Thus the bargaining councils that were responsible for the 96.5% of exemption applications in 2009 were, in terms of rank: Metal and Engineering (National) (31.7%), Road Freight (29.5%), Meat Trade (Gauteng) (9.8%), Furniture National (5.8%), Laundry, Cleaning and Dyeing (Natal) (3.6%), Electrical SA (2.9%), Furniture (Eastern Cape) (2.0%), National Textile (1.6%), Building Industry (Cape of Good Hope) (1.4%) plus the constellation of the four Hairdressing and Cosmetology bargaining councils (together accounting for 8.2% of all exemption applications in 2009).

Table 9 provides an aggregate breakdown and distinction between applications granted and applications refused. In 2009, 69.8% of all applications received led to the granting of an exemption, and 20.7% was refused, while the remainder was under consideration or appeal. This data is depicted for all the bargaining councils in Table 11. However, as a rule, the trends shown for each bargaining council are

consistent with the overall trend depicted in Table 9. There are some exceptions to the rule, which merit further comment, especially concerning applications that were refused and applications that were still under consideration at year-end in 2009. If we peruse the refusals column in Table 12, two stark trends are shown. We discuss each in turn.

First, Road Freight accounted for 29.5% of applications. One would have expected exemptions granted and refused by Road Freight to be generally consistent with this ratio, that is, roughly in the region of 29.5%. However, a much lower proportion for both party and non-party applications for exemption were refused by Road Freight: only 13.4% of refusals were associated with Road Freight. Does this mean that the processing of exemption applications under Road Freight make refusals less likely?

Second, almost exactly the opposite trend is shown for two specific bargaining councils. In contrast to the proportion of applications made, the Furniture (semi-national) (in the Manufacturing sector) and Electrical (SA) bargaining councils (in the Construction sector) each had more than double the proportion of refusals for application, this is a strange anomaly. It suggests that the exemption process for these two bargaining councils are perhaps more stringent and may therefore contribute to higher rates of refusals concerning exemptions lodged.

Finally, under the column showing applications for exemption that are still under consideration, it is noticeable that for the Metal and Engineering Bargaining Council (National), it accounted for 31.7% of exemption applications for all bargaining councils in 2009; 56.3% of applications which were still under consideration was from Metals and Engineering (National). Proportionately, this appears significant. However, when one illustrates this by number in Table 11, it translates into 57 applications under consideration involving party members in 2009, while 53 were for non-party members, resulting in a total of 90 out of 160 (56.3%) of applications under consideration being associated with the Metals and Engineering Bargaining Council (National).

(b) Trends in exemption applications: 2010 to 2012, derived from the Tridevworx Supplementary Questionnaire

In addition to retrieving data from bargaining councils concerning a number of indicators designed to measure and record the efficacy of exemption systems as they were experienced in 2013, the Questionnaire sent to all bargaining councils during the research process also contained a supplementary Questionnaire. In addition to obtaining the contact details of party and non-party employer associations and trade unions, and the contact details of party and non-party companies that had applied to their respective bargaining council for an exemption in 2013, this supplementary Questionnaire also sought to fill the information gap relating to the total number of exemption applications made by companies for the three years preceding 2013. This meant that bargaining councils had to return information concerning the number of exemption applications made, granted, refused, appealed and withdrawn in 2010, 2011 and 2012. This information was crucial to the interpretation of the trend in exemption applications made since 2000, but more particularly, for the period following the onset of the global economic recession in 2008. Ten bargaining councils completed and returned a supplementary Questionnaire. The following analysis is as a result of this data.

If we recall the earlier data (2000 to 2004) assembled by Godfrey et al. (2006), this showed an almost three-fold increase in the number of exemption applications made from 2000 to 2009 when the Department of Labour released data from its own administrative records. The data from the Department showed that 1 850 applications for exemption were received in 2009. The Department's data was derived from returns to 31 bargaining councils, but not all of these had processed exemption applications in 2009. In fact, 21 bargaining councils received applications for exemption in 2009 and, of these, only 8 received 20 or more exemption applications for the entire year. Overall, however, as shown above, 1 850 applications for exemption were received by bargaining councils in 2009, of which roughly 54% derived from party applications and 46% from non-party applications.

The supplementary data shown in Table 13 does not distinguish between party and non-party applications, but does provide an overall aggregate figure that can be compared to the Department of Labour data for 2009. Since we do not have data showing exemption applications for 2008, when the global economic crisis began (there would also have been a lag of a few months before these effects reached firms and compelled them to explore using the exemption system as a measure to mitigate financial distress), we can use the 2009 exemption application data with a high certainty of it being a proxy for financial distress signals among firms in sectors served by bargaining councils in particular. So, if we use 2009 as the marker when the global economic crisis ensued, and the exemption system experienced greater use, the total number of applications between 2009 (when 21 bargaining councils received application for exemption from enterprises) and 2010 to 2012 (with 10 bargaining councils providing this information) increased by 55.2% within barely a year from 2009 to 2010. Even though the total number of applications for exemption (in the return sample of 10 supplementary Questionnaires) declined from 2010 to 2011, there was still an increase of 20.2% recorded between 2009 and 2011. Finally, if we take the three-year period from 2009 to 2012 when the application for exemptions continued to grow, the growth percentage amounted to 60.7%.

Thus, in aggregate terms, there was a significant increase in the number and proportion of applications for exemptions to bargaining councils in South Africa between 2009 and 2012. The granting of exemptions as a proportion of the total number of applications did not substantially change over the three years 2010 to 2012. In 2010, 88.6% of exemption applications resulted in exemptions being granted. The percentage ratio of applications granted in relation to applications made was 86.9% in 2011, shifting down only slightly to 82.9% in 2012.

Table 13: Information on exemption applications 2010 to 2012 derived from Supplementary Questionnaire to 2013 Survey

SIC Sector	Name of Bargaining Council		Total number of application made	%	Total number of exemptions granted	%	Total number of exemptions refused	%	Total number of exemptions appealed	%	Total number of exemptions withdrawn	%	Total number of under consideration	%
Manufacturing	National Textile BC (NTBC)	2010	30	1.0	15	0.6	14	6.1	4	2.8	1	1.6	0	0.0
		2011	37	1.7	10	0.5	27	12.3	4	4.1	0	0.0	0	0.0
		2012	27	0.9	12	0.5	15	3.1	5	2.7	0	0.0	0	0.0
	National BC for the Leather Industry of SA	2010	15	0.5	2	0.1	6	2.6	4	2.8	7	11.3	0	0.0
		2011	8	0.4	5	0.3	0	0.0	0	0.0	3	5.1	0	0.0
		2012	14	0.5	7	0.3	4	0.8	0	0.0	3	15.0	0	0.0
	BC for the Furniture Manufacturing Industry (Kwa Zulu Natal)	2010	1	0.0	0	0.0	1	0.4	0	0.0	0	0.0	0	0.0
		2011	2	0.1	1	0.1	1	0.5	0	0.0	0	0.0	0	0.0
		2012	19	0.6	19	0.8	0	0.0	0	0.0	0	0.0	0	0.0
	BC for the Furniture Manufacturing Industry	2010	135	4.7	86	3.4	49	21.2	53	37.1	0	0.0	0	0.0
		2011	131	5.9	110	5.7	21	9.5	14	14.4	0	0.0	0	0.0
		2012	118	4.0	98	4.0	20	4.2	17	9.1	0	0.0	0	0.0
	Metal & Engineering Industries BC (National)	2010	504	17.5	373	14.6	118	51.1	82	57.3	13	21.0	0	0.0
		2011	636	28.6	501	25.9	129	58.6	78	80.4	6	10.2	0	0.0
		2012	1218	41.0	844	34.2	368	76.8	163	87.6	6	30.0	0	0.0
Motor Industry BC (National) (MIBCO)	2010	1622	56.5	1591	62.3	8	3.5	0	0.0	13	21.0	10	41.7	
	2011	1252	56.3	1219	63.1	25	11.4	0	0.0	7	11.9	1	7.7	
	2012	1366	45.9	1328	53.9	30	6.3	0	0.0	5	25.0	3	33.3	
Transport	National BC for the Road Freight and Logistics Industry (NBCRFLU)	2010	531	18.5	461	18.1	30	13.0	0	0.0	28	45.2	12	50.0
		2011	137	6.2	75	3.9	7	3.2	1	1.0	43	72.9	12	92.3
		2012	143	4.8	118	4.8	14	2.9	1	0.5	5	25.0	6	66.7
Construction	Building BC (North & West Boland)	2010	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
		2011	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
		2012	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Wholesale, Retail, Catering and Accommodation	BC for the Food Retail, Restaurant, Catering & Allied Trades	2010	32	1.1	14	0.5	5	2.2	0	0.0	0	0.0	2	8.3
		2011	8	0.4	8	0.4	0	0.0	0	0.0	0	0.0	0	0.0
		2012	4	0.1	3	0.1	1	0.2	0	0.0	0	0.0	0	0.0
Community, Social and Personal Services	National BC for the Hairdressing, Cosmetology, Beauty & Skincare Industry	2010	2	0.1	2	0.1	0	0.0	0	0.0	0	0.0	0	0.0
		2011	13	0.6	3	0.2	10	4.5	0	0.0	0	0.0	0	0.0
		2012	64	2.2	36	1.5	27	5.6	0	0.0	1	5.0	0	0.0
Total	Total	2010	2872	100.0	2544	99.6	231	100.0	143	100.0	62	100.0	24	100.0
		2011	2224	100.0	1932	100.0	220	100.0	97	100.0	59	100.0	13	100.0
		2012	2973	100.0	2465	100.0	479	100.0	186	100.0	20	100.0	9	100.0

Having sketched the aggregate picture for the trend in exemption applications between 2010 and 2012, it is also important to analyse the trend in applications made, exemptions granted, exemptions refused, exemptions appealed, and exemptions withdrawn among the group of 10 bargaining councils that returned a supplementary Questionnaire. To really capture the more relevant detail, it is important to identify the more significant trends. To do this adequately, we focus primarily on bargaining councils where applications made, received, refused, appealed or withdrawn exceeded 20 per year, or where the percentage proportions shared between bargaining councils was at least above 2.5%.

If we start with this premise and first address the total number of applications for exemptions made by the National Textile Bargaining Council (NTBC) between 2010 and 2012 and the Bargaining Council for the Food, Retail, Restaurant, Catering and Allied Trades in 2010, we notice that the number of applications for these respective years exceeded 20, but that the percentage size of the applications was less than 2.5%. This means that proportionately, in the bigger picture, it was actually miniscule. For this reason, we focus our commentary on

bargaining councils where the number and proportion of applications made, granted, refused and appealed was significantly larger or at least 2.5% of the overall proportion. We are seeking to ascertain whether the bargaining councils that recorded the more significant applications for exemption for 2010 to 2012 are indicated in the return sample to the Tridevworx Supplementary Questionnaire.

The Supplementary Questionnaire gives prominence to roughly four bargaining councils that generated high exemption application levels between 2010 and 2012. A rank of the proportionate size of each of the four largest contributions takes the following order for 2010 to 2012: the Motor Industry Bargaining Council (National) (MIBCO) (56.5%, 56.3% and 45.9%), the Metal and Engineering Industries Bargaining Council (MEIBC) (17.5%, 28.6% and 41.0%), the National Bargaining Council for the Road Freight and Logistics Industry (NBCRFLI) (18.5%, 6.2% and 4.8%), and the Bargaining Council for the Furniture Manufacturing Industry (4.7%, 5.9% and 4.9%). Even though, of these four, the Motor Industry Bargaining Council held the largest share contribution for the three-year period, its proportionate share contribution out of the 10 responding bargaining councils declined from 2010 to 2012 from 56.5% to 45.9%. Similarly, together with the National Bargaining Council for the Road Freight and Logistics Industry (NBCRFLI) and the Bargaining Council for the Furniture Manufacturing Industry, the actual number of applications for the Motor Industry Bargaining Council declined between 2010 and 2012. Only the Metal and Engineering Industries Bargaining Council (National) recorded both a proportionate and a numerical increase in the number of applications for each of the three successive years from 2010 to 2012. In fact, the number of exemption applications made to the Metal and Engineering Industries Bargaining Council between 2010 to 2012 increased by more than double from 504 to 1 366. This is a highly significant finding, because it indicates an increased use of the exemption mechanism in the Metal and Engineering Industries Bargaining Council.

The increase is even more significant if it is contrasted with the data provided by the Department of Labour for 2009 (see Table 11). Although this data did not include an entry for the Motor Industry Bargaining Council, it did for the remaining three bargaining councils. A comparison between it and the supplementary data

for 2010 to 2012 shows that the number of exemption applications between 2009 and 2010 were evenly pegged. Over 20-09 and 2010, the number of exemption applications made to the Bargaining Council for the Furniture Manufacturing Industry increased marginally from 108 in 2009 to 135 in 2010 (25%), while it decreased for the Metal and Engineering Industries Bargaining Council (MEIBC) from 586 to 504 (-16%) and the National Bargaining Council for the Road Freight and Logistics Industry (NBCRFLI) from 545 to 531 (-2.6%).

The fact that exemption applications that were made to the Metal and Engineering Industries Bargaining Council more than doubled for the three-year period 2009 to 2011 compared to 2012 demonstrates categorically that greater use was being made of the exemption system, particularly by firms under the Metal and Engineering Industries Bargaining Council. The data that was obtained from the survey shows the continuity in the pattern, especially for the Metal and Engineering Industries Bargaining Council, which we interrogate further in the next section.

3.2. Bargaining council exemptions: 2013

Data is being sought for key indicators to facilitate continuity with the previously done work and the need to profile the central features of the bargaining system in 2013. This involves acquiring data about the number of exemption applications according to party and non-party members, exemptions applications according to enterprise size, the number of employees covered by exemption applications, and exemption applications by request type. Most bargaining councils also have the powers to revoke or withdraw an exemption in terms of provisions in the LRA and bargaining council constitutions. There is very little information about the extent to which bargaining councils have exercised these powers.

(a) Applications made, approved, refused, appealed and withdrawn

Question 2.1 of the Bargaining Council Questionnaire sought to measure the incidence of applications made, approved, refused, appealed and withdrawn by all existing bargaining councils in South Africa during 2013. Of the 46 bargaining councils surveyed, 25 participated, and 13 of the 25 bargaining councils indicated receiving applications from firms in the sectors and industries under their jurisdiction.

Total number of applications

Table 14 consolidates all the responses of the thirteen Bargaining Councils which received applications in 2013 and provides a breakdown of the number and percentage of approvals, refusals, appeals and withdrawals for the status of exemptions awarded to all firms under the jurisdiction of these 13 bargaining councils.

Table 14: Total number of applications made, approved, refused, appealed and withdrawn in 2013

SIC Sector	Name of Bargaining Council	Total number of applications made	Total number of exemptions granted	Total number of exemptions refused	Total number of exemptions appealed	Total number of exemptions withdrawn
Agriculture, Hunting, Forestry and Fishing	SC for the Squid and Related Fisheries of SA	0	0	0	0	0
	National BC for Clothing Manufacturing Industry	377	354	22	0	0
Manufacturing	%	11.3	12.2	7.5	0.0	0.0
	National Textile BC (NTBC)	18	2	2	0	0
	%	0.5	0.1	0.7	0.0	0.0
	BC for the Canvas Goods Industry (Witwatersrand & Pretoria)	0	0	0	0	0
	National BC for the Leather Industry of SA	9	7	1	0	1
	%	0.3	0.2	0.3	0.0	1.0
	BC for the New Tyre Manufacturing Industry (National)	0	0	0	0	0
	Furniture BC (Eastern Cape)	2	2	0	0	0
	%	0.1	0.1	0.0	0.0	0.0
	BC for the Furniture Manufacturing Ind, KwaZulu-Natal	0	0	0	0	0
	Furniture BC (S.W.Districts)	14	7	7	0	0
	%	0.4	0.2	2.4	0.0	0.0
	Furniture BC (Western Cape)	25	11	14	1	0
	%	0.7	0.4	4.8	0.7	0.0
	National BC for the Wood & Paper Sector	0	0	0	0	0
Metal & Engineering Industries BC (National)	2061	1851	144	136	66	
%	61.7	63.7	49.0	94.4	64.1	
Motor Industry BC (National) (MIBCO)	599	595	1	0	1	
%	17.9	20.5	0.3	0.0	1.0	
Transport	National BC for the Road Freight and Logistics Ind. (NBCRFLI)	96	32	15	1	34
	%	2.9	1.1	5.1	0.7	33.0
Construction	BC for the Civil Engineering Industry	0	0	0	0	0
	BC for the Building Ind (Kimberley)	0	0	0	0	0
	Building Industry BC (Southern & Eastern Cape)	0	0	0	0	0
	Building Industry BC (East London)	0	0	0	0	0
	BC for the Building Industry (Bloemfontein)	0	0	0	0	0
	Building Industry BC (Cape of Good Hope)	75	18	56	3	1
	%	2.2	0.6	19.0	2.1	1.0
Building BC (North & West Boland)	0	0	0	0	0	
Wholesale, Retail, Catering and Accommodation	BC for the Food Retail, Restaurant, Catering & Allied Trades	5	1	4	0	0
	%	0.1	0.0	1.4	0.0	0.0
Community, Social and Personal Services	SC for the Fast Food, Restaurant, Catering & Allied Trades	0	0	0	0	0
	National BC for the Hairdressing, Cosmetology, Beauty & Skincare Industry	39	10	26	3	0
	%	1.2	0.3	8.8	2.1	0.0
	BC for the Laundry, Cleaning & Dyeing Industry (Kwa Zulu Natal)	18	16	2	0	0
	%	0.5	0.6	0.7	0.0	0.0
Return sample=25	Total	3338	2906	294	144	103
Positive responses=13	%	100.0	100.0	100.0	100.0	100.0

In 2013, 3 338 applications for exemption were made to the 13 bargaining councils listed in Table 14. The Metal and Engineering Industries Bargaining Council constituted 61.7% of applications for exemption, followed by the Motor Industries Bargaining Council (17.9%), the National Bargaining Council for the Clothing Manufacturing Industry (11.3%), and the National Bargaining Council for the Road Freight and Logistics Industry (2.9%). The two bargaining councils that received the most applications for exemption – the Metal and Engineering Industries Bargaining Council and the Motor Industry Bargaining Council – jointly accounted for 79.6% of applications made by the 13 bargaining councils that submitted a return Questionnaire. If one adds the National Bargaining Council for the Clothing Manufacturing Industry into the mix, then 90.9% of applications for exemption in 13 bargaining councils were derived from just three bargaining councils.

Lower in the ranks but still responsible for processing 75 or more applications for exemptions in 2013 are the National Bargaining Council for the Road Freight and Logistics Industry (NBCRFLI) (96 applications) and the Building Industry Bargaining Council (Cape of Good Hope) (75 applications). If we add the three bargaining councils that received the most applications to the latter intermediate group that received more than 75 but just under 100 exemption applications per year, we then have a situation in which 5 out of 13 bargaining councils were responsible for 96% of the applications made in 2013.

Although this evidence is derived from a sample of returns, the generation of applications for exemption from enterprises and firms (and perhaps even employer associations and trade unions) to their designated bargaining council suggests a number of specific traits, including the economic size of the industries and the sectors covered by the specific bargaining councils. This may also include degrees of national concentration and control, or even the converse in the form of provincial or regional decentralisation. This may also have a bearing on the internal capacity in the bargaining council and may perhaps impact the status of applications for exemption and may also affect the resulting – either positive or negative – outcome. The evidence in Table 14 also depicts trends in the appeal

process, but also provides a record of the number of exemptions withdrawn from enterprises that had earlier been granted such a status.

If one summarises this more detailed process that occurs after applications for exemptions have been received, which involves the granting of exemptions, the refusal of exemptions, the process of appealing the exemptions by the aggrieved parties (firms, employer associations and trade unions), and the withdrawal of an exemption certificate by a bargaining council, this tells us that the decision to a more extensive system in which exemption outcomes are processed appears to be concentrated mainly in 5 of the 13 bargaining councils that returned a Questionnaire. Again, purely in terms of rank, the number of cases by these 5 bargaining councils for exemptions granted, refused, appealed and withdrawn are summarised below. Ranked at the top is the Metal and Engineering Industries Bargaining Council, which accounted for 61.7%, 63.7%, 49% and 94.4% respectively of exemptions granted, refused, appealed and withdrawn.

As was the case for the total number of applications made (see column 2 in Table 14), ranked below at second but for exemptions granted is the Motor Industry Bargaining Council (with 20.5% of exemptions granted). It seems that a very high proportion of exemptions applied to the Motor Industry Bargaining Council are granted. This means that for this specific bargaining council, there is very little need for the exemption process to be prolonged with further motions of refusals, appeals and withdrawals of exemption (this phenomenon will be examined further using data contained in Table 15).

Third in terms of ranking by exemptions granted, refused, appealed and withdrawn was the National Bargaining Council for the Clothing Manufacturing Industry, which accounted for 11.3%, 12.2%, 7.5% and 0% of exemptions in the return sample that were granted, refused, appealed and withdrawn.

Fourth, in terms of ranking by exemptions granted refused, appealed and withdrawn was the National Bargaining Council for the Road Freight and Logistics Industry, which accounted for 1.3%, 7.5% 0.7% and 33.3% of exemptions in the return sample that were granted, refused, appealed and withdrawn. But in the case of the National Bargaining Council for the Road Freight and Logistics

Industry, after that for the Metal and Engineering Industries Bargaining Council, it experienced the second highest number of exemptions withdrawn by a bargaining council.

