

Bargaining council and other benefit schemes

**Prepared for
National Treasury**

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Introduction

This research paper forms part of a larger suite of papers investigating different aspects of the current situation in respect of social security arrangements in South Africa. This suite was commissioned by the National Treasury to inform their planning in respect of a possible major reform of work-related social security arrangements. This particular paper looks at benefit schemes of bargaining councils and related bodies. As discussed further below, these funds between them provide different sorts of cover to more than 800 000 employees.

To date there has been virtually no research into benefit funds of bargaining councils, although there has been some research into other aspects of these councils. One of the factors preventing research into the benefit funds is that many of these funds were established several decades ago, with amendments being introduced piecemeal over subsequent years. Obtaining a full picture from documentary sources would therefore require a painstaking search through many years of government gazettes. The Department of Labour has staff responsible for registration and associated tasks related to bargaining councils. They do not, however, have easily accessible documentation on the various councils even in respect of basic aspects other than the funds.

The research described in this report thus started from the beginning by establishing which of the many councils have particular types of funds and, subsequently, establishing the basic characteristics of those funds. This basic fact-finding was supplemented by interviews with key role-players to obtain their views on the current situation and possible changes.

The next section of this report provides a brief description of the methodology employed. This is followed by some background information on bargaining councils, changes in the regulatory environment, and a profile of the bargaining councils that have funds. The long section that follows describes the findings in respect of the bargaining council funds. This section includes information and views gathered through both the initial fact-finding and the subsequent interviews with role-players. The next, shorter, section describes findings in respect of benefit schemes which are not part of bargaining councils, but which cover similar groupings of employees. The final section discusses key issues emerging from the research which will be important to consider in designing reforms to the social security system.

Methodology

The research process involved three relatively distinct phases.

The first phase simply established which bargaining councils had funds and, among these, which funds each one had. In respect of about half of the funds this information was available from prior research conducted by the Labour and Enterprise Policy Research Group (LEP) at the University of Cape Town, which has done the main prior research in this area. For the remaining funds, telephone calls were conducted to complete the first phase scan.

The second phase involved more detailed interviews or questionnaire completion with all councils that reported having funds. A structured questionnaire was used for this purpose,

with questions asked only in respect of the relevant funds for each council. For each specified fund, we asked a set series of questions relating to membership, contributions and benefits. In each case we also asked if there had been changes to the fund over the past five years.

All but one of the councils with funds supplied information. In seven cases, the councils referred us to the administrators for some of the information requested. Overall, the council informants were extremely accommodating and patient with our requests. If this is an indication of the sort of service that members of the various funds receive, they are indeed fortunate.

During this interview phase, it became clear that some questions were not understood in the same way by all respondents. In these cases we followed up in order to ensure that both we and the informant were understanding things in the same way. There are almost certainly some misunderstandings that we did not capture. To avoid clumsy writing, the report below is written as if all information provided was based on our understanding of the questions.

There are currently approximately 55 functioning bargaining councils in the private sector, with a further five (including the overarching one) covering public servants, one in local government, and one for parastatal Transnet. In addition to these, there are two statutory councils (Amanzi and printing, packaging and newspaper industry). There are also two provident funds established in terms of sectoral determinations, in the private security and contract cleaning sectors respectively. This yields a total of 61 bodies which needed to be scanned, each of which could have multiple funds.

Lists of existing bargaining councils were obtained both from the Department of Labour and from LEP. From both sources there were warnings that some of the councils listed were in the process of winding up. On trying to contact them, five of the listed bargaining councils appeared to be no longer operative.

At the conclusion of this phase, an interim report was compiled and circulated to all those who had provided information as well as to the National Treasury team and other researchers. This draft report purposefully included all the detail that had been provided during interviews so as to have a full record of the information gathered. Respondents were asked to inform us if there were any errors or misrepresentations. Two respondents pointed out small errors in the report. Several others confirmed that they had no problems with the information presented.

The third phase involved interviews with key role-players. A full list of informants is provided in Appendix III. Interviews included:

- representatives of the Financial Services Board (Registrar of Pension Funds), Council of Medical Schemes, and Pension Funds Adjudicator, as the central regulatory bodies in respect of pension, provident and medical funds;
- the Registrar of Labour Relations within the Department of Labour, as the body responsible for registration and oversight of bargaining councils;
- the secretary of the National Association of Bargaining Councils, an umbrella body to which 21 or more of the councils are affiliated;

- representatives (secretaries) of six bargaining councils;
- an employer representative from the metal and engineering industry, which has the largest private sector bargaining council in terms of membership;
- a union representative from the clothing industry, which has another of the larger bargaining councils;
- the manager of a bargaining council medical scheme; and
- representatives of the Life Officers Association, as people knowledgeable about the retirement insurance industry.