Finally, representing a very small proportion in the return sample and ranked fourth in terms of exemptions granted, refused, appealed, withdrawn was the National Bargaining Council for the Hairdressing, Cosmetology, Beauty and Skincare Industry, with respective proportions of 0.4%, 13%, 2.1% and 0%.

Overall percentage breakdowns

Table 15 presents a breakdown between applications made vs. applications approved, refused, appealed and withdrawn in 2013. The data is presented so that it shows the proportion of the overall but also specific breakdowns of the exemption cycle such as exemptions granted, refused, appealed and withdrawn by the bargaining council had a system in place for which a request for an exemption was made in 2013. The picture presented in Table 15 shows that for the overall 13 bargaining councils, 87.1% of applications for exemption was granted. Only 8.8% of all applications for exemption was refused. One hundred and forty-four cases (see Table 14) involving applications for exemption were appealed; although these 144 cases where exemption applications were appealed represented only 4.3% of the total number of exemption applications, as a proportion of the number of exemptions refused, the ratio of refusals to appeals is nonetheless quite high.

Table 15: Percentage breakdown between applications made vs. applications approved, refused, appealed and withdrawn in 2013

SIC Sector	Name of Bargaining Council	Total number of applications made	Total number of exemptions granted	Total number of exemptions refused	Total number of exemptions appealed	Total number of exemptions withdrawn
Manufacturing	National BC for Clothing Manufacturing Industry	100.0	93.9	5.8	0.0	0.0
	National Textile BC (NTBC)	100.0	11.1	11.1	0.0	0.0
	National BC for the Leather Industry of SA	100.0	77.8	11.1	0.0	11.1
	Furniture BC (Eastern Cape)	100.0	100.0	0.0	0.0	0.0
	Furniture BC (S.W.Districts)	100.0	50.0	50.0	0.0	0.0
	Furniture BC (Western Cape)	100.0	44.0	56.0	4.0	0.0
	Metal & Engineering Industries BC (National)	100.0	89.8	7.0	6.6	3.2
	Motor Industry BC (National) (MIBCO)	100.0	99.3	0.2	0.0	0.2
Transport	National BC for the Road Freight and Logistics Ind. (NBCRFLI)	100.0	33.3	15.6	1.0	35.4
Construction	Building Industry BC (Cape of Good Hope)	100.0	24.0	74.7	4.0	1.3
Wholesale, Retail, Catering and Accommodation	BC for the Food Retail, Restaurant, Catering & Allied Trades	100.0	20.0	80.0	0.0	0.0
Community, Social and Personal Services	National BC for the Hairdressing, Cosmetology, Beauty & Skincare Industry	100.0	25.6	66.7	7.7	0.0
	BC for the Laundry, Cleaning & Dyeing Industry (KwaZulu Natal)	100.0	88.9	11.1	0.0	0.0
	Total	100.0	87.1	8.8	4.3	3.1

Table 15 (see columns 4 and 5) shows that 8.8% of all applications for exemption was refused, and 49% of refusals (4.3% vs. 8.8%; 144 exemption appeals out of 294 exemption refusals) resulted in the lodging of appeals. This evidence suggests that parties that applied for exemption had much scope to take the matter further and lodge an appeal in 49% of instances where exemption applications were refused. This demonstrates a high transition (49%) between exemptions refused and refusals subsequently translating into an appeal against the bargaining council's original decision not to grant exemptions for which an enterprise initially applied.

(b) Party and non-party applications for exemptions received, approved, refused, appealed and withdrawn

Table 16 consolidates and represents data derived from Question 2.2 in the Questionnaire, which elicited information from bargaining councils on the number of exemptions received, approved, refused, appealed and withdrawn. This data is captured for both party and non-party members to bargaining councils.

It is advisable to start with the aggregate picture and then proceed to work further by disaggregating this data and searching for interesting nuances and anomalies to inform our discussion.

Table 16: Number of exemptions received, approved, refused, appealed and withdrawn between party and non-party applications in 2013

SIC Sector	Name of Bargaining Council	Exemption Applications			Exemption Applications Approved			Exemption Applications Refused			Exemption Applications Appealed			Exemption Applications Withdrawn			
		Party	Non-Party	Total	Party	Non-Party	Total	Party	Non-Party	Total	Party	Non-Party	Total	Party	Non-Party	Total	
Agriculture, Hunting, Forestry and Fishing	SC for the Squid and Related Fisheries of SA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	National BC for Clothing Manufacturing Industry % Breakdown	299	78	377	293	61	354	6	16	22	0	0	0	0	0	0	
Manufacturing	National Textile BC (NTBC) % Breakdown	5	13	18	2	0	2	1	1	2	0	0	0	0	0	0	
	BC for the Canvas Goods Industry (Witwatersrand & Pretoria)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	National BC for the Leather Industry of SA % Breakdown	5	4	9	5	2	7	0	1	1	0	0	0	0	1	1	
	BC for the New Tyre Manufacturing Industry (National)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Furniture BC (Eastern Cape) % Breakdown	1	1	2	1	1	2	0	0	0	0	0	0	0	0	0	
	BC for the Furniture Manufacturing Ind, KwaZulu-Natal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Furniture BC (S.W.Districts) % Breakdown	5	9	14	5	2	7	2	5	7	0	0	0	0	0	0	
	Furniture BC (Western Cape) % Breakdown	17	8	25	8	2	10	8	6	14	1	0	1	0	0	0	
	National BC for the Wood & Paper Sector	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Metal & Engineering Industries BC (National) % Breakdown	479	940	1419	545	779	1324	29	66	95	21	68	89	0	0	0	
	Motor Industry BC (National) (MIBCO) % Breakdown	336	263	599	332	263	595	1	0	1	0	0	0	1	0	1	
	National BC for the Road Freight and Logistics Ind. (NBCRFLI) % Breakdown	17	79	96	13	19	32	0	15	15	1	0	1	2	32	34	
	Construction	BC for the Civil Engineering Industry	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
		BC for the Building Ind (Kimberley)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Building Industry BC (Southern & Eastern Cape)		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Building Industry BC (East London)		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
BC for the Building Industry (Bloemfontein)		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Building Industry BC (Cape of Good Hope) % Breakdown		9	66	75	3	15	18	6	50	56	0	3	3	0	1	1	
Building BC (North & West Boland)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Wholesale, Retail, Catering and Accommodation	BC for the Food Retail, Restaurant, Catering & Allied Trades % Breakdown	0	5	5	0	1	1	0	4	4	0	0	0	0	0	0	
	SC for the Fast Food, Restaurant, Catering & Allied Trades	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Community, Social and Personal Services	National BC for the Hairdressing, Cosmetology, Beauty & Skincare Industry % Breakdown	23	16	39	4	6	10	10	16	26	3	0	3	0	0	0	
	BC for the Laundry, Cleaning & Dyeing Industry (Kwa Zulu Natal)	3	15	18	1	15	16	2	0	2	0	0	0	2	0	2	
Return sample =25	Total	1199	1497	2696	1212	1166	2378	65	180	245	26	71	97	5	34	39	
Postive resones=13	% Breakdown	44.5	55.5	100.0	51.0	49.0	100.0	26.5	73.5	100.0	26.8	73.2	100.0	12.8	87.2	100.0	

Table 16 primarily seeks to differentiate between party and non-party applications for exemption in the aggregate as well as to highlight anomalies across bargaining councils and perhaps even across different sectors. This data refers only to 2013 and is based on positive responses to the Tridevworx Questionnaire. Of 25 bargaining councils, 13 advanced a positive response to the Questionnaire in the survey, for which the data was used to generate Table 16. Naturally, this also meant using the distinction between party and non-party applications to describe and analyse exemption applications that were approved, refused, appealed and withdrawn. Since we have already discussed the ratio of applications that resulted in approvals, refusals, appeals and withdrawals (see Table 15), our discussion here mainly concerns the differentials between party and non-party applications along all the above-mentioned axes.

The aggregate picture

If we examine the aggregate picture concerning applications made, non-party applications exceed party applications by a ratio of 55.5% to 44.5% . Numerically, this is represented by 1 497 exemption applications by non-party members vs. 1 199 applications by party members across 13 bargaining and statutory councils.

However, as the 2013 exemption process unfolds beyond applications made and toward its results, a significant numerical and proportionate result tilts towards party applications. Thus, while accounting for 44.5% of overall exemption applications, party members of bargaining and statutory councils made up 51% of exemption applications approved in 2013. Non-party members thus accounted for a disproportionately smaller percentage of approvals (41%) compared to their proportion of applications (55.5%). This means that non-party applicants accounted for a higher number of refusals in 2013. In the aggregate, 73.5% of exemption applications that were refused derived from non-party members, while the balance involved party members. While the numerical values show a significant gap, the pattern is one where non-party members again account for the bulk of exemption applications appealed (73.2%; 71 of 97). Similarly, non-party members to bargaining and statutory councils also account for a higher proportion of exemption applications withdrawn (87.2%; 34 of 39). In all the latter instances, party members account for the residual.

These patterns are replicated to different degrees for exemption applications to specific bargaining councils that returned a Questionnaire showing either party or non-party applications. Concerning the ratio of party to non-party applications for exemptions across bargaining councils, the evidence indicates three distinct trends among groups of bargaining councils.

A rough balance between party and non-party applications in bargaining councils

First, some bargaining councils show a roughly equal number and proportion of exemption applications from party and non-party members to the main agreement. Three bargaining councils show this trend: the National Bargaining Council for the Leather Industry of South Africa, the Furniture Bargaining Council (Eastern Cape), and the Bargaining Council for the Retail, Restaurant, Catering and Allied Trades. However, because the numbers of applications for exemption were relatively small (i.e. less than 10 each in 2013), this does not warrant more detailed analysis. Nonetheless, we can still refer to these as a first group of bargaining councils.

Bargaining councils where party applications exceeded non-party applications

A second group of bargaining councils represent a trend in which the number of applications from party members to the main agreement exceeds the number from non-party members. This is particularly prominent in four bargaining councils.

From the top of Table 16 down, the first bargaining council listed from this group is the National Bargaining Council for the Clothing Manufacturing Industry, where party applications constituted 79.3% of the total in 2013.

A similar trend was witnessed in the Furniture Bargaining Council (Western Cape), the Motor Industry Bargaining Council (National), and the National Bargaining Council for the Hairdressing, Cosmetology, Beauty and Skincare Industry, where party members respectively accounted for 68%, 56.1% and 59%

of exemption applications. Also concerning this second group of bargaining councils, exemption applications that were approved were still dominated by membership in the National Bargaining Council for the Clothing Manufacturing Industry and the Motor Industry Bargaining Council (National), where respectively 82.8% and 55.8% of approvals were for party members. Although the numbers are very small, in the Furniture Bargaining Council (Western Cape), 80% of approvals were for party members.

An insignificant number of applications for exemption by either party or non-party members were refused by the Motor Industry Bargaining Council (National). A small number (a total of 22) of exemption applications were refused by the National Bargaining Council for the Clothing Manufacturing Industry, but here too, 72.7% (16) of refusals involved non-party applications. In the Furniture Bargaining Council (Western Cape), 57.1% (8 out of 14) applications that were refused in 2013 involved party members.

Remaining with the second group of Bargaining Councils, in the National Bargaining Council for the Hairdressing, Cosmetology, Beauty and Skincare Industry, exemption applications that were refused in 2013 exceeded applications that were approved by a factor of more than 2.5 times. Contrary to the situation where party member applications exceeded those by non-party members, the National Bargaining Council for the Hairdressing, Cosmetology, Beauty and Skincare Industry was characterised by non-party members accounting for the majority of applications approved as well as refused. But concerning applications approved compared to the Clothing and Motor Industry Bargaining Councils, the number was relatively small.

Bargaining councils where non-party applications exceeded party applications

The remaining bargaining councils can be classified as part of a third group, characterised from the outset by non-party applications exceeding party applications. With the percentage of non-party applications for exemption shown in brackets, these 6 bargaining councils are: the National Textile Bargaining Council (72.2%; 13 out of 18), Furniture Bargaining Council (South Western Districts) (64.3%; 9 out of 14), the Metal and Engineering Industries Bargaining Council (National) (66.2% out of 1 419 applications made), the National Bargaining Council for the Road Freight and Logistics Industry (82.3%; 79 out of 96), the Building Industry Bargaining Council (Cape of Good Hope) (88%; 66 out of 75) and the Bargaining Council for the Laundry, Cleaning and Dyeing Industry (KwaZulu-Natal), where non-party applications represented 83.3% of applications lodged (i.e. 15 out of 18 exemption applications received).

Remaining with this third group, when we consider exemption applications approved, it is noticeable that in cases where the number of applications approved was 10 or above in 2013, only 4 bargaining councils stand out. In each, non-party exemption applications approved exceeded party applications approved. This tells us that, in this third group, the exemption application process is largely a non-party affair. These 4 bargaining councils where this trend is recorded for 2013 are: the Metal and Engineering Industries Bargaining Council (National), where 58.8% of approvals in 2013 were for non-party members, the National Bargaining Council for the Road Freight and Logistics Industry, where non-party members constituted 59.4% of approvals, the Building Industry Bargaining Council (Cape of Good Hope), where non-party members represented 83.3% of approvals, and the Bargaining Council for the Laundry, Cleaning and Dyeing Industry (KwaZulu-Natal), where non-party members held 93.8% of the approvals granted.

The converse of approved applications is applications that were refused. This represents the next phase in the exemption process. Where the number of refusals is 10 or above, exemption applications refused are again characterised by a greater proportion of refusals to non-party members. In this third group, three

bargaining councils continue to stand out: the Metal and Engineering Industries Bargaining Council (National), the National Bargaining Council for the Road Freight and Logistics Industry, and the Building Industry Bargaining Council (Cape of Good Hope).

If we continue to follow the cycle sequence of the exemption process concerning exemption applications appealed and exemption applications withdrawn, only two bargaining councils from the third group stand out; this warrants a few comments. Of all 13 bargaining and statutory councils that effectively made use of the exemption process, only one is noticeable concerning appeals lodged with respect to the exemption process. This bargaining council, drawn from the third group characterised by a significant prominence in applications lodged from non-party members (as noted above), is the Metal and Engineering Bargaining Council (National), which accounted for 89 out of 97 appeals against exemption applications that were unsuccessful across 13 bargaining councils. Despite this, non-party applications made up 76.4% (68 out of 89) of exemption applications where an appeal was lodged to an earlier decision not to grant an exemption to the Metal and Engineering Industries Bargaining Council (National).

The second Bargaining Council that stands out concerning the exemption process is the National Bargaining Council for the Road Freight and Logistics Industry, with respect to exemption applications that were withdrawn. In fact, overall, 34 out of 39 exemption applications that were withdrawn concerned both party and non-party members to the National Bargaining Council for the Road Freight and Logistics Industry, but even here, 94.1% of applications withdrawn concerned non-party members. What would induce them to do so after undergoing the process of applying for an exemption? We can only assume that such withdrawals of applications for exemption are a reflection that the issues concerning the reason for the application for the exemption were to some extent resolved through engagement with a bargaining council.

One stark characteristic

Finally, there appears to be one stark characteristic highlighted in the data concerning the relationship between applications for exemption and applications

that were approved. This appears to cut across the features of specific groups we described. The stark characteristic is this: for all bargaining councils where the number of applications for exemption exceeded 300 to 350 in 2013, the proportion of approved exemption applications also appeared to be comparatively very high. Three bargaining councils could be classified in this manner: the National Bargaining Council for the Clothing Manufacturing Industry (377 applications; 354 approvals, representing 93.9%), the Metal and Engineering Industries Bargaining Council (National) (1 419 applications; 1 324 approvals, representing 93.3%), and the Motor Industry Bargaining Council (National) (599 applications; 595 approvals, representing 99.3%). The trend certainly suggests that in bargaining councils where a relatively large number of applications for exemptions (300 to 350 and above) from some aspects of the main agreement or the agreement as a whole takes place, systems are likely to be institutionalised to deal more effectively and efficiently with such exemption processes.

The number of employees covered by exemption applications in small, medium-sized and large firms

The following discussion consolidates the picture of the number of employees who worked within different sized firms who were either party or non-party to a bargaining council main agreement under a particular bargaining or statutory Council. To help interpret the data in Table 17, we have devised a short explanatory illustration below to make sense of the five pages of interpretation that is provided in respect of each of the nine industries shown (e.g. clothing, textiles, leather etc) in Table 17.

Explanatory illustration: Slice of Table 17

Name of Bargaining Council	Employees under applications in small firms			Employees under exemption applications in All Firms		
	Party	Non-Party	Total	Party	Non-Party	Total
Metal & Engineering Industries BC (National)	9910	15924	25834	33032	53078	86110
Party & Non-Party in relation to Firm-Size	30.0	30.0	30.0	100	100	100
% of Employees under exemption status in BC	11.5	18.5	30.0	38.4	61.6	100
Total	17043	19013	36056	50640	59389	110029
Party & Non-Party as a % of Firm-Size	33.7	32.0	32.8	100	100	100
% of All BC Employees under exemption status	15.5	17.3	32.8	46.0	54.0	100

This explanatory illustration provides a slice of Table 17 where one can see that each block consists of three rows. Each bargaining council is represented by four blocks. It also means that three rows in these four blocks contains information that is relevant to one specific bargaining council. From the first block adjoining the **orange** block, following the first row, we have three sets of numbers. The first is 17 041, the second 19 013, and the third 36 056. This tells us that for the aggregate number of employees in 11 bargaining councils, 17 043 employees were engaged in small firms that were party to bargaining or statutory council main agreements, while 19 013 employees also worked in small firms that were not party to an agreement. This represented a total of 36 056 employees of small firms.

The second row of this block provides percentage values. The first is 33.7%, the second 32.0%, and the third 32.8%. This means that 33.7% of employees in party firms were to be found in small firms, while 32% of employees in non-party firms also worked in small firms. The third value, 32.8%, provides the total number of employees who worked in small firms across the 11 bargaining councils that provided a positive response to the specific question in the Questionnaire.

Finally, the third row provides another set of percentage values. In the block, the first two values are 15.5% and 17.3%. These values indicate the proportion of total employees under all 11 bargaining councils who are either employees of

party or non-party small firms. The adjoining block represents this data for employees in medium-sized firms, and the third block provides this data for large firms. The fourth block provides an aggregate for employees in all firms who are either party or non-party members to a bargaining council main agreement. Again, the same applies for each row in a specific block: the first row provides for the number of employees that are engaged in party or non-party firms, the second the total percentage of party, non-party and total employees engaged in all firms, while the third row of this fourth block aggregates the total percentage of party, non-party and overall employees engaged in all firms.

Where the numbers are not excessively low, each block tells a story for each bargaining council. Let us record this story from the bargaining council ranked at the uppermost of the SIC chart to the one which our data shows to be at the bottom in terms of the data in Table 17. Because much data is consolidated in Table 17, this makes it difficult to read on a normal page. However, the reader should not fixate on the Table; it is merely evidence in the discussion. It is much more important to comprehending the bigger picture that the data depicts and tells.

Table 17: Number of employees covered by applications from small, medium-sized and large firms in 2013

SIC Sector	Name of Bargaining Council	Employees under applications in small firms			Employees under applications in medium sized firms			Employees under applications in large firms			Employees under exemption applications in All Firms		
		Party	Non-Party	Total	Party	Non-Party	Total	Party	Non-Party	Total	Party	Non-Party	Total
Agriculture, Hunting, Forestry and Fishing	SC for the Squid and Related Fisheries of SA	0	0	0	0	0	0	0	0	0	0	0	0
Manufacturing	National BC for Clothing Manufacturing Industry Party & Non-Party in relation to Firm-Size	254	161	415	0	0	0	0	0	0	254	161	415
	% of Employees under exemption status in BC	100.0	100.0	100.0	0.0	0.0	0.0	0.0	0.0	0.0	100.0	100.0	100.0
	National Textile BC (NTBC) Party & Non-Party in relation to Firm-Size	61.2	38.8	100.0	0.0	0.0	0.0	0.0	0.0	0.0	61.2	38.8	100.0
	% of Employees under exemption status in BC	63	183	246	0	0	0	431	456	887	494	639	1133
	National BC for the Canvas Goods Industry (Witwatersrand & Pretoria)	12.8	28.6	21.7	0.0	0.0	0.0	87.2	71.4	78.3	100.0	100.0	100.0
	% of Employees under exemption status in BC	5.6	16.2	21.7	0.0	0.0	0.0	38.0	40.2	78.3	43.6	56.4	100.0
	National BC for the Leather Industry of SA Party & Non-Party in relation to Firm-Size	0	0	0	0	0	0	0	0	0	0	0	0
	% of Employees under exemption status in BC	27	4	31	50	64	114	551	102	653	628	170	798
	BC for the New Tyre Manufacturing Industry (National)	4.3	2.4	3.9	8.0	37.6	14.3	87.7	60.0	81.8	100.0	100.0	100.0
	% of Employees under exemption status in BC	3.4	0.5	3.9	6.3	8.0	14.3	69.0	12.8	81.8	78.7	21.3	100.0
	Furniture BC (Eastern Cape) Party & Non-Party in relation to Firm-Size	0	0	0	0	0	0	0	0	0	0	0	0
	% of Employees under exemption status in BC	35	11	46	0	0	0	0	0	0	35	11	46
	BC for the Furniture Manufacturing Ind, KwaZulu-Natal	100.0	100.0	100.0	0.0	0.0	0.0	0.0	0.0	0.0	100.0	100.0	100.0
	% of Employees under exemption status in BC	76.1	23.9	100.0	0.0	0.0	0.0	0.0	0.0	0.0	76.1	23.9	100.0
	Furniture BC (S.W.Districts) Party & Non-Party in relation to Firm-Size	0	14	14	12	29	41	94	34	128	106	77	183
	% of Employees under exemption status in BC	0.0	18.2	7.7	11.3	37.7	22.4	88.7	44.2	69.9	100.0	100.0	100.0
	Furniture BC (Western Cape) Party & Non-Party in relation to Firm-Size	0.0	7.7	7.7	6.6	15.8	22.4	51.4	18.6	69.9	57.9	42.1	100.0
	% of Employees under exemption status in BC	56	48	104	223	24	247	1167	0	1167	1446	72	1518
	National BC for the Wood & Paper Sector	3.9	66.7	6.9	15.4	33.3	16.3	80.7	0.0	76.9	100.0	100.0	100.0
	% of Employees under exemption status in BC	3.7	3.2	6.9	14.7	1.6	16.3	76.9	0.0	76.9	95.3	4.7	100.0
Metal & Engineering Industries BC (National) Party & Non-Party in relation to Firm-Size	0	0	0	0	0	0	0	0	0	0	0	0	
% of Employees under exemption status in BC	9910	15924	25834	18167	29192	47359	4955	7962	12917	33032	53078	86110	
Motor Industry BC (National) (MIBCO) Party & Non-Party in relation to Firm-Size	30.0	30.0	30.0	55.0	55.0	55.0	15.0	15.0	15.0	100.0	100.0	100.0	
% of Employees under exemption status in BC	11.5	18.5	30.0	21.1	33.9	55.0	5.8	9.2	15.0	38.4	61.6	100.0	
Transport	National BC for the Road Freight and Logistics Ind. (NCRFLI)	3791	2416	6207	587	55	642	4174	1029	5203	8552	3500	12052
% of Employees under exemption status in BC	44.3	69.0	51.5	6.9	1.6	5.3	48.8	29.4	43.2	100.0	100.0	100.0	
Construction	BC for the Civil Engineering Industry	31.5	20.0	51.5	4.9	0.5	5.3	34.6	8.5	43.2	71.0	29.0	100.0
% of Employees under exemption status in BC	0	0	0	0	0	0	0	0	0	0	0	0	
BC for the Building Ind (Kimberley)	0	0	0	0	0	0	0	0	0	0	0	0	
Building Industry BC (Southern & Eastern Cape)	0	0	0	0	0	0	0	0	0	0	0	0	
Building Industry BC (East London)	0	0	0	0	0	0	0	0	0	0	0	0	
BC for the Building Industry (Bloemfontein)	0	0	0	0	0	0	0	0	0	0	0	0	
Building Industry BC (Cape of Good Hope) Party & Non-Party in relation to Firm-Size	0	78	78	147	415	562	332	637	969	479	1130	1609	
% of Employees under exemption status in BC	0.0	6.9	4.8	30.7	36.7	34.9	69.3	56.4	60.2	100.0	100.0	100.0	
Building BC (North & West Boland)	0.0	4.8	4.8	9.1	25.8	34.9	20.6	39.6	60.2	29.8	70.2	100.0	
Wholesale, Retail, Catering and Accommodation	BC for the Food Retail, Restaurant, Catering & Allied Trades Party & Non-Party in relation to Firm-Size	0	1	1	0	4	4	0	0	0	0	5	5
% of Employees under exemption status in BC	0.0	20.0	20.0	0.0	80.0	80.0	0.0	0.0	0.00	0.00	100.00	100.00	
Community and Social Services	SC for the Fast Food, Restaurant, Catering & Allied Trades	0.0	20.0	20.0	0.0	80.0	80.0	0.0	0.0	0.00	0.00	100.00	
% of Employees under exemption status in BC	0	0	0	0	0	0	0	0	0	0	0	0	
Return sample=25	National BC for the Hairdressing, Cosmetology, Beauty & Skincare Industry	0	0	0	0	0	0	0	0	0	0	0	
Positive responses=11	BC for the Laundry, Cleaning & Dyeing Industry (Kwa Zulu Natal) Party & Non-Party in relation to Firm-Size	2907	173	3080	2007	173	2180	700	200	900	5614	546	6160
% of All BC Employees under exemption status	% of Employees under exemption status	51.8	31.7	50.0	35.7	31.7	35.4	12.5	36.6	14.6	100.0	100.0	100.0
Total	Total	47.2	2.8	50.0	32.6	2.8	35.4	11.4	3.2	14.6	91.1	8.9	100.0
Party & Non-Party as a % of Firm-Size	Party & Non-Party as a % of Firm-Size	17043	19013	36056	21193	29956	51149	12404	10420	22824	50640	59389	110029
% of All BC Employees under exemption status	% of All BC Employees under exemption status	33.7	32.0	32.8	41.9	50.4	46.5	24.5	17.5	20.7	100.0	100.0	100.0
		15.5	17.3	32.8	19.3	27.2	46.5	11.3	9.5	20.7	46.0	54.0	100.0

Clothing

If we examine the National Bargaining Council for the Clothing Manufacturing Industry, the block provides an interesting representation. Almost all employees covered by exemption applications under the Clothing Bargaining Council in 2013 are classified as being employed in small firms. This applies to all party and non-party firms. Among these small firms, the split between firms is that 61.2% (254) are party firms and 38.8% are non-party firms. In the Clothing sector, not a single medium-sized or large firm was identified as an applicant for exemption from either parts of the main agreement or the agreement as a whole. Therefore, not a single employee in a medium-sized or large Clothing sector firm was affected by such an application.

Textiles

The situation in the Textile sector was substantially different, since the number of employees affected by firms applying for exemption to the National Textile Bargaining Council were largely drawn from large firms. Overall, 21.7% of employees in firms that applied for an exemption worked in small firms. In contrast, 78.3% of Textile employees that were affected by employer applications for an exemption worked in large firms. Large firms accounted for 87.2% (431) of all party employees and 71.4% of all non-party employees. The bottom line is that application for exemption in the Textile industry is largely associated with large firms, probably because the industry is dominated more by large firms than small ones.

Leather

The situation in respect of employees affected by applications for exemption in the Leather industry bears a close resemblance to the picture in Textiles. The percentage split between employees in party firms versus those in non-party firms was 78.7% to 21.3%. This means that, among firms in the Leather industry that applied for an exemption to the bargaining council, the number of employees represented by party firms exceeded the number of employees in non-party firms by more than three and a half times.

Only 114 employees from firms in the Leather industry that applied for an exemption to the National Bargaining Council for the Leather Industry of South

Africa worked in medium-sized firms (14.3% of all employees in firms that applied for exemption). An even smaller number and percentage worked in small firms. While the numbers amount to 653 employees, it also translated into 81.8% of employees in firms that applied for exemption being classified as engaged in large firms. An even higher percentage of employees (87.7%) working in firms that were party to the main agreement were employed in large firms, in contrast to 60% of employees working in non-party firms that were classified as large. Thus, the bulk (81.8%) of employees attached to firms that had applied for exemption to the National Bargaining Council for the Leather Industry of South Africa was engaged in large firms.

Furniture

The situation concerning the proportion of employees and the pattern in the distribution of enterprise sizes under application for exemption from the Furniture Bargaining Council (Eastern Cape) almost exactly mirrored the situation under the National Bargaining Council for the Clothing Manufacturing Industry. Although the employee numbers were quite small, 100% of employees in firms that had applied for exemption in the sector were drawn from small employers. The split between employees in party and non-party firms was weighted heavily in favour of party-firms: 76.1% (35 out of 46 employees) worked in small party firms, while non-party firms accounted for the difference.

There is an even greater contrast between the Furniture Bargaining Council (Eastern Cape) on the one hand and the Furniture Bargaining Council (South Western Districts) and the Furniture Bargaining Council (Western Cape) on the other. As indicated, 100% of employees in firms that had applied for exemption under the Furniture Bargaining Council (Eastern Cape) were employed in small firms. In the South Western Districts, 69.9% of employees that worked in firms that had applied for exemption were engaged in large firms. In the case of party firms, the concentration of employees in large firms is even more stark: 88.7% of employees engaged in party firms that had lodged applications for exemption worked in large firms. The distribution of employees by enterprise size in non-party firms that had applied for exemption to the Furniture Bargaining Council (South Western Districts) was more evenly spread between medium-sized and

large enterprises: 37.7% of employees in non-party firms in the Furniture industry in the South Western Districts worked in medium-sized enterprises, while 44.2% worked in large firms. This concentration towards exemption applications to large firms was even more noticeable under the Furniture Bargaining Council (Western Cape). Here, 76.9% of employees of firms that had applied for exemption worked in large firms, 16.3% in medium-sized firms, and 6.9% in small firms. However, concerning all the bargaining councils listed in Table 17, the Furniture Bargaining Council (Western Cape) had the highest ratio of employees classified as party to non-party firms: 95.3% (1 446 employees) in firms that had applied for exemption were engaged in party-firms, while only 4.7% (72 employees) were from non-party firms.

But if one considers the enterprise location of employees to party and non-party members, the following is clear: 80.7% (1 167 out of 1 446 employees) of employees to party members who had applied for exemption to the Furniture Bargaining Council of the Western Cape were based in large firms. In contrast, 66.7% (48 out of 72) of employees who worked for non-party members that had applied for an exemption worked in small firms.

Metal and Engineering

The largest number of exemption applications are drawn from firms that fall under the Metal and Engineering Industries Bargaining Council (National) (see Table 14). However, when we look at the proportion of employees in party and non-party firms that were affected by exemption applications in 2013, 78.3% (86 110 out of 110 029) were attached to party and non-party firms under the auspices of the Metal and Engineering Industries Bargaining Council (National). If one looks at the split between employees in party and non-party firms under the Metal and Engineering Industries Bargaining Council (National), 38.4% worked in firms that were party to the Main Agreement, vs. 61.65% that worked in non-party firms. Yet there is a surprising degree of symmetry between party and non-party employees working in small, medium-sized and large firms in the sector. Employees who worked Metal and Engineering firms that had applied to the respective bargaining council for an exemption in 2013 were predominantly drawn first from medium-sized firms (55%), then small firms (30%) and, finally, large enterprises (15%).

Whether employees worked for party or non-party firms, exactly the same distribution ratios applied. This allows one to draw the conclusion that employees working in firms that had applied for exemption from the Metal and Engineering Industries Bargaining Council (National) in 2013 were largely drawn from medium-sized and small firms.

Motor

After the Metal and Engineering Industries Bargaining Council (National), the second highest number of employees engaged by firms that had applied for an exemption in 2013 (roughly 10.96%) were under the jurisdiction of the Motor Industry Bargaining Council (National) (MIBCO). Unlike firms under the jurisdiction of the Metal and Engineering Industries Bargaining Council (National), almost exactly the opposite in terms of party and non-party employee affiliation in MIBCO prevailed: 71% of employees from firms that had applied for an exemption to the Motor Industry Bargaining Council (National) were party members to the Main Agreement, the remaining 29% being non-party members. However, employees in firms that had applied for exemption to the Motor Industry Bargaining Council (National) worked mainly in small and large firms, and hardly in medium-sized firms. From the data in Table 17, 51.5% (6 207 out of 12 052) of employees worked in small firms vs. 43.2% (5 203 out of 12 052 employees) worked in large firms. Among firms that had applied for exemption to the Motor Industry Bargaining Council (National), only 5.3% of employees (totalling 642) worked in medium-sized enterprises.

In terms of the distribution between employees in firms that were either party or non-party members to the Main Agreement of the Motor Industry Bargaining Council (National), the differences between the location of party employees in small and large firms was not as stark: 44.3% of employees in firms that were party to the Main Agreement worked in small firms, vs. 48.8% who worked in large firms. But in the case of employees in firms that were non-party members to the Main Agreement, 69% worked in small firms, vs. 29.4% who worked in large firms. Thus, employees in firms that were party to the Main Agreement were to be found in relatively similar concentration in both small and large firms, whereas for employees that worked in firms that were non-party members to the Main

Agreement, there was a 7:3 split that they were more likely to be found working in small firms.

However, the overall picture we present is that employees in firms that had applied for exemption to the Motor Industry Bargaining Council (National) were to be drawn from both small and large firms, but hardly from medium-sized firms.

Building

If we scrutinise the number of employees covered by firms that had applied for exemption in 2013 to the Building Industry Bargaining Council (Cape of Good Hope), although it only affected 1 609 employees, 29.8% (479 employees) worked in firms that were party to the Main Agreement, vs. 70.2% of employees (1 130 employees) who worked for non-party firms. Only 4.8% of employees in firms that had applied for exemption to the Building Industry Bargaining Council (Cape of Good Hope) were engaged in small firms. Proportionately, 34.9% of such employees worked in medium-sized firms, while 60.2% worked in large firms. But employees to firms that were party to the Main Agreement still tended to be found in large firms, and the evidence indicates that 69.3% of employees in party firms worked in large firms, with the balance (30.7%) being engaged in medium-sized firms. Although the number of employees in non-party firms outnumbers employees in party firms by a factor greater than 2:1, employees in non-party firms also worked mainly in large firms (56.4%), compared to 36.7% of other non-party firm employees who worked in medium-sized firms under the jurisdiction of the Building Bargaining Council (Cape of Good Hope). Confirming the classification of employee location in firms (both party and non-party) that applied for exemption from the Main Agreement of the Building Bargaining Council (Cape of Good Hope), the majority were engaged in large firms, while a significant minority were in medium-sized enterprises. Such employees were hardly to be found working in small firms in the sector .

Food, Retail, Restaurant, Catering

Concerning the number of employees covered by applications for exemption in small, medium-sized and large firms under the Bargaining Council for the Food Retail, Restaurant, Catering and Allied Trades, the numbers are so small that they do not justify an analysis of an informative trend.

Laundry, Cleaning, Dyeing

In contrast, if we examine the distribution of employees covered by applications in small, medium-sized and large firms in 2013 under the auspices of the Bargaining Council for the Laundry, Cleaning and Dyeing Industry (KwaZulu-Natal), some interesting trends can be observed. Out of the 6 160 employees covered by such firms, 91.1% (5 614) was from firms that were party to the Main Agreement, vs. 8.9% (546 employees) that were engaged in non-party firms. Employees in firms that had applied for exemption classified as parties to the Main Agreement were drawn mainly (close to half) from small firms (47.2%; or 2 907 employees), whereas roughly one-third worked in medium sized firms (32.6% or 2 007 employees). Overall, employees in non-party firms that had applied for exemption to the Bargaining Council for the Laundry, Cleaning and Dyeing Industry (KwaZulu-Natal) constituted less than 9% of all employees under exemption application to the Bargaining Council, but were evenly split between small firms (31.7%; 173 of non-party employees), medium-sized firms (31.7%; 173 of non-party employees) and large firms (36.6%; 200 of non-party employees). Nonetheless, the overall picture for the Bargaining Council for the Laundry, Cleaning and Dyeing Industry (KwaZulu-Natal) was that employees covered by applications for exemption were engaged mainly in small and medium-sized firms in the sector.

(d) Party and non-party applications by type of request

Table 18 provides detailed breakdowns of party and non-party applications for exemption by request type. Requests were defined through five options: as either covering the entire main agreement or as a specific element to it. These specific elements for which exemptions were applied covered: wages, pension/provident funds, medical or sick fund benefits as well as a general category referred to in

the Questionnaire as 'Other'. Presumably, *Other* incorporated a wide range of reasons that were not adequately accommodated under the specific designations given in the Questionnaire. Some of these reasons are captured in the open-ended qualitative answers for both party and non-party applications for exemption. This data is presented in Table 19; we briefly analyse it in the next section.

Table 18: Party and non-party applications by type of request: 2013

SIC Sector	Name of Bargaining Council Return sample=25; Positive responses to question = 13	Party Applications					Non-Party Applications					Total
		Entire Main Agreement	Wages	Pension/provident funds	Medical/sick fund benefits	Other	Entire Main Agreement	Wages	Pension/provident funds	Medical/sick fund benefits	Other	
Agriculture, Hunting, Forestry and Fishing	Statutory Council for the Squid and Related Fisheries of SA	0	0	1	0	0	0	0	0	0	0	1
	% Distribution in Applications	0.0	0.0	100.0	0.0	0.0						0.0
Manufacturing	National BC for Clothing Manufacturing Industry	0	0	0	0	0	0	0	0	0	0	0
	National Textile BC (NTBC)	0	3	0	0	8	0	3	2	0	2	18
	% Distribution in Applications	0.0	27.3	0.0	0.0	72.7	0.0	42.9	28.6	0.0	28.6	0.8
	BC for the Canvas Goods Industry (Witwatersrand & Pretoria)	0	0	0	0	0	0	0	0	0	0	0
	National BC for the Leather Industry of SA	0	0	0	1	4	0	2	1	0	1	9
	% Distribution in Applications	0.0	0.0	0.0	20.0	80.0	0.0	50.0	25.0	0.0	25.0	0.4
	BC for the New Tyre Manufacturing Industry (National)	0	0	0	0	0	0	0	0	0	0	0
	Furniture BC (Eastern Cape)	0	0	0	0	1	0	0	1	0	0	2
	% Distribution in Applications	0.0	0.0	0.0	0.0	100.0	0.0	0.0	100.0	0.0	0.0	0.1
	BC for the Furniture Manufacturing Ind. KwaZulu-Natal	0	0	0	0	0	0	0	0	0	0	0
	Furniture BC (S.W Districts)	0	1	0	0	13	0	1	0	0	8	23
	% Distribution in Applications	0.0	7.1	0.0	0.0	92.9	0.0	11.1	0.0	0.0	88.9	1.1
	Furniture BC (Western Cape)	0	4	3	0	9	3	1	3	0	1	24
	% Distribution in Applications	0.0	25.0	18.8	0.0	56.3	37.5	12.5	37.5	0.0	12.5	1.1
	National BC for the Wood & Paper Sector	0	0	0	0	0	0	0	0	0	0	0
	Metal & Engineering Industries BC (National)	240	208	4	0	27	347	542	6	0	49	1423
% Distribution in Applications	50.1	43.4	0.8	0.0	5.6	36.8	57.4	0.6	0.0	5.2	65.5	
Motor Industry BC (National) (MIBCO)	0	8	131	0	139	0	15	62	0	77	432	
% Distribution in Applications	0.0	2.9	47.1	0.0	50.0	0.0	9.7	40.3	0.0	50.0	19.9	
Transport	National BC for the Road Freight and Logistics Ind. (NBCRFLI)	0	5	3	0	8	0	7	23	0	30	76
% Distribution in Applications	0.0	31.3	18.8	0.0	50.0	0.0	11.7	38.3	0.0	50.0	3.5	
Construction	BC for the Civil Engineering Industry	0	0	0	0	0	0	0	0	0	0	0
	BC for the Building Ind (Kimberley)	0	0	0	0	0	0	0	0	0	0	0
	Building Industry BC (Southern & Eastern Cape)	0	0	0	0	0	0	0	0	0	0	0
	Building Industry BC (East London)	0	0	0	0	0	0	0	0	0	0	0
	BC for the Building Industry (Bloemfontein)	0	0	0	0	0	0	0	0	0	0	0
	Building Industry BC (Cape of Good Hope)	0	5	0	0	4	31	10	1	0	33	84
% Distribution in Applications	0.0	55.6	0.0	0.0	44.4	41.3	13.3	1.3	0.0	44.0	3.9	
Wholesale, Retail, Catering & Accommodation	Building BC (North & West Boland)	0	0	0	0	0	0	0	0	0	0	0
	BC for the Food Retail, Restaurant, Catering & Allied Trades	0	0	0	0	0	0	4	0	0	5	
Community, Social and Personal Services	Statutory Council for the Fast Food, Restaurant, Catering & Allied Trades	0	0	0	0	0	0	0	0	0	0	
	National BC for the Hairdressing, Cosmetology, Beauty & Skincare Industry	2	6	8	4	3	5	0	8	0	3	39
Community, Social and Personal Services	% Distribution in Applications	8.7	26.1	34.8	17.4	13.0	31.3	0.0	50.0	0.0	18.8	1.8
	BC for the Laundry, Cleaning & Dyeing Industry (Kwa Zulu Natal)	0	18	0	0	3	0	15	0	0	0	36
% Distribution in Applications	0.0	85.7	0.0	0.0	14.3	0.0	100.0	0.0	0.0	0.0	1.7	
Total For All BC in Sample		242	258	150	5	219	386	597	111	0	204	2172
% Distribution in Applications		27.7	29.5	17.2	0.6	25.1	29.9	46.3	8.6	0.0	15.8	100.0

The aggregate picture

The aggregate picture derived from Table 18 for 13 bargaining councils that had processed applications for exemption in 2013 shows specific differences between types of application for exemption between party and non-party applications. The types of exemption application by party members are somewhat evenly spread between different types of applications made. Exemption applications from current wage rates paid to employees accounted for 29.5% of party applications,

exemption from the main agreement, 27.7%, with almost exactly one-quarter of exemption applications from party members (25.1%) grouped under 'Other'.