The bargaining councils selected for follow-up interviews with their secretaries included two from the Building industry, two from Furniture, together with Diamond Cutting and Metal & Engineering. The latter two were selected as representatives of a large national fund on the one hand, and a small localised fund on the other. The Building and Furniture industries were selected as they had several different regional councils, each of which had more than one fund. This was done, among others, to assess whether there were commonalities across councils and funds within a particular industry. While these six funds are not representative in a statistical sense, they should give some sense of the diversity across funds.

Most of the third phase interviews were conducted telephonically. One was conducted face-to-face. In two cases, the interviews were done wholly or in part through email.

This report brings together the information and opinions gathered across all three phases. The report omits some of the detail given in the earlier report so as not to overwhelm the reader. Enough detail is hopefully retained to give a sense of the diversity that exists across councils and funds.

Background information

Bargaining councils

Bargaining councils currently operate in terms of the Labour Relations Act (LRA) of 1995, although the majority were established as industrial councils under the predecessor act, the Industrial Conciliation Act. Bargaining councils are established when employer and employee bodies (unions) in a particular industrial sector and geographical area agree to come together to engage in collective bargaining. The employer associations and unions that agree to do so are referred to as ‘parties’ to the bargaining council and constitute the bargaining partners once the council is established. In order to be registered for these purposes by the Department of Labour, the parties must prove that they are sufficiently ‘representative’. In particular, they must prove that the unions proposed as party to the council have more than 50% of employees in the specified sector as members.

Once registered, a bargaining council has a range of powers and obligations. Among its powers, are those relating to establishment of social benefit funds. Thus section 28 of the LRA gives registered councils the power “to establish and administer pension, provident, medical aid, sick pay, holiday, unemployment and training schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the bargaining council or

their members”. Among the obligations imposed on bargaining councils is the requirement that they report each year to the Registrar of Labour Relations.

Among the advantages of registration is the possibility of having agreements extended to non-parties, so that all employers and employees in the industry are covered. Extension to non-parties requires a special application to the Minister. Extension means that non-member employers cannot unfairly compete against member employers, for example by paying lower wages. Section 33A(2) clarifies that the collective agreements that can be extended in this way include “the rules of any fund or scheme established by the bargaining council.”. As will be seen below, some funds have been extended in this way.

Godfrey et al (2006) estimate that, of the approximately 9,5 million employees covered by the LRA and Basic Conditions Employment Act (BCEA), about 25% are covered by bargaining council agreements. The council’s coverage increases to just under a third of employees if the calculation is restricted to employees in occupational categories 4-9, namely clerks, service and shop workers, skilled agriculture and fishery workers, craft and related trades workers, plant and machine operators and assemblers, and elementary (unskilled) workers. Nearly 5% of the employees covered by councils have employers who are not members of employer associations party to the council, but who are registered with it.

The number of bargaining councils has fallen from 104 in 1983, to 87 in 1995, to just over 50 today. Part of this decrease is explained by mergers of regional and sub-sectoral councils into single, larger, national councils. Thus, despite the decrease in the number of councils, the number of employees covered has increased over the last ten years.

As will be seen below, despite some mergers, councils still vary greatly in terms of their geographical and sectoral scope. Some are national, while others are restricted to a particular province, or even particular city. Some cater for a very specific industry, such as Canvas Bag Manufacturing, while the Metal & Engineering council covers a wide range of different products and has national scope. Of the nine industry categories used for most statistical analysis of the labour market, only manufacturing, transport and community services are relatively well covered by bargaining councils. The community services ‘industry’ is covered primarily by local government and public sector bargaining councils, while Transnet contributes much of the high coverage in transport.

Changes in the regulatory environment

In respect of both retirement (provident and pension) and medical schemes, recent years have seen important changes in legislation that directly affect bargaining councils. There have also been significant changes in the labour legislation. In the case of the pension and medical schemes legislation, there is strong likelihood of further changes. The following paragraphs attempt to summarise the main developments to date. There is, however, much contention over these issues, and some readers might thus well disagree with some parts of the summary. The issues involved, and the implications, are discussed in more detail in the final section of the paper.