The request types by non-party applicants for exemption to the 13 bargaining councils in the return sample of 25 that had processed exemption applications in 2013 was dominated by wages (46.3% of exemption applications by non-party members involved exemption from some features of wage levels set by the centralised bargaining system of bargaining councils). This was followed by requests for exemption from a main agreement by 29.9% of non-party applications. Exemption requests by non-party applicants that were classified under 'Other' numbered 204 in 2013 and accounted for 15.8% of non-party applications.

If we direct our attention to the total column on the far right in Table 18, we quickly ascertain the total number of applications received by the 13 bargaining councils that had processed exemption applications in 2013. The names of these bargaining councils are also highlighted in yellow in Table 18. Of the 13 bargaining councils, 8 processed more than 20 applications in 2013 involving both party and non-party applicants.

Bargaining councils with less than 20 applications in 2013

Because the numbers involved are relatively small, we will not provide a detailed analysis of bargaining councils that received fewer than 20 exemption applications in 2013. From this grouping of 8, which had more than 20 applications in 2013, 4 received fewer than 50 applications for exemption. Three of these with fewer than 50 applications in 2013 appeared to be regional bargaining councils that operated within the Manufacturing and the Community, Social and Personal Services sectors. These three regional councils were: the Furniture Bargaining Council (South Western Districts), the Furniture Bargaining Council (Western Cape), and the Bargaining Council for the Laundry, Cleaning and Dyeing Industry (KwaZulu-Natal). Concerning the number of exemption applications processed in 2013, the National Bargaining Council for the Hairdressing, Cosmetology, Beauty and Skincare Industry also received fewer than 50 applications, but it is a national bargaining council. Concerning the

distribution in the types of applications made, the Furniture Bargaining Council (South Western Districts) and the Bargaining Council for the Laundry, Cleaning and Dyeing Industry (KwaZulu-Natal) appeared to be dominated by applications of a single type for both party and non-party applicants. For the Furniture Bargaining Council (South Western Districts), the bulk of party and non-party exemption applications were classified under 'Other'. At the Bargaining Council for the Laundry, Cleaning and Dyeing Industry (KwaZulu-Natal), 85.7% (18 out of 21) applications from party members was linked to wages. Similarly, every single application (100%; 15 out of 15) from non-party members was related to wages. Although it processed a relatively small number of exemption applications in 2013, in the National Bargaining Council for the Hairdressing, Cosmetology, Beauty and Skincare Industry, exemption applications generally ranged across all request types for both party and non-party members.

Bargaining councils with more than 50 applications in 2013

From Table 18, one can identify 4 bargaining councils where the annual number of applications in 2013 exceeded 50. Concerning increments in size, these four were: the National Bargaining Council for the Road Freight and Logistics Industry (3.5% of all applications for exemption in 2013, or 76 cases), the Building Industry Bargaining Council (Cape of Good Hope) (84 applications; 3.9% of applications which differentiated between request types), the Motor Industry Bargaining Council (National) (432 applications differentiated by request type, representing almost one-fifth of all applications), and the Metal and Engineering Bargaining Council National, which accounted for roughly two-thirds of all applications where the response type was indicated.

Irrespective of the proportion in the distribution between the party applications and non-party applications for exemption, it is apparent that the application request type mirrors the sector and the bargaining council to which these applied. Since the latter 4 bargaining councils each account for more than 50 applications in 2013 and significantly more for specific bargaining councils (as noted), the number of applications grouped by request type also represents a more general trend, in contrast to merely being an outlier.

In the case of the National Bargaining Council for the Road Freight and Logistics Industry, party and non-party applications by request type in 2013 revolved mainly around wages and *Other*. In the case of the Building Industry Bargaining Council (Cape of Good Hope), while the number of non-party applications exceeded party applications in 2013 by a ratio of 2.36:1 (see Table 17, extreme right block in row 9, where the percentage breakdown between party and non-party applications was 29.8%: 70.2% giving a ratio of 1:2.36), the request type from party applications was related to wages and *Other*, while for non-applications in terms of ranking this included: the entire main agreement (41,3% of applications), *Other* (44%) and wages (13.3%). The only variation here was the high emphasis given to exemption from the Main Agreement by non-party applicants.

While party applicants for exemption to the Motor Industry Bargaining Council constituted 71% of applications, there was a close correlation in the type of requests for exemption made by party and non-party members. Of applications from party members for exemption in 2013, 50% was defined as *Other*, while the remainder (47.1%) were requests for exemptions from pension/provident funds and the administration of these. Exactly the same ranking and sequence was shown for exemption requests from non-party applicants: 50% was classified under *Other* and 40.3% were requests for exemption from pension/provident funds. What is clear is that these two request types dominated applications to the Motor Industry Bargaining Council from both party applicants and non-party applicants in 2013.

Finally, applications by request type to the Metal and Engineering Industries Bargaining Council (National) depicts exactly the same correspondence between party and non-party applications for exemption, despite the overall picture prevailing where the number of employees engaged in non-party firms was outnumbered by the number of employees in party firms that applied for exemption by more than 20 000 (by 53 078 to 33 032 in 2013) (see Table 17, from which these numbers are derived). Concerning the proportion of exemption applications by request type by party employers, the bulk of exemption applications was distributed in the following manner: 50.1% of party applications

(240 applications) for exemption was directed at the entire Main Agreement, while 43.4% (208 applications) related to wages. If one combines these two request types, this accounts for 93.5% of all requests for exemption to the Metal and Engineering Industries Bargaining Council in 2013. Non-party applications generated exactly the same categories, but the sequence in terms of size to applications was reversed. Instead, the bulk of non-party applications for exemption to the Metal and Engineering Industries Bargaining Council (National) was around wages, amounting to 57.4% (542 applications) for this request type, whereas applications from non-party employers for exemption from the Main Agreement amounted to 36.8% (347 applications). Among non-party employers, these two request types for exemption accounted for a staggering 94.2% of all exemption applications.

Qualitative reasons for making an exemption application

We already referred to the fact that the open-ended questions generated multiple reasons why, in the views of bargaining councils, companies chose to apply for exemption. The previous structured questions were not able to capture the variation in the reasons given, which the open-ended questions allowed. The evidence from the open-ended questions for the bargaining councils to complete requested that the answers given be ranked in order of priority. Provision was made for the three most cited reasons in order of priority to be given; the results of are captured in Table 19.

The number of responses received for each priority reason about why companies applied for exemption to their relevant bargaining council in their sector ranged from 10 to 12, roughly in the same region as the number of bargaining councils that actively processed exemption applications in 2013. For the first priority reason cited, a high emphasis was placed on financial affordability, with 7 responses stating this clearly, and an additional response closely linked to affordability but presented as: 'Employer cannot afford to pay bargaining council levies'. The remaining four first priority reasons cited for party and non-party applications for exemption related to issues of affordability, but also contained organisation-related and market-related themes as motives for applications for exemption.

Table 19: Reasons for party and non-applications for exemption in 2013

Reasons Given for Exemption Applications	First Reason	Second Reason	Third Reason
Financial Affordability	7	1	1
Party exceeding overtime hours	2		
Decline in orders	1		
Provident Fund	1		1
Employer cannot afford to pay Bargaining Council levies	1		
Lack of Productivity		1	
Arrears in penalties and interest		1	
Competition		1	
To vary Conditions of Employment		1	
Recession		1	
Established in-house Funds		1	
Wages		1	
Employees have their own retirement annuity		1	
Non-party, company experiencing financial difficulties and working short time		1	
Stakeholder pressure		1	
Alternative benefits offered		1	
Previous provident fund contributions		1	
Employees did not want to form part of BC			1
Lack of Business			1
Geographical Location			1
Monthly Returns			1
Financial			1
Salon & employees do not want to be registered with the Bargaining Council			1
Collective Agreement not extended to non-parties			1
Wage rates, financial hardship during the current Agreement			1
Number of Responses to reasons in order of Priority	12	13	10

The second and third priority reasons put forward concerning companies applying for exemption did not exclude purely financial motives, but contained a much wider set of motives, which related more to making it possible to give these companies better leverage to establish themselves as viable business concerns. For these reasons, second and third priority reasons had a much wider scope than purely around financial matters.

4

**ECONOMIC AND
ORGANISATIONAL
DIMENSIONS OF BARGAINING
COUNCIL EXEMPTIONS AND
COMPANY RESPONSES**

The regulatory framework, namely provisions in the LRA pertaining to the establishment and functioning of bargaining councils, the making of agreements, its scope and measures to ensure compliance, is perceived to constitute critical impediments to the pursuit of economic growth by various commentators, despite the existence of exemption systems.²⁶ It is infused with arguments that for certain industries to compete and retain and increase employment, greater flexibility in remuneration and employment conditions are required, with regional variation. An SBP report titled *Counting the cost of red tape for business in South Africa* (main report, June 2005) that examined the cost of regulation and its impacts on economic growth and development in South Africa noted limitations to the benefits of regulation. It prompted the President to consider large-scale exemptions of SMMEs from central bargaining arrangements – a theme that was pursued by a series of papers on bargaining councils’ impacts on SMME enterprises.²⁷

Greater flexibility of labour market institutions has been argued for, despite the Comprehensive Labour Market Commission of 1995–6 and the ILO Country Review of 1996 concluding that an acceptable level of flexibility exists.²⁸ However, flexibility can be defined in various ways. Standing et al. (1996) described the enactment of a plethora of labour legislation after 1994 as an attempt to move from *regulated rigidity* to “create a system of *regulated flexibility*”²⁹ with security, that is, a flexible labour market where the promotion of various forms of labour security remains a key priority. Provisions for exemptions, albeit blanket arrangements or based on the application of individual companies, have facilitated downward or upward variation that have augmented flexibility.

Provisions for conditional blanket sectoral exemptions were previously facilitated by sectoral determinations informed by agreements negotiated at the National

²⁶ Rankin, N: How the extension of agreements by bargaining councils to non-parties restricts competition, raises prices, limits entrepreneurship and creates unemployment, Department of Economics, Stellenbosch University, February 2013 and Rankin, N. A: The Regulatory Environment and SMMEs. Evidence from South African Firm Level Data. Development Policy Research Unit Working Paper, Volume 06/133, 2006.

²⁷ Rankin, N., op. cit and Godfrey, Shane; Maree, Johann and Theron, Jan: Conditions of Employment and Small Business: Coverage, Compliance and Exemptions; Working Paper 06/106, Development Policy Research Unit, UCT, March 2006

²⁸ Standing, G., Sender, J. and Weeks, J.: *Restructuring the labour market: The South African challenge*, an ILO Country Review, 1996.

²⁹ Ibid, p16.

Economic Forum (NEF) and its successor, National Economic Development and Labour Council (NEDLAC). It dealt with issues such as the previous Public Works Programme (PWP) and the civil engineering industry as well as the current Expanded PWP, which is governed by a range of wage determinations. The argument reared its head again since the 2008 global economic crisis. While NEDLAC facilitated an accord titled *Framework for South Africa's response to the international economic crises* (19 February 2009) to preserve and create employment, the responsiveness of the labour market regulatory regime was in the spotlight again.³⁰ Applications to bargaining councils for exemptions and working shorter times and training lay-off schemes increased between 2008 and 2010.

“... however, not all applications were related to wages but often to council levies and other employment conditions such as annual bonuses. As to the granting of exemptions, it would appear that the councils sought to take into account the recession when considering applications and where cases were genuine and the enterprise could show a case of hardship and the need for relief for a period of time, then the applications were granted. [...] However, it is questionable whether these interventions had the desired results. Where councils were able to be more proactive was in industrial policy issues, but that is a terrain that a number of councils have failed to explore”.³¹

Section 32 of the LRA makes provision for the extension of collective agreements to non-parties by the responsible Minister based on an application by the relevant bargaining council using certain criteria; it also highlights the importance of exemptions provisions. This is with the provision in collective agreements that an independent body considers appeals to not grant exemptions from an agreement. This is based on the understanding that the bargaining council has exemption procedures in its constitution in terms of Section 30(1)(k) of the LRA.

A number of comments have been made about the efficacy of the bargaining council exemption systems. What underpins these remarks is whether procedural fairness prevailed in the making of decisions.

“The supporters of collective bargaining say that third parties can apply for exemption from the agreements reached in the bargaining councils. This is an expensive and time-consuming process, says Mashaba. And, indeed, the Newcastle textile companies that won exemptions had to go to court to do so. ‘Don’t tell me about exemptions. The majority of small businesses in this country cannot afford to go through the process. It costs money and it costs time to make this application. And why should they have to apply in the first place? Why should they be subjected to this form of collusion by big trade unions and companies?’ ”

³⁰ see Grawitzky, Renee: *Collective bargaining in times of crisis: A case study of South Africa*, Working Paper 32, ILO, December 2011.

³¹ Ibid, p. 24.

However, there is no clear evidence in the literature on whether the actual application of exemption processes by bargaining councils has led to small companies experiencing prohibitive procedural arrangements when applying for exemption. While the previous chapter clearly illustrates that the overwhelming majority of applications of party and non-party companies has been approved in sectors with high self-regulation levels, it is nevertheless important to examine matters of procedural fairness in the exemption application processes. Interesting insights were provided by a survey of some critical issues, among others the cost to companies of applications relative to enterprise size, turnaround times for the granting of exemptions, consultation with all affected parties, competitiveness, cyclical downturns, and access to sector support instruments. The unintended consequences of bargaining council decisions consider whether the BCEA and the main collective agreements have been undermined; thus, the following are also considered: the sector's competitiveness, the submission of a company turnaround strategy or plan, the availability of sector support instruments, and the involvement of bargaining council, parties and non-parties therein.

4.1. Organisational and financial dimensions of bargaining council exemptions

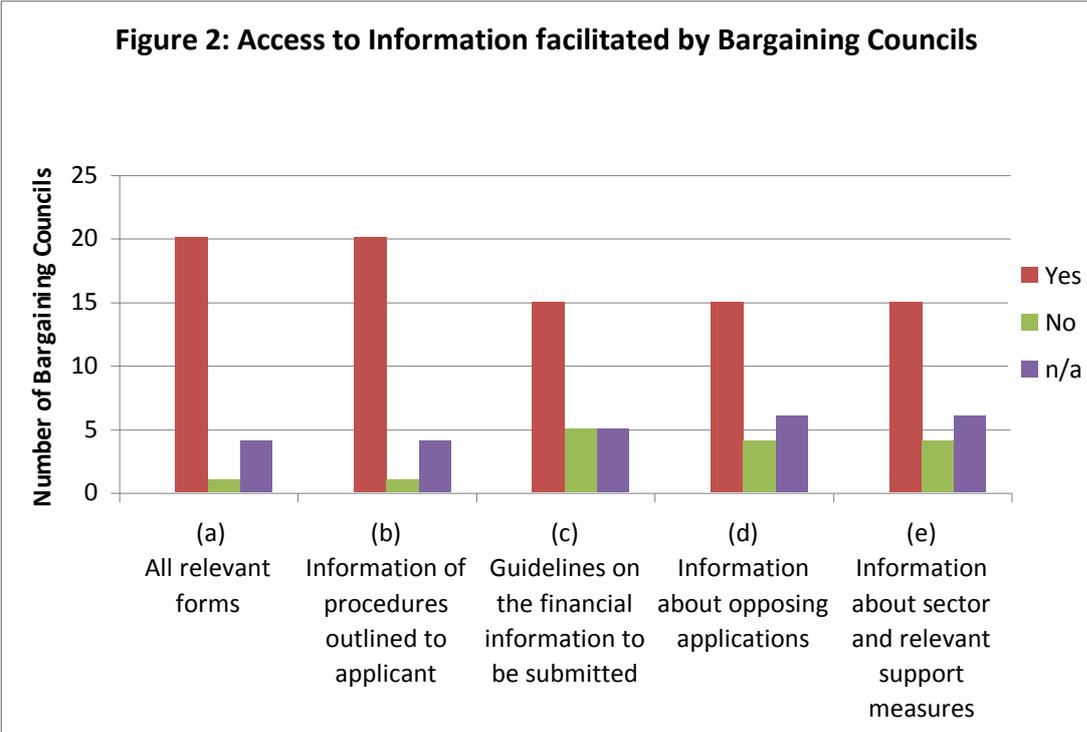
It is important to ascertain the organisational and financial dimensions of the exemption process by examining factors that inform whether procedural fairness prevailed in the process, with due consideration of enterprise size. Furthermore, the intention is to consider indicators that were used in previous studies and to develop indicators that would improve insights into issues such as the procedural fairness of exemption procedures and the unintended consequences of bargaining councils' decision-making. Here, the following are considered: access to information, cost to company of applications, application turnaround time, and the extent of consultation prior to the application and during the decision-making process with relevant affected parties.

These indicators of procedural fairness in the exemption process are to an extent measurable when assessing the responses of the 13 bargaining councils and the

83 companies drawn primarily from the Metal, Engineering and Motor industries that had applied for exemption. More than 80% (2 660 of 3 338) of exemption applications made to the 13 bargaining councils in 2013 were processed in the Metal, Engineering and Motor industries. Of the respondents of the 800 companies surveyed, 94% (78 of 83) are drawn from these two sectors. A large number of companies made multiple applications, which account for the discrepancy between the number of applications received, applicant companies, and companies surveyed.

(a) Access to bargaining council information and support

An applicant’s **access to bargaining council information and support** is critical to ensuring the effective and efficient use of a bargaining council exemption system. This involves having access to all the relevant application forms, criteria and knowledge of the procedures used, including accessing the relevant bargaining support to ensure compliance with the application criteria. The support provided by the relevant employer associations and unions in addition to that provided by bargaining councils is an important consideration. These measures are important to enhancing the capacity of the applicant to comply with criteria.



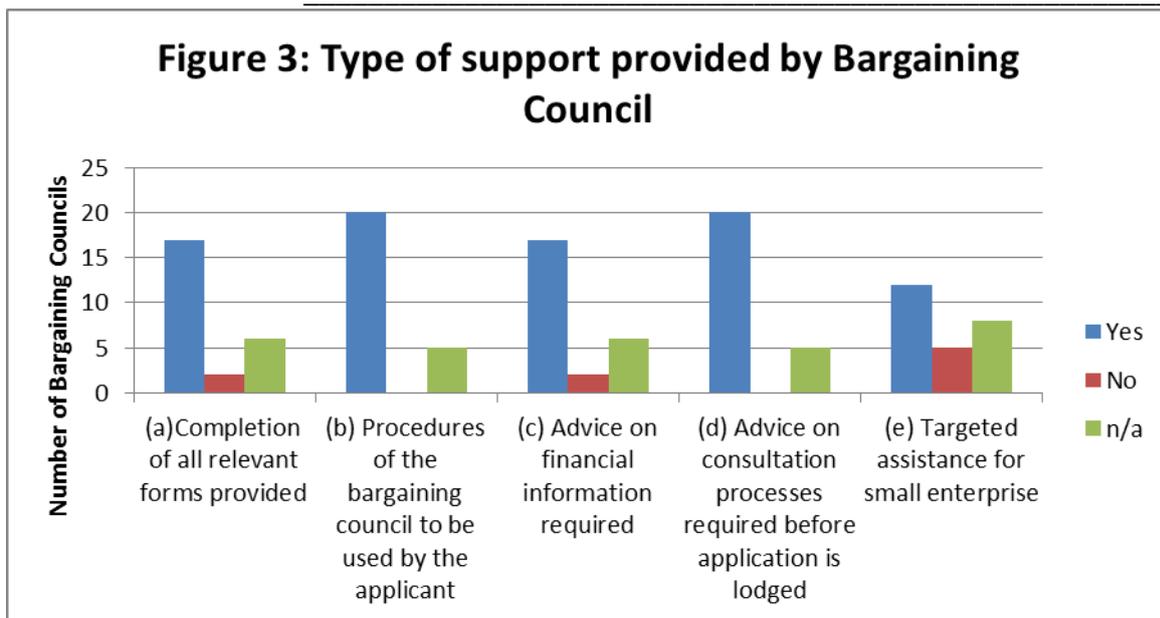
Most of the councils surveyed provide access to information about what is required to prepare an exemption application (see Figure 2). Twenty councils provide all the relevant forms and information of procedures to be followed. Only one council has confirmed that such information is not provided to applicants, while 4 councils indicated that the matter is not applicable to its operations, because they had not received enquiries to consider and process applications.

Similarly, applicants are also briefed about what is required when submitting financial information by 15 councils, while 5 do not provide such information. The remaining 5 councils did not deem it necessary to provide such services, because they had not received enquiries to consider and process applications.

Only 15 councils provided information about opposing applications, while 4 councils indicated that they did not provide such information to applicants. The remaining 6 councils did not deem it necessary to provide such services, because they had not received enquiries to consider and process applications.

Fifteen councils provided information about the support measures available for companies applying for exemption, while 4 councils did not provide such information. The remaining 6 councils did not deem it necessary to provide such services, because they had not received enquiries to consider and process applications.

The **support measures** to assist companies to complete application form an integral part of the services provided by councils. The support ranges from the completion of the application, to advice on the procedures to be followed, the financial information to be provided, the consultation processes the company should embark on with its employees, and the targeted assistance available to companies. It is evident that the majority of councils do provide various forms of support to companies making an application.



Of the 25 councils surveyed, 17 provided a service to assist companies with the completion of exemption applications, while 2 provided no support. The remaining 6 did not deem it necessary to provide such support, because they had not received enquiries to consider and process applications. Twenty councils provided support to applicants concerning the procedures to be followed when making an exemption application, while 5 councils did not, because they had not received enquiries from companies to consider and process applications.