The first major change came with the Labour Relations Amendment Act of 1998, which amended Section 28 of the 1995 Act to say that “the provisions of the laws relating to

pension, provident or medical aid schemes or funds must be complied with in establishing any pension, provident or medical aid scheme or fund” under/by a bargaining council, and that the relevant laws would apply to all such funds and schemes previously established. In effect, this amendment was understood to mean that the pension and provident funds would fall under the Pension Funds Act while medical schemes would fall under the Medical Schemes Act. There was, however, subsequent confusion and complicated litigation over whether these clauses applied both to funds established under a bargaining council and those established by a bargaining council (see below).

Before this time, bargaining council funds had been considered exempt from the two Acts on the basis that they were regulated by the Department of Labour. They were, however, required to furnish annual returns to the pension and medical regulators. Some of the bargaining funds had gone beyond this reporting requirement. The Metal & Engineering informants explained that they did so to express their strong belief in the need for good corporate governance.

Profile of councils with funds

A total of 27 private sector councils reported that they had at least one fund. This constitutes about two-thirds of all private sector councils. Appendix I contains a list of the 14 private and one parastatal (Transnet) sector councils that did not report having funds, while Appendix II lists all those reporting funds. Appendix II includes an indication of which funds each council reported. Unemployment benefits are excluded from appendix II because this type of fund or coverage was reported by only one council.

Information was obtained from all of the 27 bargaining councils that reported having funds. Geographically, five of the councils covered the whole country, while Electrical and Motor covered all of the country except areas that previously constituted the ‘independent homelands’ of Transkei, Bophuthatswana, Venda and Ciskei. The remaining 20 councils covered specified parts of the country. For the most part these areas are indicated in the name of the council. Two exceptions are: Furniture Industry, which covers Gauteng, Mpumalanga, Limpopo, North West and Free State; and Laundry, Cleaning & Dyeing Industry, which covers specified areas of KwaZulu-Natal. The first of these councils was until recently known as Furniture and Bedding Greater Northern, but has changed its name and has an application pending for extension of scope. To avoid confusion, it is referred to below in this report as Furniture Greater Northern. For a similar reason, Laundry, Cleaning & Dyeing has KwaZulu-Natal included in its name for the purposes of this report. The third exception is Hairdressing and Cosmetology Services – Semi National, which covers Witwatersrand, East London, Port Elizabeth, Uitenhage, Bloemfontein and Kimberley.

All 27 of the councils with funds provided estimates of the number of employers covered by the bargaining council. All councils except Jewellery and Precious Metal (Cape) provided estimates of the total number of employees covered by the council’s main agreement. These estimates, which gave a total of over 800 000 employees and close on 50 000 employers, are shown in Table 1. In practice, there are at least two reasons why fewer employees than this would be covered by funds. Firstly, some councils have funds that do not cover all employees in their scope. Furniture KwaZulu-Natal, for example, has funds only for metropolitan workers. Secondly, some council funds are not extended to non-parties.

The table confirms the vast differences in the numbers covered. In terms of employers covered, the range is from 22 for the Laundry Cleaning and Dyeing Industry (Cape) to 18 000 for the Motor Industry Bargaining Council (National). In terms of employees, the range is from 667 in the Furniture Manufacturing Industry (Eastern Cape) to 300 000 for Metal and Engineering. The differences in both size and geographical scope constitute two of the many characteristics in terms of which these councils, and their funds, are diverse.

Table 1 Number of employees and employers covered by councils with funds

Bargaining council	Employees	Employers
Building Industry (Bloemfontein)	2200	160
Building Industry (East London)	1500	100
Building Industry (Kimberley)	2700	90
Building Industry (North and West Boland)	3678	235
Building Industry (Southern & Eastern Cape)	10000	1000
Building Industry Bargaining Council (Cape of Good Hope)	34000	1000
Clothing Manufacturing Industry National	74456	1048
Canvas Goods Industry (Witwatersrand & Pretoria)	1000	40
Contract Cleaning Industry (Natal)	12000	235
Diamond Cutting Industry (SA)	2165	49
Electrical Industry of SA (National)	15365	3342
Furniture Greater Northern	17261	1289
Furniture Manufacturing Industry (Eastern Cape)	667	65
Furniture Manufacturing Industry KwaZulu-Natal	7000	250
Furniture Manufacturing Industry Western Cape	5000	230
Hairdressing & Cosmetology (KwaZulu-Natal)	700	200
Hairdressing and Cosmetology Services – Semi National	4351	1617
Hairdressing Trade, Cape Peninsula	1800	550
Jewellery & Precious Metal Industry (Cape)	-	64
Laundry Cleaning and Dyeing Industry (Cape)	1405	22
Laundry, Cleaning and Dyeing Industry	850	86
Leather Industry of South Africa	17256	278
Meat Trade Gauteng	3697	861
Metal & Engineering Industries	300000	9500
Motor Industry Bargaining Council (National)	200000	18000
Restaurant Catering and Allied Trades	26200	5500
Road Freight Industry (National)	60000	3000
Total	805251	48811