Seventeen councils provided support services to companies on the financial information that should be provided on application, while only 2 councils did not provide such a service. Twenty councils advised applicants on how to deal with the consultation processes with its employees when preparing to apply. The remaining 5 councils did not provide support services on the financial information required or the consultation processes to be used, because they had not received enquiries to consider and process applications.

Only 12 councils provided support services to companies requiring targeted sector support from identified agencies. Five councils made no provision for such support services, while 7 had not received any enquiries to consider and process applications.

(b) Consultation

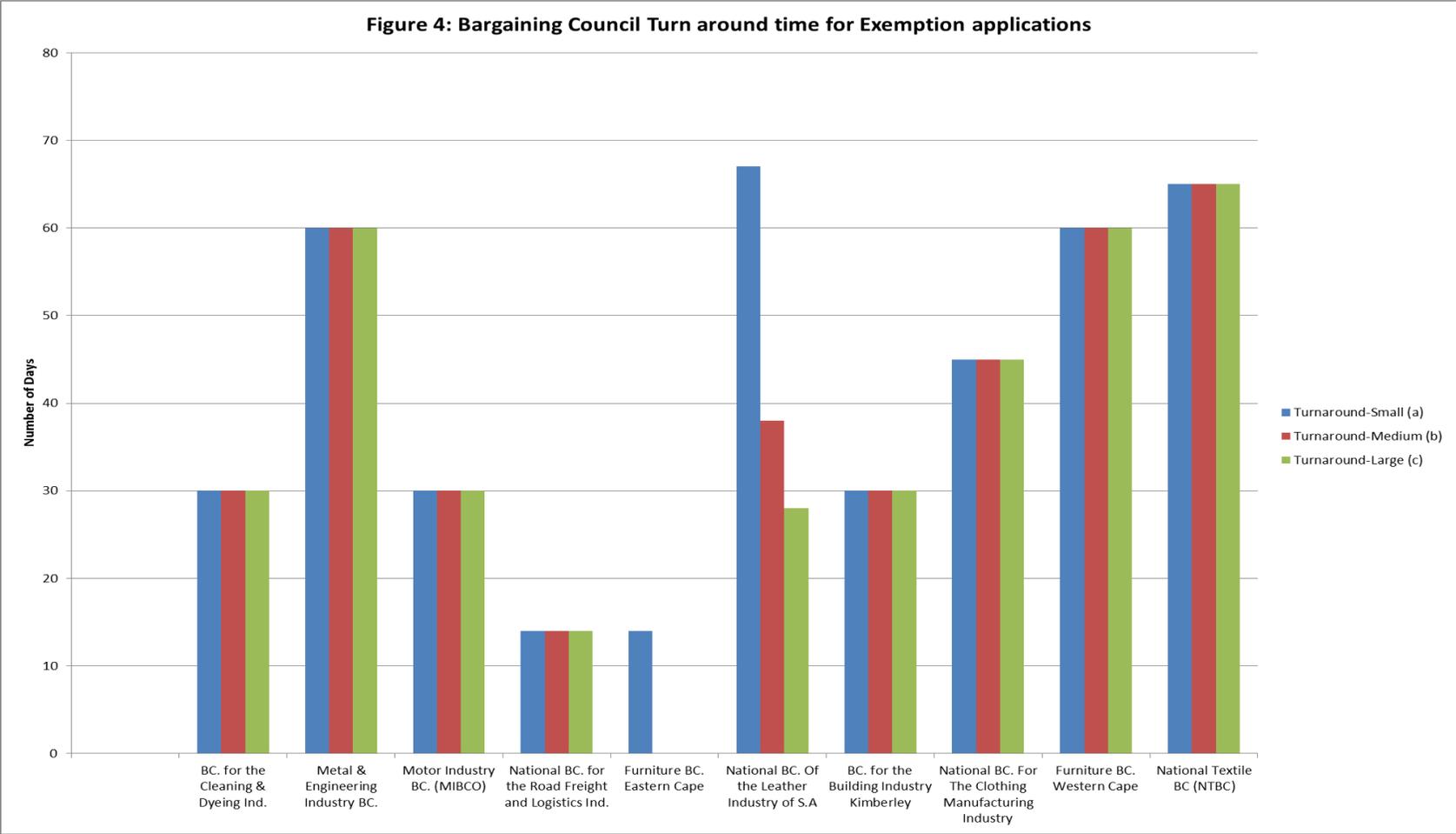
Consultation underpins the criteria used when considering applications for exemption. Here, consultation between employers and trade unions prior to the submission of applications as well as the engagement of the applicant and all affected parties, such as immediate competitors, by the bargaining council or independent exemptions body when deliberating is critical when evaluating procedural fairness.

Most bargaining council procedures distinguish between the need for companies to consult its employees and trade unions before making an application and the need for companies to participate in the deliberations concerning an application for exemption. While the former should be reflected in the applications received by all the bargaining councils, the latter essentially involved employers associations and trade unions that represent the interests of their constituents in the deliberations of a bargaining council exemptions committee.

(c) Exemption process turnaround times

An assessment of **exemption process turnaround times**, that is the total time between the submission of an application for decision-making and the outcome, were dealt with in relation to the number of days. This involves examining the **actual time** it took to consider and approve applications and issue an exemption certificate or to refuse applications. Similarly, the actual times it took for exemptions to be withdrawn or appealed are also considered.

Figure 4: Bargaining Council Turn around time for Exemption applications



Bargaining councils took between 15 to 70 days to consider and finalise exemption applications (see Figure 4). Most of the councils dealt with applications in the same time period, irrespective of enterprise size. It is only in the case of the National Bargaining Council for the Leather industry that different enterprise sizes experienced different timeframes: small firms: 68 days, medium-sized firms: 38 days, and large firms: 28 days.

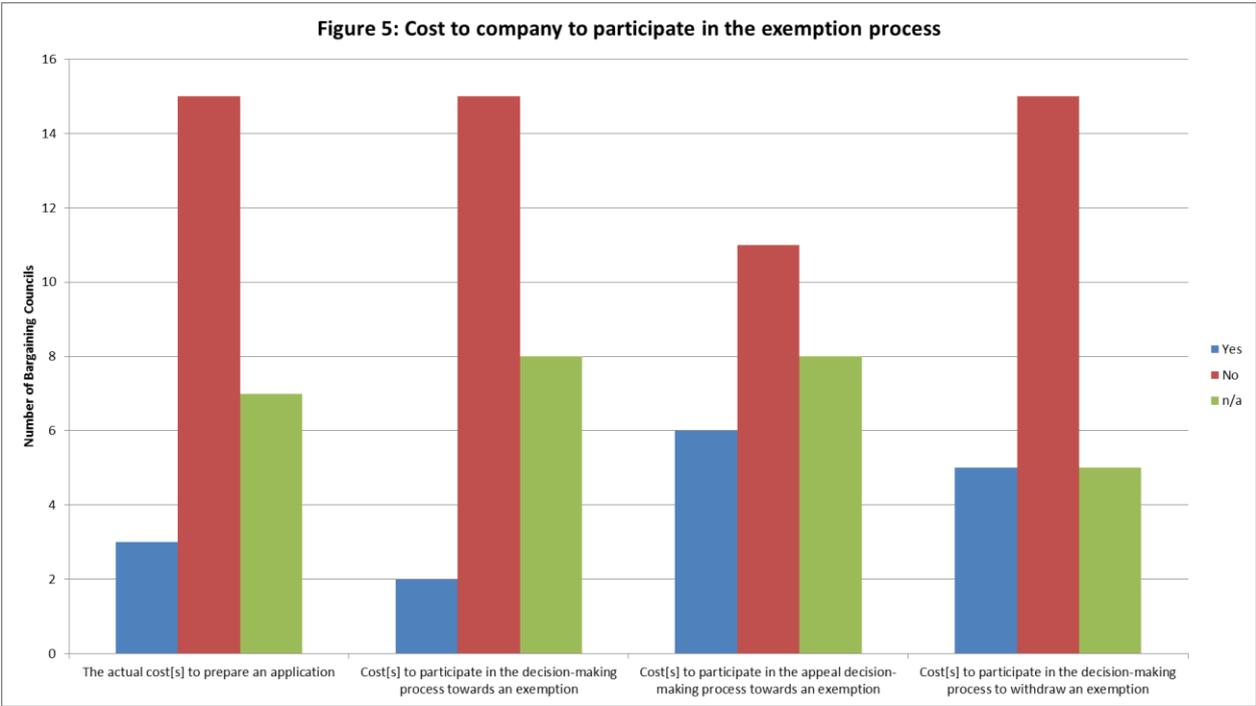
Only three bargaining councils provided information about the number of days it took to finalise an appeal process. The MEIBC took 10 days, while the Building Industry Bargaining Council 30 days to conclude an appeal process. The Leather Bargaining Council took 54 days for a large company. The low response rate of the 25 bargaining councils relates to the consideration that most exemption applications are approved, with few of the companies whose applications are refused embarking on an appeal process.

A larger number of bargaining councils (8) dealt with withdrawals of exemptions granted. The withdrawal processes took between 14 to 60 days. While the National Road Freight and Logistics Bargaining Council's process only took 14 days, the Furniture Bargaining Council (Western Cape) and Building Industry Bargaining Council (Kimberley) took 60 days. The Furniture Bargaining Council-Eastern Cape and the National Bargaining Council for the Clothing Manufacturing Industry took 30 days, and the National Textile Bargaining Council 43 days. Both the MEIBC and the Bargaining Council for Laundry, Cleaning and Dyeing Industry-KZN took 45 days. None of the companies surveyed in Metal and Engineering and Motor industries were subjected to MEIBC and MIBCO processes that led to the withdrawal of exemptions granted.

(d) Costs to company

The **costs to company**, particularly to small companies, of participating in the exemption process, has been cited as a significant prohibiting factor by commentators. It can generally be concluded that most bargaining councils do not consider costs to company of preparing to apply and to participate in the decision-

making process to be a significant factor in dissuading companies from applying for exemption.



Only 3 councils of the 25 surveyed councils consider the actual costs of preparing an exemption application and to participate in the decision-making process a significant factor. However, 15 councils did not consider the actual cost a significant factor. Provisions in the exemption procedures that entrust the employer and employee representatives to conclude matters on behalf of companies could have been a deciding factor when considering the cost of participating in the decision-making process. The remaining 7 councils had not received or considered any applications for exemptions, and thus were not in a position to comment.

Six councils considered the cost to company of participating in the appeal process, and 5 councils considered the costs of participating in the decision-making process to withdraw an exemption a significant factor, although the number of appeals and withdrawals dealt with by these councils were negligible. Eleven and 15 bargaining councils did not consider cost to company to participate in the appeal and withdrawal processes a significant factor.

The surveyed bargaining councils could only provide information in relation to cost incurred as levied by bargaining councils. They could not account for the costs companies incur as a result of their preparations and participation in the exemption processes.

It can be concluded that the critical factors – such as access to information about bargaining council exemption processes, council support to companies applying for exemption, consultation measures with employees, costs to company and turnaround time for exemption applications – do constitute important indicators of an exemption process' procedural fairness. Although reasonable exemption procedures exist to enable companies to attain a favourable response from bargaining councils, as reflected by their success rate, companies identified areas where significant improvements can be considered to ensure fairness. The procedural and substantive nature of the exemption process is a matter that varies according to sector, and should be considered by its bargaining council where required.

However, it is important to highlight the consideration that some bargaining councils have adjusted their procedures to ensure that some of the perceived impediments are removed or reduced so as to improve procedural fairness. The case of the Clothing Bargaining Council permitting non-complying parties and non-parties to apply for exemptions are one significant example. However, regional variations in the application of exemption processes are a matter of concern. Some have commented on the need to effect greater standardisation so as to ensure that the procedures are evenly applied across all the regions where bargaining councils operate. This should include the regular review policies for the procurement of service providers used by the exemption committee.

4.2. Company experiences of the exemption system: Cases in the Manufacturing sector

The Questionnaire sent to all bargaining councils in the Survey conducted by Tridevworx was complemented by a Supplementary Questionnaire. Among the items of information collected in the latter was a request for all bargaining councils that had processed exemptions in 2013 to provide Tridevworx with a comprehensive list of companies that had applied for exemption during 2013. Two bargaining councils provided Tridevworx with a comprehensive list of companies that made use of the exemption process in 2013. Corresponding closely to our typology of bargaining councils that are imputed to exhibit a high self-regulation level, these two bargaining councils that provided companies' contact details were the Metal and Engineering Industries Bargaining Council (National) and the Motor Industry Bargaining Council (National). By sheer chance, both bargaining councils were also responsible for processing the highest number of exemption applications per year over at least several years. Thus, this made it much easier to select firms from these two bargaining councils as case studies to understand recent company experiences of the exemption system in bargaining councils in South Africa.

(a) Company exemption applications: 2013

As noted, the data from the return sample to the company Questionnaire was used as a case study to analyse company-level use of the exemption system under specific bargaining councils. The data was sufficient to compare company-level use of the bargaining council exemption system under the Metal Engineering Industries Bargaining Council (National) and the Motor Industry Bargaining Council (National), the two bargaining councils selected as case studies of the experiences companies have had of the exemption system.

Table 20 tabulates the results of company applications for exemption made in 2013 to the Metal and Engineering Industries Bargaining Council (National) and the Motor Industry Bargaining Council (National). In the case of companies that

fall under the jurisdiction of the Metal and Engineering Industries Bargaining Council (National), 48 companies returned a Questionnaire.

From the 48 companies that had applied to the Metal and Engineering Industries Bargaining Council (National), 624 applications were made for exemption. The discrepancy between the higher number of applications made (625) compared to the number of companies that made these applications (24) is explained by the fact that many companies lodged multiple applications. Despite the fact that 625 applications were made by 48 companies in the sample firms, a very high proportion (96.16%) of applications made for exemption to the Metal and Engineering Industries Bargaining Council by companies in 2013 were granted. Only 2.24% of applications was refused. Roughly about 1% of applications for exemption were appealed, and no exemptions were withdrawn by the Metal and Engineering Industries Bargaining Council (National) among the sample companies.

Table 20: Consolidation of company applications made, approved, refused, appealed and withdrawn in the Metal and Engineering Industries Bargaining Council and the Motor Industry Bargaining Council: 2013

Name of Bargaining Council	Metal and Engineering Industries Bargaining Council (National)		Motor Industry Bargaining Council (National) (MIBC)	
	Number of Applications	% of Applications Made	Number of Applications	% of Applications Made
Companies Returning a Questionnaire	48		27	
Applications made, approved, refused, appealed and withdrawn				
Total Number of Applications Made	625	100	35	100
Total Number of Exemptions Granted	601	96.16	14	40
Total Number of Exemptions Refused	14	2.24	3	8.6
Total Number of Exemptions Appealed	6	0.96	0	0
Total Number of Exemptions Withdrawn	0	0	1	2.9

Among companies under the jurisdiction of the Motor Industry Bargaining Council (National), 27 returned the Questionnaire; these were responsible for 35 applications for exemption. This means that even for companies in the Motor industry who used the exemption system of the bargaining council, a number of companies made more than one application. However, among companies that returned the Questionnaire, only 40% of applications for exemption in 2013 were granted. Although the number of applications made by Motor companies (compared to Metal and Engineering companies) was smaller, the percentage of refusals for exemptions was higher, at 8.6%, but it also only amounted to three

refused applications for exemption. Similarly, of the 35 applications for exemption by companies in the case study of the Motor Industry Bargaining Council (National), one exemption that had previously been granted was withdrawn. In the aggregate, the data provided in Chapter 3 provides a more accurate global picture of the breakdown between the granting and the refusal of applications for exemption from (both party and non-party) applicant companies.

Table 21 provides a comparison between the exemption request types by companies to Metal and Engineering Industrial Bargaining Council (National) and the Motor Industry Bargaining Council (National). The exemption requests from Metal and Engineering companies were concentrated in three types. It mainly concerned first applications around exemptions relating to pension/provident funds (44.7% of applications) followed by applications classified as *Other* (39%), while a smaller proportion (16.3%) of applications by Metal and Engineering companies concerned exemption requests relating to wages.

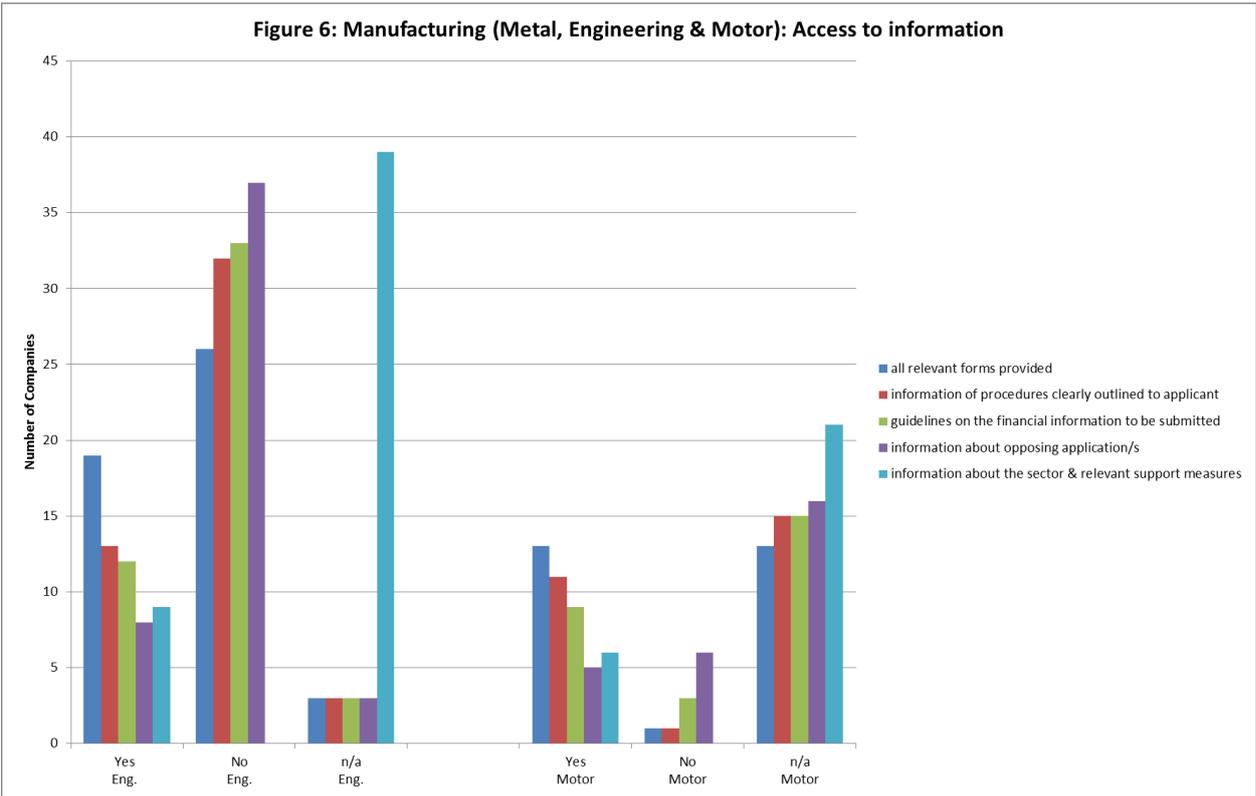
Table 21: Survey of company applications by request type

Exemption Application by Type of Request	Metal and Engineering Industries Bargaining Council (National)		Motor Industry Bargaining Council (National) (MIBC)	
Companies Returning a Questionnaire	48		27	
Companies indicating Type of Request for Exemption in 2013	24		10	
Companies not providing information of Type of Exemption in 2013	24		17	
Type of Request	Number of Applications	%	Number of Applications	%
Entire Main Agreement (a)	0	0.0	5	15.2
Wages (b)	20	16.3	2	6.1
Pension/provident funds (c)	55	44.7	17	51.5
Medical/sick fund benefits (d)	0	0.0	1	3.0
Other (e)	48	39.0	8	24.2
Total	123	100.0	33	100.0

Despite the smaller proportion of exemption applications by Motor companies, the applications for exemption to the Motor Industry Bargaining Council (National) showed a wider spread in request types. While more than half (51.5%) were concerned with exemption applications relating to pension/provident funds, a sizeable proportion were applications for exemption that concerned *Other* requests, 15.2% of applications (5 out of 33) were directed to the main agreement as a whole. Smaller proportions of exemption applications submitted by sample Motor companies were concerned with wages (6.1%) and medical/sick fund benefits (3%).

(b) Access to bargaining council information and support

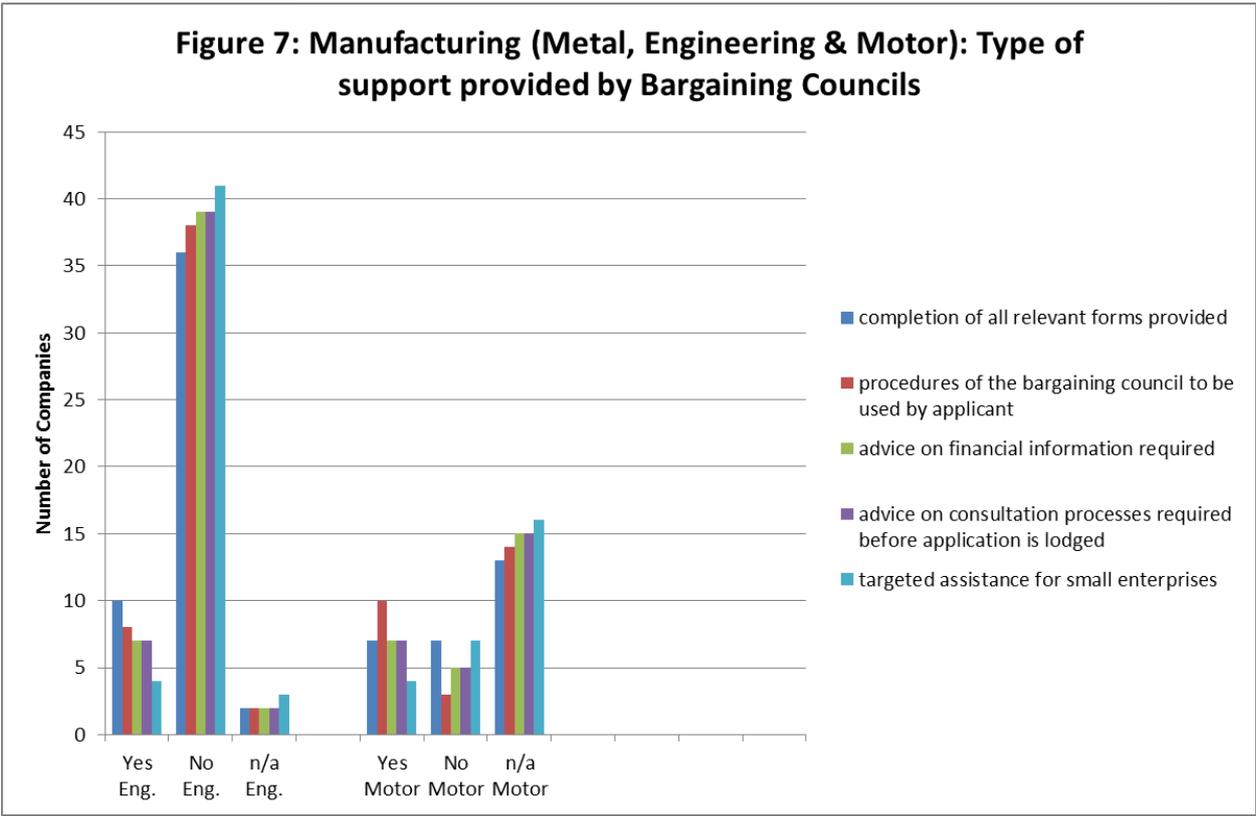
The experiences of companies applying for exemption to the Metal and Engineering Industries and Motor Industries Bargaining Councils provides a more nuanced picture when considering access to information. Less than 50% of respondents in the Metal and Engineering industries indicated that they were provided with access to the relevant information (see Figure 6). Of 49 companies, 19 were provided with all the relevant forms, while 26 companies were not provided with such information. A similar trend – albeit less pronounced – could be ascertained for the Motor industry, where 13 out of 29 companies received access to all the relevant forms, while only one company did not receive all the relevant forms.



Information of the procedures to be used was outlined only to 13 of the 49 Metal and Engineering companies, while guidelines on the financial information to be submitted were provided for 12 companies. Thirty-three and 32 companies received no such information. A different trend could be observed in the Motor industry, where 11 and 9 companies received the relevant information, while only 1 and 3 did not received such guidance.

Eight Metal and Engineering and 5 Motor companies received information about opposing applications where this was deemed relevant. Most of the Metal and Engineering (39) and Motor (21) companies did not receive information about the sector and available support measures. Only 9 and 6 companies respectively received such information.

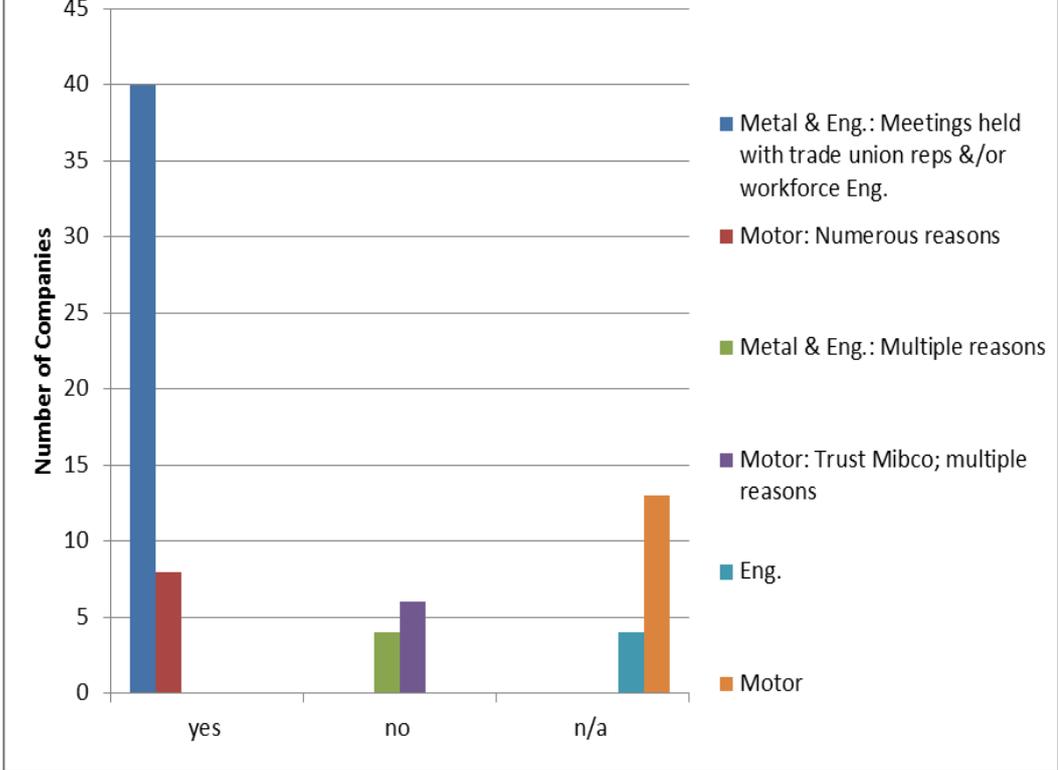
The survey of Manufacturing companies of the Metal and Engineering and Motor industries provide a different picture of how the support services were used by various companies (see Figure 7). Ten or less of the companies surveyed in the Metal and Engineering and Motor industries that applied for exemption received support from their bargaining council. This constitutes less than 50% of Metal and Engineering companies but more than 50% of Motor companies that responded positively. Thirty-six Metal and Engineering companies received no support from the bargaining council when completing the relevant forms, 38 companies received no explanation of the procedures to be used, while 39 companies were not advised on the required financial information. Thirty-nine companies did not receive advice on the consultation processes required before making an application, while 41 companies did not use the available targeted sector support for small enterprises.



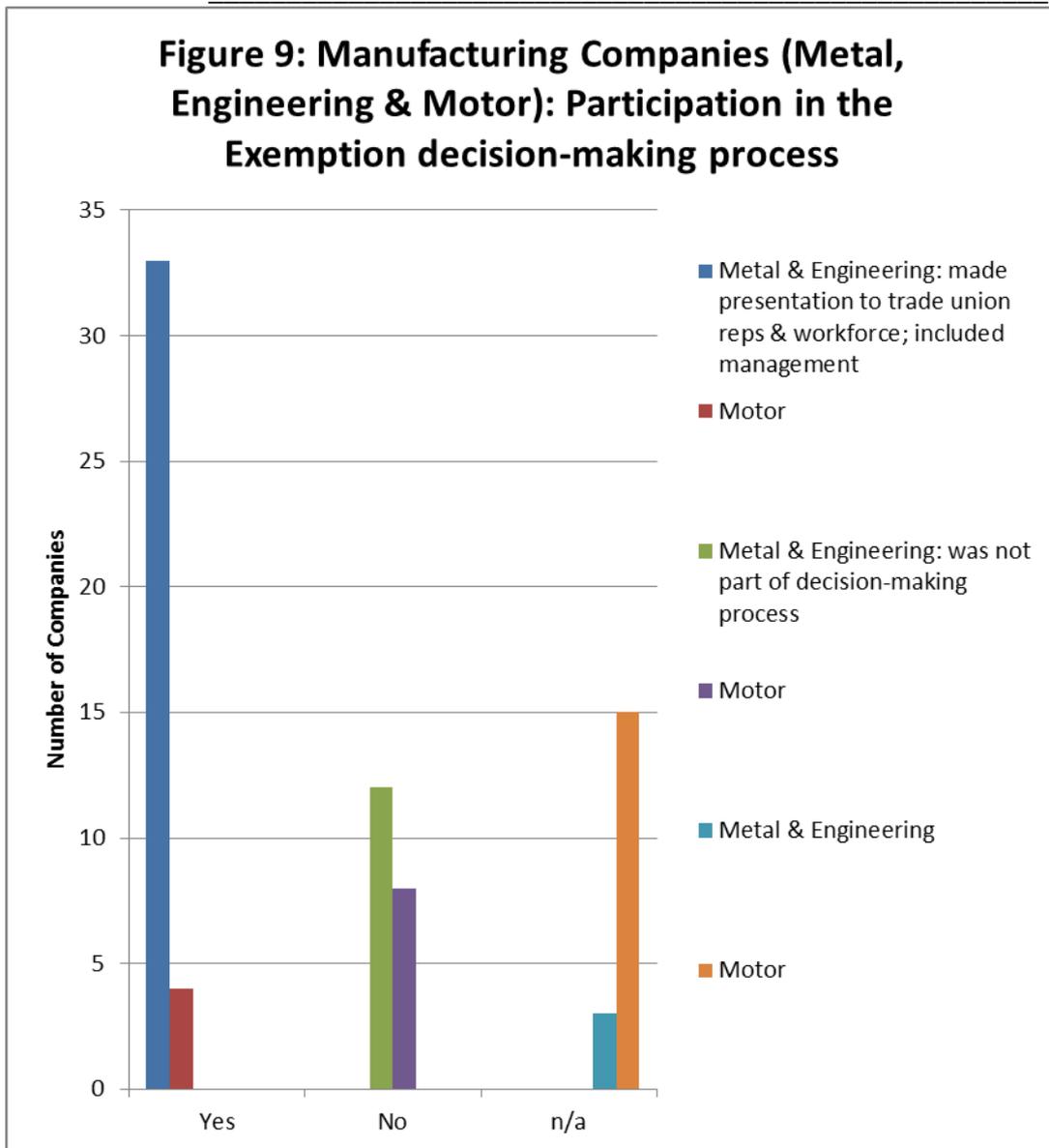
(c) Consultation

Of the 49 companies surveyed in the Metal and engineering industries, 40 consulted their employees or their representatives before lodging an application. Only with 4 was there no consultation. However, only 7 Motor companies embarked on the same exercise, as opposed to 6 companies as reflected in Figure 8.

Figure 8: Manufacturing Companies (Metal, Engineering & Motor): Consultation before an application was lodged

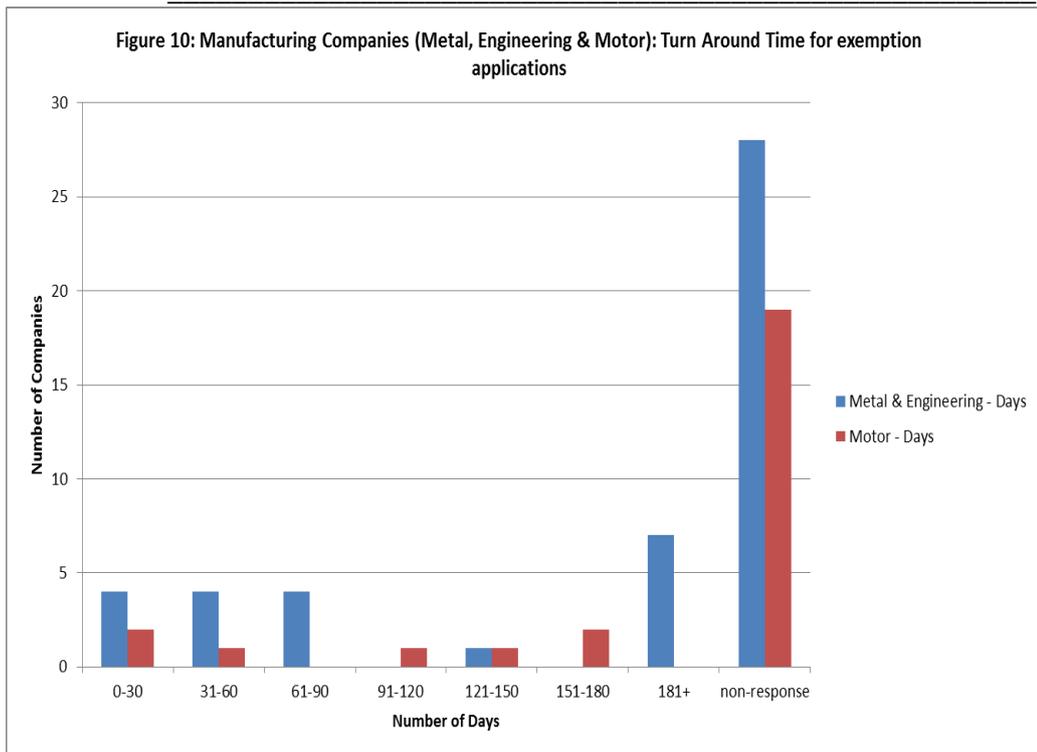


Thirty-three Metal and Engineering companies participated in the decision-making process by making representations to employees, trade unions and employers associations (see Figure 9).

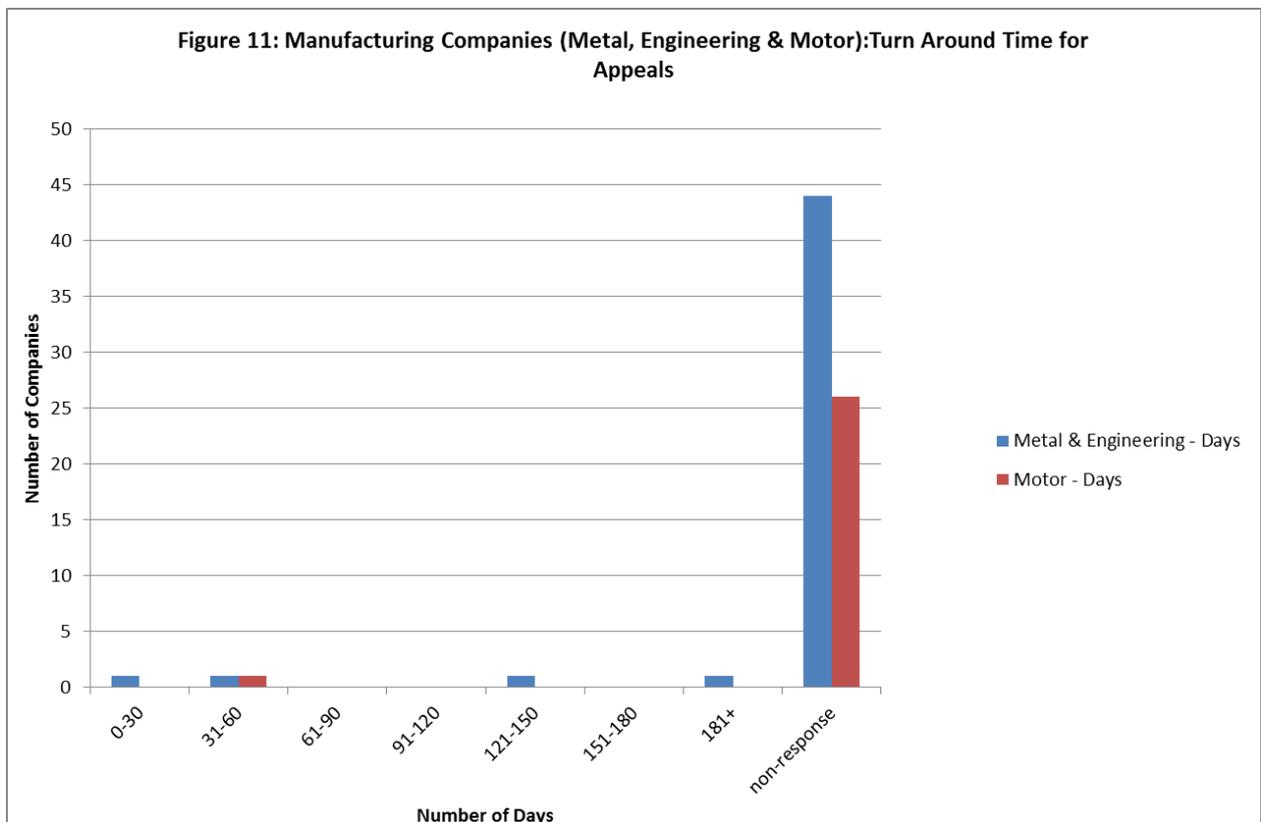


(d) Exemption process turnaround times

The MEIBC generally took 60 days while MIBCO took 30 days to finalise exemption applications. However, some companies in the Metal and Engineering and Motor industries cited experiencing various timeframes (see Figure 10). Only 8 companies cited an actual turnaround time within a 60-day period in the Metal and Engineering industry, while 2 companies experienced a turnaround time of within 30 days. Twelve companies in Metal and Engineering experienced a turnaround time of more than 60 days, while 29 companies did not respond to the question. Seven Motor companies also experienced an actual turnaround time of more than 30 days, while 19 companies did not respond to the question.

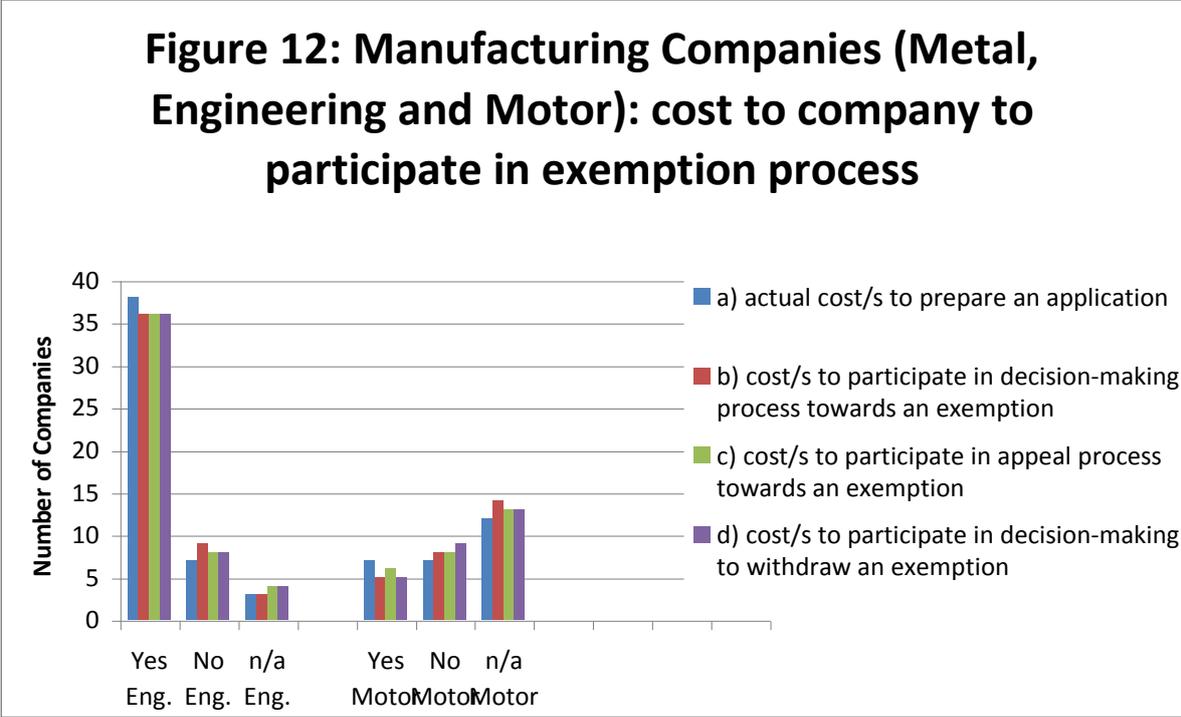


This trend is reinforced by the consideration that only 5 companies experienced an appeal process and provided actual turnaround time experiences (see Figure 11). Four of these companies used the MEIBC appeal processes where, with the exception of 1 company, it took more than 30 days.