Division of the number of employees by the number of employers gives an idea of the average size of workplaces. The Hairdressing councils have the smallest average, of 3 or 4 employees per workplace. In contrast, Clothing has an average of 71 employees per workplace. The relative sizes will affect the ease of administering and monitoring operation of the various funds.

A council can cover a large overall number of employees, but still encompass many small individual employers. For example, in the largest council, Metal & Engineering, 70% of firms have less than 10 employees.

As noted above, bargaining council agreements often cover employers and employees beyond those who are employer and employee (trade union) parties to the council itself. Thus 20 of the 27 councils said that the main agreement had been extended to non-parties. Of the remainder, one (Furniture Manufacturing KwaZulu-Natal) said it was extended for metro areas but not for rural, four said it had not been extended, and one (Building Bloemfontein) said that the (latest) agreement had not yet been published because of problems with representivity. (By the time of the final interview, having proof of 47% coverage of employees, they were hoping to have the problem sorted out in the near future.)

All councils which provided the information – even those which said the agreement had not been extended to non-parties – gave different estimates for the numbers of employers and employees party to the council and the numbers covered by the main agreement. There were also differences between the number of members of party unions, the number of employees of party employers and the number of employees covered. The different estimates are shown in Table 2. (The table excludes Building Industry Kimberley as this council did not provide estimates beyond the number of employers and employees covered.) For employees, the first number represents who should enjoy the protection of the agreement, the second number says how many of these are employed by party employers, and the third number says how many are members of party unions. For employers, the two numbers represent those who are covered, followed by those who are actually party to the council i.e. affiliated to the relevant employees organisations.

Table 2 Number of employers and employees party to agreement and covered by it

Bargaining council	Employees			Employers	
	Covered	Party	Party unions	Covered	Party
Building Industry (Bloemfontein)	2200	1340	900	160	38
Building Industry (East London)	1500	1200	600	100	70
Building Industry (North and West Boland)	3678	2108	1527	235	131
Building Industry (Southern & Eastern Cape)	10000	8000	4000	1000	400
Building Industry Bargaining Council (Cape of Good Hope)	34000	9400	6112	1000	244
Canvas Goods Industry (Witwatersrand & Pretoria)	1000	681	420	40	35
Clothing Manufacturing Industry National	74456	35339	56044	1048	270
Contract Cleaning Industry (Natal)	12000	8265	4886	235	72
Diamond Cutting Industry (SA)	2165	2130	1028	49	41
Electrical Industry of SA (National)	15365	9485	8006	3342	3342
Furniture Bargaining Council Greater Northern	17261	8664	8158	1289	8907
Furniture Manufacturing Industry Western Cape	5000	90%	4597	230	75%
Furniture Manufacturing Industry (Eastern Cape)	667	412	414	65	12
Furniture Manufacturing Industry KwaZulu-Natal	7000	4900	2100	250	110
Hairdressing & Cosmetology (KwaZulu-Natal)	700	600	550	200	160
Hairdressing and Cosmetology Services – Semi National	4351	2585	3621	1617	1576
Hairdressing Trade, Cape Peninsula	1800	1200	1200	550	550
Jewellery & Precious Metal Industry (Cape)	-	360	548	64	30
Laundry Cleaning and Dyeing Industry (Cape)	1405	555	722	22	1
Laundry, Cleaning and Dyeing Industry	850	46	25	86	35
Leather Industry of South Africa	17256	12369	11095	278	131
Meat Trade Gauteng	3697	2142	2544	861	515
Metal & Engineering Industries	300000	181000	185000	9500	3500
Motor Industry Bargaining Council (National)	200000	130032	146217	18000	9000
Restaurant Catering and Allied Trades	26200	14400	14900	5500	4680
Road Freight Industry (National)	60000	33000	30000	3000	700

The different estimates are important because – as will be seen below – in some cases funds cover all employees covered by the bargaining council, while in others the funds are restricted to parties, or to those employed by employers party to the fund.