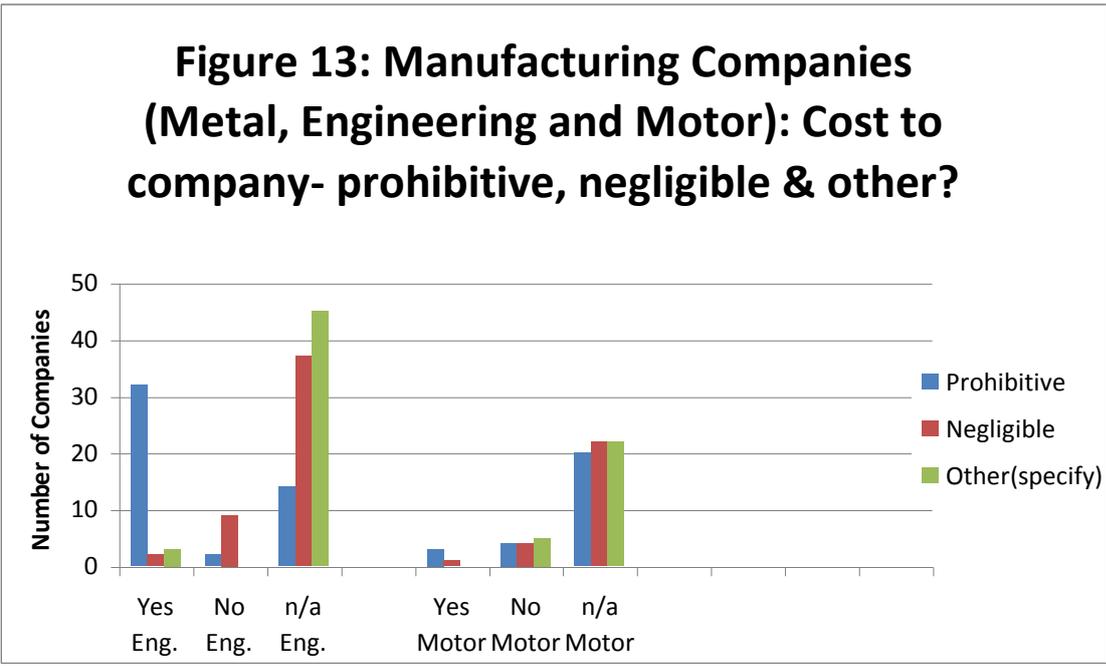


(e) Cost to company

In this context, the responses of surveyed companies provides a more nuanced perspective (see Figure 12). More than 35 of the 49 Metal and Engineering respondents identified cost to company as significant. Thirty-eight companies considered the actual cost to prepare an application to be significant, while 36 also cited participation in the decision-making process as well as appeal and withdrawal processes as important considerations. Less than 10 companies did not consider the cost to prepare an application (7), cost to participate in the decision-making processes (9), appeal processes (8) and withdrawal processes (8) as significant.



However, this trend is not evident in the Motor industry, where less than 10 companies considered the preparation of an application (7), participation in the decision-making processes (5), appeal processes (6) and withdrawal processes (5) as significant. Slightly more companies did not consider cost to company for preparing an application (7), participation in the decision-making processes (8), appeal processes (8) and withdrawal processes (9) as significant factors. The remainder of the 29 companies did not respond to the question.



Thirty-two Metal and Engineering companies out of 49 indicated that the cost to company of the exemption process is prohibitive, while only 2 companies disagreed, with 3 companies citing other reasons. Two companies considered the cost to company of the exemption process as negligible, with 9 companies in disagreement. However, a different trend can be observed in the Motor industry, where only 3 companies out of 29 considered the cost to company to be prohibitive, while 4 did not agree.

4.3. Stakeholder initiatives to change the exemption system

While all the employer associations and trade unions favour collective bargaining and the development and use of the bargaining council exemption system in particular, their initiatives for change covered the entire spectrum of negotiating amicable solutions to litigation. Despite the high rate of success attained by companies applying for exemption, a number of companies appealed against unsuccessful applications and withdrawals. Some companies whose application has been unsuccessful even applied to the relevant labour court for relief. In other instances, trade unions and employer associations that are party to bargaining council agreements and even bargaining councils themselves made application to review decisions of the relevant exemption committee. These experiences have recently led to the revision of the legislative framework, namely the LRA which

governs the exemption provisions of bargaining councils. Revisions are intended to improve procedural fairness by determining the turn-around times of applications and appeals and to enhance the independence of the exemption committee that will consider applications and appeals particularly from non-party applicants. Parties to bargaining councils have, nevertheless, under these circumstances sought to change the exemption provisions of bargaining councils.

(a) Adjusting the exemption system to changing circumstances

Bargaining councils have historically changed the exemption system consonant with the changing provisions of the LRA or the negotiated provisions of the main collective agreement or/and constitution. The emphasis was on improving procedural fairness of the process, particularly with regard to applications made by non-party companies. The expressed intent was to encourage non-party companies to use the exemption procedures especially where the Minister of Labour has extended the main collective agreement to those companies not party to the agreement.

Bargaining councils that are engaged with a highly intense level of self-regulation have historically altered the exemption system by introducing blanket exemption arrangements. Blanket exemption arrangements take place in addition to the provisions that allow companies to make individual application for exemptions. Historically, a number of companies in various industries were subjected to employment conditions which took account of geographical variations. The establishment of differential rates for designated geographical areas formed an integral part of the main collective agreements of bargaining councils such as the MEIBC, MIBCO and the BCNCM.

The ascendancy of economic policies that focusses on economic growth and the high failure rates of Small Medium and Micro Enterprises(SMME) has led to an intense debate about whether the South African labour market is sufficiently flexible to accommodate SMMEs. Some of the areas identified by bargaining councils involved the introduction of blanket exemption arrangements for enterprises of a particular size or maturity.

The Clothing Bargaining Council has provisions that permit companies of a particular size –, those that employ five or less scheduled workers – to be exempt from the main collective agreement . These companies can be classified as micro-enterprises in terms of the bargaining council definition of employee- class size, whereas small enterprises are defined as employing up to 50 and, medium sized enterprises between 51 and 200 scheduled employees (see Table 3). It developed a tracking system to ensure the registration of all companies to facilitate compliance with these arrangements by requiring them to register and inform the bargaining council on an annual basis of its employee size. It also encouraged non-compliant companies to adhere to a phased-in approach towards compliance.

The MEIBC made provision for the blanket exemption of new entrants from the main collective agreement for a specified period, in addition to geographical variations in employment conditions. The employer associations involved in the MEIBC have recently tabled consolidated proposals redefining the definition of a small enterprise and the requirement for a blanket exemption from the main collective agreement for enterprises employing less than 50 scheduled workers. Compliance with the main collective agreement will be phased in over a period of 5 years, once the number of employees in an enterprise increases above 50. The intention is to ‘stimulate job creation’.

(b) Attaining exemption through litigation

Individual companies or parties choose to engage in litigation usually after an unsuccessful application for an exemption or the withdrawal of an exemption. , Some do so with the assistance of employer associations and trade unions. It should be emphasized that these cases rose from the exemption process and are distinct from those where companies have allegedly not complied with the implementation of the main collective agreement.

Trafford Trading (Pty) Ltd vs National Bargaining Council for the Leather Industry of South Africa & Exemptions Appeal Committee of the National Bargaining Council for the Leather Industry of South Africa and Others (DA11/09) and SUBARU Pretoria (Pty) Ltd vs the Motor Industry Bargaining Council (MIBCO),

Mr. Meyer NO and MIBCO's Exemptions Board and MIBCO's Appeals Board (JR 2068/2010) reflect instances of recourse to litigation in which the established bargaining council processes have been exhausted by the applicant.

Some identifiable cases reflects attempts by Bargaining Councils and parties challenging decisions of the independent Exemption Committee to award particular exemptions. This evident in the cases, the National Bargaining Council for the Clothing Manufacturing Industry (Cape) & others v Zietsman NO & others and SATAWU v National Bargaining Council for the Road Freight Industry and another (2011) 22 SALLR 1 (BC).

The Valuline cc, Afrika HK Manufacturing (Pty) Ltd, Satcotrade (Pty) Ltd, JCR Clothing cc, Gold Shu-Lin Clothing cc , United Clothing and Textile Association vs the Minister Of Labour, the National Bargaining Council for the Clothing Manufacturing Industry, South African Clothing and Textile Workers' Union and others involved some employers in Newcastle, KZN challenging the extension of the collective bargaining agreement to non-parties. The Free Market Foundation vs Minister of Labour and Others has recently challenged right of the Minister of Labour to extend the main collective agreement to non-parties by questioning the constitutionality of section 32 of the LRA.

A common thread is the definition of enterprise size that informs current deliberations about the determination of blanket exemptions, remuneration and conditions of employment in specific sectors of the national economy. What the results of research clearly demonstrate is that the regulation of labour market flexibility is a contested terrain and contains a number of critical challenges. It is evident that the regulatory framework provided by the LRA accommodates critical stakeholders such as organised business and labour to regulate labour market arrangements on a sectoral level. The boundaries for these sectoral demarcations are often defined by the jurisdiction of the bargaining council or any other forum, albeit statutory or non-statutory. Parties and non-parties to main collective agreements do use and contest the fairness of procedures to ensure effective self-regulation.

A number of critical issues to remove barriers and to improve the exemption system to companies making use of bargaining councils, however, remain to be addressed. These critical issues encompass:

- **Access to information and support:** This involves the provision of information and support to companies that make use of the bargaining council exemption systems from bargaining councils themselves, as well as employer associations and trade unions. It should form part of the process of communicating to participants the role of bargaining councils in the labour market of a particular sector.
- **Enterprise size** with reference to employee class size: The involvement of enterprises varying in size in the determination of representation and decision-making, including the granting of individual company as well as blanket exemptions hinges on an agreed definition of enterprise size. Although definitions are currently sector specific and dominated by employee class size, additional criteria such as annual turnover can enrich deliberations.
- **Participation:** Consultation with employees prior to the lodging of an exemption application and particularly the opportunity to make representation to the respective exemption committee could enhance the fairness of application procedures.
- **Turnaround time:** The requirement that exemption applications be processed within a 30 day period, requires bargaining councils to make the necessary adjustments to ensure compliance.
- **Cost to company:** Although most bargaining councils do not levy charges to companies making applications for exemption, the prevailing diversity in the costs incurred by companies needs to be reduced as illustrated by the experiences of MEIBC and MIBCO companies
- **Sector support:** It is imperative that information about available support instruments for sectors be incorporated into deliberations about the exemption system of bargaining councils.

These issues can, however, only be addressed at a sectoral level where labour market arrangements are determined by the operations of bargaining councils.

5

IMPROVING OUTCOMES OF EXEMPTION SYSTEMS

In 2013, councils faced significant challenges to execute their mandates, to ensure procedural fairness, and to develop their capacities to deal with companies in distress. It is evident from the previous chapter that the overwhelming majority of the exemptions applications made between 2000 and 2013 were approved. However, this does not detract from considerations that the systems used by councils have flaws. It is thus important to assess the impacts of the labour market regulatory environment on such self-regulatory systems by ascertaining the quality of available information and analysis of the operations and effectiveness of bargaining council exemption system, the reporting protocols within and between bargaining councils, the relevant sectors, and the Department of Labour and stakeholders.

Information about the factors such as access to information about the exemption system, the support provided by councils, employer associations and trade unions in the implementation of the systems, and whether procedural fairness prevailed when the applications were processed informed the exemption systems' operational dimensions. Such information also provided an assessment of the impacts of the regulatory provisions, as informed by the rules of the bargaining and statutory councils and the LRA. Information to inform analysis of the costs and benefits of self-regulation as well as the effects of the overall regulatory framework provided by the LRA also rest on the reporting protocols in bargaining and statutory councils, its parties and non-parties, and between these councils and the Department of Labour.

However, the perspectives and experiences of party and non-party stakeholders such as employer associations and trade unions, their insights into procedural fairness, and reporting protocols and strategies to deal with the unintended economic, organisational and policy consequences of the bargaining council exemption system are critical to sustaining a self-regulatory system of collective bargaining and the development of remedial measures. While the Constitution confers occupational and corporate rights on enterprises, the modalities of the deliberations of enterprises and its associations and trade unions are critical to the realisation of these rights in the various sectors.

5.1. Key organisational, financial and economic challenges of bargaining councils

Most councils listed organisational and financial challenges as most significant when seeking to regulate remuneration and employment conditions in their respective sectors (see Table 24). These ranged from issues such as the registration, organisation and representativeness of parties, financial difficulties to councils problems being experienced with the implementation of agreements reached among the councils. The latter involved councils' capacity to regulate the establishment of common conditions of employment and remuneration in various sectors. It is also apparent that bargaining councils' capacities to facilitate relationships between their labour market responsibilities and the development and growth of respective sectors were affected. However, it is evident that not all councils were afflicted with the same problems that gave rise to these challenges that impacted on their abilities to develop and implement exemption provisions.

Table 22: Three critical challenges bargaining councils dealt with in 2013			
Issue	Challenge 1	Challenge 2	Challenge 2
Organisational and financial dimensions			
Regulating the industry		1	
Representation of parties	2		
Relationship between employer parties and trade union	1		
Trade union rivalry		1	
Resistance to register with the bargaining council		1	
Explaining bargaining councils to employees			1
Explaining bargaining councils to the new employers		1	
Prolonged wage negotiations		1	
Implementation of a new bargaining model		1	
Enforcement of bargaining council agreements; non-compliance issues	2	3	1
Travelling distance related to the scope of councils	1		
Financial difficulties	1		1
Non-payment of the monthly council levies, which results in high arrears and penalties	3	1	1
No payments are received in respect of employee funds and non-payment is not enforceable		1	1
Privateers misrepresenting funds			1
Receiving incomplete exemption applications	1		
No exemption applications received	2	1	1
High Court litigation involving the Free Market Foundation	1		1
Economic dimensions			
Rising cost of manufacturing: Cost of electricity, the weak rand, and increased cost of raw materials		1	
Global competitiveness; local replacement with imports	1		
Volatile exchange rate, which makes it difficult to secure long-term supply of goods			1
Promoting industry development			1
Retrenchment of employees		1	
Business rescue plans		1	
Business closure	2		
Formation of co-operatives		1	
Total number of responses by bargaining councils	17	15	12

(a) Organisational, financial and regulatory challenges

The availability of information between and among stakeholders about the efficacy of a sector's collective bargaining system are critical to the prevalence of transparency, accountability and good governance. While the employer and trade union parties to bargaining councils have internal processes to facilitate mandating and negotiating to arrive at main collective agreements, it is imperative that all the stakeholders in an industry be able to access information about its deliberations to facilitate transparency, accountability and good governance. This involves information about the powers and functions of councils, stakeholder interests and mandates, and decisions made when engaging in the development of the rules and agreements that underpin the functioning of various bargaining and statutory councils.

Although **a council's scope** is defined in its constitution or/and main collective agreement, it is difficult to ascertain **a council's coverage** concerning the number of employers and employees and enterprise size by using the information provided by councils and Stats SA (as noted in Chapter 2). It is also important to ascertain the extent to which a council is able to accommodate enterprises of various sizes, based on the profiles of associations and trade unions that are parties to a council. Nonetheless, it is evident that the overwhelming majority of enterprises – whether organised by these associations or non-parties – can be considered to be small or medium-sized based on employee class size. How enterprise size is defined needs to be revisited, to ensure consistent application throughout sectors so as to ensure effective representation and participation in decision-making processes.

While processes to determine **representation of parties on councils** have been embraced by the Department of Labour and councils, the nature of relationships between employer associations and trade unions, and rivalries within these associations, have impacted on the functioning of some councils. This has affected the successful conclusion of agreements and their implementation, and has also impaired processes to convince both employers and employees of the services provided by councils.

Negotiating and enforcing agreements have been cited as significant problems by some bargaining councils. Some commentators have cited the increased prevalence of disputes and industrial action as indicators of a labour market that is in turmoil. Bargaining councils have devoted considerable resources by employing compliance officers to ensure that party and non-party enterprises comply with a main agreement and to advise enterprises of what remedial options exist.

Councils cited financial difficulties as a factor that impaired their functioning. Levies paid to councils by companies are critical to the operational activities central to the execution of their mandate. The non-payment of such monthly council levies by certain parties have resulted in companies being in arrears and having to pay penalties.

Bargaining and statutory councils were important facilitators of social security for employees in respective sectors. The organisation of employee benefits such as pensions and provident funds, sick funds and medical aids comprise a pivotal constitutional mandate of these councils, yet has received little comment. Some councils had the problem where no payments are received in respect of employee benefit funds such as pensions/provident funds and medical aid/sick pay and where non-payment is not enforceable through the use of appropriate sanctions. Furthermore, “privateers” misrepresent these benefit funds.

Councils’ exemption provisions and systems facilitated variations from a main collective agreement, including employee benefits. However, what is central is a bargaining council’s constitutional powers and capacity to provide easily accessible application procedures and the finalising of applications within what is considered a reasonable period. The effectiveness of a bargaining council in relation to its exemption systems were ascertained by examining issues such as the marketing of and access to services provide by a bargaining council in a sector, the prevalence of procedural fairness of the exemption application process, and the support provided to ensure procedural fairness for exemption applicants. An assessment of the procedural fairness and operational effectiveness of bargaining councils’ exemption mechanisms, including

considering whether the decision-making process used and criteria applied by a bargaining council was fair and proper were dealt with in Chapter 4.

Some councils have indicated that a significant challenge is the receipt of no or incomplete applications for exemption from a main collective agreement. The former is partly due to some councils being unable to conclude an agreement and/or extend it to non-parties, for various reasons, including insufficient representation and prolonged negotiation processes that delay an agreement's implementation. The receipt of incomplete applications also reflect that applicants might not have understood the procedures owing to a lack of access to the relevant information and insufficient support to complete an application.

The application of the exemption provisions are not always even throughout the regions in the case where the exemption provisions are processed at a regional level of the larger national councils. Similar cases are approved in some regions, but refused in others. This can be ascribed to differing interpretation and capacities among the parties involved in the decision-making processes. It has also been observed that some regions also contracted service providers to advise them about the financial nature of an application without having the required qualifications to ensure independence and requisite professionalism – a situation that was perpetuated through the engagement of the same service providers for long periods.

Furthermore, consolidated information about exemption provisions of some councils and periodic updates of the number and types of applications processed is difficult to obtain. The information is in the possession of the councils and the Registrar of Labour Relations, and not in the public domain. Hence it is not effectively used as an indicator of labour market flexibility or an early warning system about the state of industries or sectors to inform the regulatory impact.

Litigation by institutions such as the Free Market Foundation have questioned the right of the Minister of Labour to extend agreements to non-parties in a particular sector have also had significant implications on the application of exemption provisions developed to facilitate labour market flexibility.

(b) Economic challenges

Some councils indicated that economic issues such as the rising cost of manufacturing, namely the cost of electricity, the weak rand, and increased cost of raw materials, together with global competitiveness that have led to the replacement of local goods with imports have contributed to retrenchments of employees and closures of businesses. The development of business rescue plans and industry promotion and support measures have become a significant consideration that has impacted on councils' core business. A central consideration involved the extent to which the current system of forging agreements, and particularly the rate at which councils receive applications for exemptions, could serve as an early warning system of an evolving crisis.

It also raised the question of the extent to which councils could perform vital economic support functions to promote and develop a sector, with reference to IPAP I and II, which facilitated the implementation of the 2007 National Industrial Policy Framework (NIPF). While sector programmes such as the DTI's Motor Industry Development Programme (MIDP), which became the Automotive Production Development Programme (APDP) and Clothing Textile Competitive Programme (CTCP) and Production Incentives (PI), as facilitated by IDC, were regarded as critical support instruments, they were essentially forged outside the confines of bargaining councils, despite involving all the relevant parties involved in bargaining councils. This poses the critical question as to whether bargaining councils, and particularly exemption systems, can serve not only as an early warning system of the state of a sector but also as a platform for deliberating and facilitating sector policies – an issue that has certainly been pursued in larger councils such as the MEIBC.

The afore-mentioned challenges have affected bargaining and statutory councils, depending on self-regulation levels. Most councils were occupied with the discharge of their constitutional mandates, with varying capacities. While councils with high self-regulation levels were able to effectively conclude agreements, facilitate their enforcement, and experience many exemption applications, where appropriate, the same cannot be said of councils with poor representation and no main agreement. The latter have been occupied with improving their

representation level, developing organisational capacity to discharge their mandates of concluding agreements, developing a national presence, extending agreements to non-parties, and resolving disputes. Newly established councils were in the process of developing protocols in areas such as representation, concluding main agreements, and ensuring compliance to facilitate extensive self-regulation. Only councils with high self-regulation levels have ventured into areas of the relationships between their activities in the labour market and more comprehensive issues, such as a sector's economic plight in the face of global competition, albeit afflicted with intense litigation.

5.2 Reporting protocols: The Department of Labour and bargaining councils

The reporting protocol between bargaining councils and the Registrar of Labour Relations is detailed in Section 54 of the LRA. Here, the Registrar and his or her deputies can be officials appointed by the Minister with the requisite mandate. Bargaining councils are required to annually provide the Registrar with information on matters such as audited financial statements, agreements, representiveness of employer associations and labour unions in their sector and small enterprise data – including “the number of applications for exemptions received from small enterprises and the number of applications that were granted and the number rejected”, as detailed in Section 54(2)(f)(iv). Non-compliance can affect a bargaining council's registration.

While it is evident that the Registrar's functions are critical to the relationships between the Department and bargaining councils, it is the use of the information by the department and Minister to perform duties and responsibilities that are not effectively captured in the literature. Here we are reflecting on information that informs deliberations about the extension of agreements, relationships between bargaining councils and small enterprises and the granting of exemptions.

The relationship is spelt out in the LRA, which requires bargaining councils to annually provide information on a number of factors. These factors are spelt out in Section 54(2)(f) of the LRA and are captured in the LRA Form 3.20 B, as follows:

-
- The number of enterprises and the total number of employees employed.
 - Information on small enterprises within the bargaining council's scope.
 - The number of applications for exemption made to the council. This information needs to be provided concerning the number of parties and non-parties and the size of the enterprises as well as the number of employees.
 - The representation of small enterprises on bargaining councils. This involves the number of seats allocated to small enterprises and the total number of seats allocated to small enterprises on the council, the exemption boards and the boards of the council's funds.