The questionnaire did not enquire about levels of wages paid to employees covered by different councils. A database being built by Community Agency for Social Enquiry for the Department of Labour is helpful here. The database includes 33 sets of wages related to bargaining councils that reported at least one benefit fund. The fact that the number is 33 – larger than the number of councils with funds – is explained by the system providing multiple records for a particular council where the agreement establishes different minimum wages for different geographical areas or sub-sectors of the industry covered. In fact, the 33 sets omit a small number of councils that have funds. The set nevertheless gives a sense of the levels of wages prescribed for the employee members of the funds, as well as the significant range in levels.

Among unskilled workers, for example, the bargaining council for Hairdressing and Cosmetology (semi-national) sets a minimum monthly wage of R665, while the footwear

section of the National Leather Industry has a minimum wage for unskilled workers of R2 683 per month. Among skilled workers Contract Cleaning (Natal) sets a minimum wage of R1 536 per month, while the Electrical Industry has a minimum wage of R4 999.

Perhaps the most relevant comparator for the purposes of this research is the threshold at which a person becomes liable to pay personal income tax. For the 2007/08 financial year, the threshold is R43 000 per annum. This is equivalent to about R827 per week and R18-9 per hour, depending on the number of hours worked per week.

Across all councils, the minimum wages prescribed for unskilled workers fall well below the personal income tax threshold. For skilled workers, it is only in Clothing, the Electrical Industry, Building North and West Boland, Metal & Engineering, and Furniture Manufacturing Western Cape that set skilled minimum wages above the threshold. For most, if not all, industries unskilled workers probably outnumber skilled workers. Thus the majority of employees covered by the bargaining council funds are not liable for personal income tax even in the form of the Standard Tax on Employees (SITE).

The bargaining council funds

The overall picture

Appendix II shows which funds were relevant for each of the 26 bargaining councils which reported funds. Of the 27 councils, Restaurant, Catering & Allied Trades had only one fund, in that it provided survivor benefits through Metropolitan Employee Benefits. In contrast, two of the Building councils each provided for all seven funds or types of benefits for which we prompted outside of unemployment benefits. A further three councils covered six of the seven main funds/benefits. These were the remaining two Building councils and Metal & Engineering. The latter council was not only one of those which covered most of the funds; it was also the council with the largest coverage in terms of number of employees.

Pension funds

Pension funds provide benefits at the time of retirement. Historically, pension funds tended to be found among higher-paid and more highly-skilled workers, while provident funds were found among lower-paid and less-skilled workers. Today provident funds outnumber pension funds. In some cases, such as Building Bloemfontein, pension funds were closed and members transferred when the provident funds were established. In others, the pension fund remained for those previously covered, while a provident fund was established for the uncovered workers.

Thirteen councils said that they had pension funds, while the council for the Restaurant Catering and Allied Trades said that negotiations were underway to establish such a fund. All the building industry councils except Bloemfontein had pension funds. Most, if not all, of the councils with pension funds operate in industries which previously had developed apprenticeship systems leading to a skilled artisan status.

For each fund we asked whether it was specific to that council or included employees from outside the council or industry. All of the pension funds covered only employees from that particular bargaining council. The Motor Industry fund only covered pensioners as the council moved their active members from the pension to the provident fund at the end of 2004.

Seven of the pension funds were said to be **part of the main agreement**. The remaining six were established by councils but by way of a separate agreement. This distinction was an important one in the recent appeal case (see below), but the findings of the case was that all council funds, whether established separately or not, are excluded from the Pensions Funds Act. The two Building Industry pension funds in separate agreements were not extended to non-parties. In these cases, the existence of such funds can act as an incentive to employers and employees to become members of the parties to the council, and thus help to increase the representivity of the councils. Another result of having a fund separate from the main agreement is that it can cover a longer period and will then not be affected if the main agreement is not extended due to hold-ups in annual wage negotiations.

In eight of the 13 cases, membership of the pension fund was said to be **compulsory**. (In respect of this and other types of fund, compulsory is understood to include cases in which exemptions may be obtained in particular circumstances, for example where the person is a member of another fund, or a fund providing better benefits.) In the case of Diamond Cutting, only employees of employers party to the council were eligible for the pension fund.