While we did not have sight of the quality of information that bargaining councils provided to the Registrar of Labour Relations since the system was instituted, we were informed that the process of obtaining information from bargaining councils are fraught with difficulties. Our experience to obtain similar information from bargaining councils using a customised electronic Questionnaire about the exemptions process re-emphasised the need to improve existing reporting protocols to ensure that the information that is obtained is accurate and relevant.

Bargaining council General Secretaries also expressed the need to improve the current system of reporting to the Registrar of Labour Relations, to improve the quality of labour market intelligence. Improving reporting protocols can facilitate more effective and efficient relationships between the Department of Labour and bargaining councils and forums, organised business, organised labour, other agencies such as the CCMA, the DTI and other interested and affected parties. It can also serve as an early warning system by generating information of industry-wide circumstances. While online reporting can facilitate the implementation of a more efficient system, the reporting format and its regularity can be improved by developing existing indicators and introducing new ones.

(a) Enterprise size

Bargaining councils tend to use various definitions of enterprise size, essentially based on the number of employees employed by enterprises. The Department has requested that bargaining councils report with specific reference to its definition of a small enterprise and the grouping of enterprises into six categories – 0 to 9, 10 to 49, 50 to 99, 100, 101 to 500 and > 500 – when considering applications for exemptions.

It is evident that the universal categories that are being used consist of whether an enterprise is small, medium-sized or large based on the number of employees. There is an emphasis on ascertaining the number of small enterprises in a bargaining council's scope, the number covered by membership of employer or/and trade union parties, and the number covered by the extension of an agreement in terms of the council's own definition.

While an attempt has been made to accommodate all councils using the range of categories, no reference has been made to the existence and use of definitions related to micro-enterprises. The definitions being used also do not include the use of variables such as total annual turnover for a specific SIC sector³² and VAT registration to define the enterprise size. There is therefore no consistency, with different definitions of enterprise size used by different departments, spheres of government and public entities such as the DTI and Stats SA.

These inconsistencies in definitions has significant implications for the assessment and implementation of regulatory measures that impact on various sectors as well as on monitoring and evaluation. These inconsistencies impair the assessment of the nature of representation and the efficacy of exemption systems of a council. These inconsistencies do not effectively inform deliberations about blanket exemptions in a sector and how individual company applications should be dealt with. They also significantly impoverish the debate about the types and qualities of measures required to support economic development based on enterprise size. It is therefore important that the Department of Labour and its stakeholders participate in the current processes involving the DTI, Stats

³² Republic of South Africa: Employment Equity Act, No. 55. of 1998

SA, SARS, and other government departments and agencies to review definitions of enterprise size that are currently under way and incorporate the results into deliberations about the revision of exemption provisions and systems and reporting protocols. It could also be useful to reflect on the manner in which the LRA frames enterprise sizes to be used in the discharge of certain regulatory responsibilities.

(b) Representation and decision-making

The information generated by the reporting format is needed to ascertain the extent to which enterprise sizes are considered when assessing representation on bargaining and statutory councils and associated boards and the extent to which this informs decision-making. A significant factor that should inform representation and involvement in decision-making processes are a sector's profile and existing forms of representation of employer associations and trade unions. Each sector has its particular characteristics that inform how it considers enterprise size and determines representation.

The afore-mentioned reflections on the paucity of sectoral indicators such as enterprise size and employment trends does not currently lend to informed deliberation. This is a situation that will not only be resolved by reporting protocols within and between bargaining councils and the Department of Labour; it requires collaboration with institutions such as Stats SA that engage in different methods of collecting credible data. Such data will be significant in shaping deliberations about enterprise size and sectoral trends and analysis of associational life and representation of employer and employee parties. It could help to provide insights into assertions³³ that it is primarily large scale enterprises that dominate decision-making of bargaining councils.

³³ Natrass, Nicoli and Seekings, Jeremy: Job Destruction In The South African Clothing Industry- How an alliance of organised labour, the state and some firms is undermining labour-intensive growth, CDE Focus, January 2013.

(c) Exemptions as an early warning system

The information available about the exemption systems currently in use by bargaining councils primarily involves the criteria and procedures that will be used when considering applications. The chapters in this Report note that limited research has been conducted on the number of applications received, approved, refused and withdrawn between 2002 and 2013. An ILO study conducted on the effect of the 2008 global crisis on the bargaining council system revealed that applications for exemption spiked during 2008:

*“an overview of the situation concerning exemptions and shows that overall, exemption applications increased during the crisis; however, not all applications were related to wages but often to council levies and other employment conditions such as annual bonuses. As to the granting of exemptions, it would appear that the councils sought to take into account the recession when considering applications and where cases were genuine and the enterprise could show a case of hardship and the need for relief for a period of time, then the applications were granted”.*³⁴

While the trends in the applications for exemption certainly mirrors the state of the economy and reflected why extraordinary remedial measures were adopted by social partners involved the development and implementation of the “Framework Agreement for SA’s response to the International Economic Crisis (NFA)” that was released on 19 February 2009. It emphasised the need to provide support for sectors in distress, the implementation of the Training Lay-off Scheme (TLS), and a range of measures to alleviate sectors’ plights.

The use of information generated by exemption systems is also significant in not only detecting periods of downturn in sectorial performance, but also the cost and benefits of implementing a regulatory framework. Much has been said about the impact of regulations such as the LRA, despite findings by the Presidential Labour Market Commission³⁵ and the ILO³⁶ in 1996 that South Africa’s labour market is flexible. While the evidence garnered has largely referred to the “hassle factor-dismissals”, call for the implementation of remedial measures such as

³⁴ Grawitzky, Renee: *Collective bargaining in times of crisis: A case study of South Africa*, Working Paper 32, ILO, December 2011, p. 24.

³⁵ Department of Labour: *Restructuring the SA Labour Market*, Report of the Presidential Commission to Investigate Labour Market Policy, 1996.

³⁶ Standing, G., Sender, J. and Weeks, J.: *Restructuring the labour market: The South African challenge*, an ILO Country Review, 1996, pp. 502.

blanket exemptions for small enterprises from the main agreements of bargaining councils has not been substantiated by evidence.

Does information generated by the exemption systems provide insights on the impact of labour market regulation on a sector's economic plight? Some of the evidence gathered from bargaining councils and, to a lesser extent statutory councils, illustrate a variety of reasons for exemption, ranging from financial affordability of companies to pay monthly levies, to declining orders essential to a company's viability. If this information or these indicators are taken together with the non-compliance level with the main collective agreement for each bargaining or statutory council, then more comprehensive insights can be developed about problems being experienced by enterprises. It is important that the information be used to develop agreed-upon indicators that will enable the measurement of the impacts of the regulatory framework on a more sustained basis, in addition to when an economic crisis occurs – indicators that can inform more nuanced deliberations about the types of support measures to effect the turnaround of enterprises to the review of regulatory frameworks.

5.3. Policy considerations

Economic reasons such as the growth and competitiveness of small and medium-sized enterprises and employment creation are frequently cited to lend countenance to opposition to bargaining councils. However, the current literature does not provide any insights into the financial and economic reasons that inform applications for exemption. Reflections on the cost of doing business in South Africa by the World Bank has provided interesting insights about cost implications of labour regulation, albeit focused on issues such as the hiring and firing of workers.³⁷ Although it is difficult to discern costs, company size is certainly an issue, as evidenced by the plethora of studies about the effect of labour market regulation on SMMEs. Some bargaining councils have incorporated enterprise size into their determination of variation in remuneration and employment conditions. Nonetheless, it is critical to ascertain the unintended consequences of

³⁷ Benjamin, Paul, Borat, Haroon and Cheadle, Halton: 'The cost of 'doing business' and labour regulation: The case of South Africa', *International Labour Review*, Vol. 149, No. 1., 2010.

exemption decisions on local sectors' competitiveness and the importance and the extent of sector support.

An assessment of procedural fairness, or the lack thereof, and the unintended consequences of bargaining council exemption decisions, are critical to the review of labour market policy. **Labour market policies** are underpinned by the consideration that the labour market is multidimensional. Labour market policies make provision for basic employment conditions, the determination of conditions of employment by Ministerial decree through the use of sectoral determinations, to various forms of collective bargaining that range from company-level bargaining to various types of centralised bargaining. While upward and downward variations prevail, the exemption provisions and systems of bargaining councils accommodate a similar level of flexibility. It is evident from the existing public discourse that a significant amount of research and deliberation is required to enhance the understanding and development of the flexibility of South African labour market institutions beyond the research that was commissioned by the Presidential Labour Market Commission and the ILO, as necessitated by recent travails.

Such policy deliberations should not revolve around perception surveys of the "hassle factor" such as dismissals as recent studies demonstrate, but should involve a comprehensive examination of the corporate and occupational rights conferred by the Constitution and its institutional interface as facilitated by the current regulatory framework. While significant, bargaining councils, and to a lesser extent statutory councils, only facilitate some form of centralised collective bargaining, as provided for by the LRA. Its exemption provisions and systems do facilitate some level of downward and upward variation in remuneration and conditions of employment, including particular forms of social security.

(a) Competitive advantages

While it is the intention of centralised collective bargaining to level playing fields by eliminating competition based on labour market matters, competitive advantages gained in obtaining exemption on the internal operations of a firm and in relation to its competitors remains an area of concern. However, the

comparative studies of the “cost of doing business” have demonstrated that South Africa is not less cost-effective than other middle-income countries concerning the cost of labour regulation.³⁸ The only area where South Africa is above the median is in relation to the “difficulty of hiring and firing” workers. A matter the LRA has sought to address by increasing the responsibility of bargaining councils in the resolution of disputes.

The capacity to be internationally competitive in certain markets has certainly been affected by flexibility provided by the geographical, enterprise size and sub-sectoral variations (exemptions) in wages and employment conditions in certain industries. Bargaining councils have certainly heeded this challenge when they introduced variations that address these considerations. However, what are the unintended consequences of bargaining council decisions concerning the application of criteria such as compliance with the BCEA and the broad tenets of the main collective agreements? Has the need to retain local sectors’ competitiveness and economic growth through the pursuit of wage stabilisation, productive and allocative efficiency, high employment levels and fundamental rights been compromised? Despite the argument for greater flexibility, there is no evidence in the existing literature that firms gain a competitive advantage from obtaining exemption from such agreements using the procedures observed by these councils or forums.

Most councils did not respond to the assessment that competitive advantages were gained by firms applying for exemption. However, while it is evident that the basic employment conditions in an industry were not negatively affected, four councils have registered downward variation in the employment conditions and wages in industries governed by a main collective agreement. This reduces the benefit, scope of applicability and period of an industry’s agreement where exemptions are granted and impact on the revenue and principle of centralised bargaining. The councils happen to include the two councils used in the case study, namely the MEIBC and MIBCO, which processed the bulk of exemption applications received.

³⁸ Ibid and SBP report: *Counting the cost of red tape for business in South Africa*, Main Report, June 2005.

(b) Cyclical downturns and access to sector support instruments

A range of policy instruments has contributed to the costs of doing business. Recurrent issues have been prominent – such as the tax regime, particularly the SARS-related and customs-related matters, local government regulations, employment equity and additional sector regulations.³⁹ Although labour-related matters featured prominently, the hiring and firing of employees constituted a significant component of its analysis of labour market policy, however.

“the values for South Africa indicates that, while firing and hiring costs, together with the hours rigidity index are below the global average, it is the hiring and firing rigidity measures which are noticeably above the world mean”.⁴⁰

However, concerns such as the relationships between the overall objective of labour market policies such as economic growth, international competitiveness, allocative and productive efficiencies, the need to reduce inequality, and fundamental rights and other economic and social policies have been neglected in deliberations about the efficacy of labour market regulations and the costs of doing business.⁴¹

However, no evidence in the current literature exists to support the argument that firms have been disadvantaged by particular economic policies that support the economic growth and development of sectors. Enterprises located in areas designated for decentralised industrialisation before 1994 were then exempt from the national labour market regime and received tax incentives. These policies have been replaced by those promoting Industrial Development Zones (IDZs), where no exceptional downward variation on income and employment conditions have been agreed. However, the designation of IDZs did not correspond with the jurisdiction of areas previously demarcated as decentralised areas. The consequent removal of previous policies of decentralised industrialisation can be considered a critical factor in companies’ capacities to absorb the effects of

³⁹ SBP report: *Counting the cost of red tape for business in South Africa*, Main Report, June 2005.

⁴⁰ Benjamin, Paul, Borat, Haroon and Cheadle, Halton: ‘The cost of ‘doing business’ and labour regulation: The case of South Africa’, *International Labour Review*, Vol. 149, No. 1, 2010, p. 4.

⁴¹ See Benjamin, Paul: ‘Labour law beyond employment’, *Acta Juridica* 12, April 2012.

adjustments in income and employment conditions.⁴² Some bargaining councils have developed and retained some form of regional variation in their dispensations.

The customised sector policies that have been facilitated by the DTI can aid observance of the labour regulatory regime by enterprises where support is conditional on the acceptance of certain labour market practices. Any examination must also consider CCMA practices and their medium-term to long-term strategic positioning and embeddedness, organisational structure to deal with individual and collective referrals, case handling and management, and support systems in its provision of services in terms of the LRA. Similarly, its relationship to official collective bargaining arrangements such as its facilitation and the accreditation of bargaining councils and agencies and its mediation and arbitration efforts are instructive. Through the Training Lay-off Scheme, the CCMA became extensively involved in employment retention initiatives as mandated by the National Framework Agreement. It was required to collaborate with State agencies such as the SETAs and administrators of the National Skills Fund (NSF) and the Unemployment Insurance Fund (UIF).

This has been augmented by Section 28 of the LRA (2002), which empowers bargaining councils to provide expanded services, such as industrial support, to enterprises – including the informal sector and homeworkers.⁴³ Most bargaining councils are empowered to consider and refer sector policy issue matters to forums such as NEDLAC. It is therefore imperative to consider the support that has been provided for enterprises in various sectors from bargaining councils, trade unions, employer associations and State institutions. An evaluation of the economic dimension of exemption criteria and measures to support enterprises in distress have been considered. This involves the extent to which enterprise plans to deal with economic difficulties and the available public sector support measures that were leveraged by the parties involved were considered.

⁴² Kaplan, Dave; Morris, Mike and Martin, Lucy: Identifying and developing sustainable interventions to promote non-automotive industries in the Eastern Cape, Report prepared for the National Treasury-Final, 13 January 2014.

⁴³ Godfrey, Shane, Maree, Johann and Theron, Jan: *Conditions of employment and small business: Coverage, compliance and exemptions*, Working Paper 06/106, Development Policy Research Unit, UCT, March 2006.

The MEIBC has established a policy forum to consider problems experienced in enterprises. Parties to the MEIBC, including large employers' associations such as SEIFSA, as well as NUMSA, are developing the capacities to respond to these matters by developing their research and development capacities to inform potential interventions. While some councils such as the Clothing NBC have established industry support funds, most councils to develop their capacity to support enterprises in distress by considering a turnaround plan as part of the exemptions decision-making process. This is reflected in the overwhelming response of all councils that no enterprise turnaround plan was considered or made a condition as an integral part of the exemption process. Most of the councils have listed the need to resolve financial and organisational issues as the key challenges councils experienced in 2013.

Similarly, there is a debate on the future of economic relationships concerning the increased movement towards economic and work organisation that emphasise value chains and non-standardised work practices. This will have a significant impact on the labour market, particularly on how various forms of employer associations and trade unions will organise and represent occupational interests in processes of dispute prevention and resolution.

These observed trends must be factored into initiatives to extend centralised bargaining to sectors that are currently experiencing no or low self-regulation levels. While bargaining councils in the public sector and in areas such as Metal and Engineering, Motor, Clothing, Textiles, Leather and Chemicals have incorporated dispute resolution and case handling in its remit, the same cannot be said about the newer sectors of the economy, such as platinum mining and the older sectors historically governed by sectoral determinations. Any movement towards attaining minimum employment conditions and wages at a macro-national or sectoral level must consider available facilities and capacities for dispute prevention and resolution. Furthermore, the propensity for some bargaining councils to increasingly consider sectoral policy issues while the majority have the expressed need to embark on sectoral deliberations owing to the absence of such forums in NEDLAC expands the ambit of social dialogue to increasingly incorporate social and economic issues.

Understanding labour market flexibility thus resides in an examination of its operations in the respective sectors where it prevails with various intensity levels. Any policy consideration of the framework for its operations should therefore consider the specific sectoral conditions and institutional architecture that are essential to understanding the interface between the exercise of occupational and corporate rights, as facilitated by associational life in these sectors. Unfortunately, regulatory review of the policy framework, such as the LRA, has been impaired by the dearth of comprehensive research of these conditions and institutional architecture in these sectors, including the effectiveness of exemption provisions and systems.

Furthermore, the lack of understanding of the labour market in these sectors has also impacted on an understanding of the nature and effectiveness of support strategies to dealing with some of the immediate challenges experienced by the sectors. It has been convenient to refer to labour market issues as the source of sectoral problems by resorting to common conventions such as the labour costs and the consequences of disputes without factoring into the equation issues such as productivity, research and development, technology, poor management practices, the lack of infrastructure, and access to markets. Issues that are addressed through a plethora of related policies. Thus, how can the integration of a variety of policy initiatives enhance the development of a sector through facilitating improved understanding and actions to promote stability through self-regulation and increased investment?

5.4. Recommendations on improving outcomes through sustained stakeholder engagement

What is evident is that information generated by regular monitoring of the impacts of regulation, albeit self regulation, or the implications of the LRA, could improve the outcomes of bargaining and statutory councils' exemption systems. The information garnered could improve multistakeholder involvement and co-ordination of the collective bargaining processes by facilitating the provision of relevant information for informed multistakeholder decision-making in appropriate

forums. This could involve parties working together to strengthen and develop accords, with particular reference to:

- Ensuring the **effective implementation of legislation that promotes sector-based collective bargaining and sector development**. The BCOEA and LRA provide the framework for the establishment of minimum labour market conditions in a sector. How the framework conditions are discharged in a sector depends largely on the extent of self-regulation. This involves organised business and labour developing a clear agenda of the list of issues essential to the development and promotion of a sector.
- Ensure that bargaining and statutory councils **facilitate flexible labour market arrangements** by accommodating enterprises of various sizes in their operations and deliberations in a transparent and accountable manner, while embracing sound governance practices in a sector. The exemption provisions and systems are critical to the realisation of downward and upward variation and, thus, flexibility. Stakeholders in their various sectors are critical to the development of self-regulatory measures to ensure flexibility in their sectors through the negotiation of the relevant agreements and their propagation.
- Increasingly **involve enterprises of various sizes and their stakeholders** in the development and implementation of agreements **in enterprise and sector discussions and plans**. Although problems exist with the determination of enterprise size based on employee class size, it is incumbent upon the various sectors to ensure that considerations about enterprise size is accommodated in their deliberations, albeit through blanket exemptions or while considering individual applications.
- Regularly **monitor and evaluate and enhance the procedural fairness of the bargaining council exemption system** with due regard to the experience of bargaining council and companies making application. Factors such as access to information and support, consultation, turnaround time and costs to company. This can be done through a combination of research processes and organisational improvements that could result in a more effective monitoring and evaluation system.

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- Collectively assess the impacts of their activities on economic activities by **incorporating labour market discussions in sector development strategies and plans**. Although most support measures stipulate the need for compliance with appropriate labour market arrangements as a precondition for the provision of support, a symbiotic relationship between labour markets and such support measures has not been developed. This involves encouraging how such preconditions can be affected and supported in particular sectors. Policy deliberations in these sectors with the involvement of bargaining councils and statutory councils or appropriate forums and more effective co-ordination of initiatives could assist in developing improved cohesion and the development of a predictable environment.

Bargaining and, to a lesser extent, statutory councils, have historically been one of the most significant forums to address sectoral issues that have significant regulatory and economic implications. Their deliberations have informed the character of core labour market institutions through their determination of remuneration and employment conditions in various sectors. Furthermore, it has been a significant facilitator of social wage issues such as pension and provident funds and medical aid schemes. They have also provided conflict resolution services in their pursuits of access to social justice. Their impacts on economic development have recently been underscored by their powers and functions, facilitating and promoting institutional linkages with NEDLAC and the CCMA. Some of the bigger councils such as the MEIBC have even established a policy forum to consider the required interface.

Bargaining and statutory councils and the Department of Labour have met over time to discuss matters of shared interest. Information garnered from some General Secretaries is that the forum has recently not regularly been convened years, besides ad hoc meetings to consider challenges such as litigation pursued by the Free Market Foundation. Nonetheless, regular labour market indabas are held where most of the stakeholders engage to address some of the issues raised in this Report. It is imperative that strategies be developed to deal with the afore-mentioned problems such as the development of more effective reporting

protocols, their review, the gathering and sharing of information and the development of remedial measures. These include the following considerations:

- The need to review the current reporting protocols between bargaining and statutory councils and the Department of Labour. This could involve the development of indicators that are consistent with agreeable objectives.
- The need to develop a more effective and efficient reporting system based on the use of appropriate information and communication technologies.
- The identification of areas where action might be required to enhance transparency, accountability and governance arrangements of bargaining and statutory councils.
- All the afore-mentioned issues, albeit experienced by some rather than all councils, can effectively be addressed by the development of effective marketing and communication campaigns. Most of the councils have websites that provide information about the constitutions, main collective agreements and available services. However, this is not the case with all bargaining and statutory councils.

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ANNEXURE A

QUESTIONNAIRES