Twelve of the funds (all except the Electrical Industry) were able to supply an estimate of the number of pension fund **members**. These ranged from 400 in the case of the Meat Trade to 34 000 in the case of Building Industry (Cape of Good Hope). The latter included an unspecified number covered by the provident fund rather than the pension fund. Building (Cape of Good Hope) also reported a further 150 000 'dormant' members – people who had previously worked in the industry, had now 'drifted' away, but might return. Other building industry councils did not all provide estimates of such dormant members, but said that they had a similar arrangement. The Motor Industry's 8 700 members were all retired pensioners because of the shift of current employees to a provident fund. Without the Electrical Industry, these funds covered a total of 155 892 non-dormant members.

Employers and employees **contributed** the same amount each month for all funds that provided this information. Eight of the councils specified the contribution as a percentage of earnings. For all but the Building Industry North and West Boland, which had a percentage of 14% of the minimum wage, these percentages ranged between 5% and 7,5%. The Building Industry councils for East London and Southern and Eastern Cape specified rand amounts for skilled and unskilled workers (R266,28 per month for East London and R366 per month for Southern and Eastern Cape for skilled, and R99,96 and R161 per month respectively for unskilled). The Motor Industry had no current contributions because it had closed. The Diamond Cutting administrators refused to provide the information, stating (in contradiction to what the council itself reported) that it was not a bargaining council fund. The administrators similarly did not provide information in respect of other funds reported by this council.

Nine of the councils with pension funds provided an estimate of the total amount of contributions received during 2006. These ranged from R1m for Hairdressing & Cosmetology to R243,4m for Metal & Engineering. Together, the eight funds had contributions of over R340m in 2006.

Ten funds provided estimates of the number of **employees receiving benefits** from the fund during 2006. This number ranged from 26 in the case of Hairdressing & Cosmetology (KwaZulu-Natal) to 10 081 in the case of Metal & Engineering. In total, these ten funds reported less than 25 000 beneficiaries for 2006. Unfortunately, we did not ask informants to distinguish between different types of benefits. In particular, it would have been helpful to have a sense of the division between retirement and resignation benefits. One of the building funds paid out 33 retirement benefits as compared to 494 resignation benefits in 2006.

The ten funds reported paying out a total of more than R360m in benefits during 2006. The amount per fund ranged from just over R100 000 in the case of Hairdressing & Cosmetology (KwaZulu-Natal) to R153m in the case of the Motor Industry. Combining the two estimates for total payments and total beneficiaries, we arrive at an average payout of R10 839 per beneficiary. Per fund, the average ranged from R3 878 in Hairdressing & Cosmetology (KwaZulu-Natal) to R30 885 in the Meat Trade Gauteng.

Ten funds provided estimates of the total **reserves** at the end of 2006. These ranged from R132 000 for Hairdressing & Cosmetology to R365bn in the case of Metal & Engineering. Together the ten funds had reserves of approximately R44,6bn. The Metal & Engineering fund thus accounted for 82% of the reserves of the ten funds combined.

At least ten of the funds had **external administrators**. The Metal & Engineering fund was administrated by an in-house Section 21 company, the Metal Industry Benefit Fund Administration, while the Furniture Manufacturing council administered the fund itself. Two councils did not answer this question.

The method of calculating the administration fee varied widely. Motor and Metal & Engineering had no administration fee, but instead recovered expenses. Hairdressing & Cosmetology, the Meat Trade, Electrical Industry and Building Kimberley were calculated on a percentage basis. For Hairdressing & Cosmetology the amount was 0,05% of the total salary bill. The remaining funds did not provide details.

Eight of the pension funds were **registered** under the Pension Funds Act. The funds which were not registered all fell under relatively small councils. The Meat Trade informant noted that they would have a problem complying with Section 13A of the Act, which was in conflict with the relevant provisions of the council agreement. Section 13A requires that member contributions must be paid over to the fund within seven days of the end of the period for which the contribution is made.

Provident funds

Like pension funds, provident funds provide for retirement benefits. One of the most important differences between provident and pension funds has been that the former allow for the full amount to be paid out on retirement or withdrawal, whereas with pension funds

at least two-thirds of the benefit must be paid as a monthly pension for the rest of the person's life. The ability to have access to the full amount made provident funds particularly attractive to lower-paid workers. The two types of funds have also received different tax treatment.

The majority (22) of the 26 councils which had funds of any sort had a provident fund agreement. Of the four which did not, three had pension funds, while the fourth was in the process of negotiating for such a fund. Nine councils had both provident and pension funds. In such cases, an individual employee could belong to only one of these funds.

The Metal & Engineering Industries provident fund was the only one which covered some employees from beyond the council. This fund covered an additional 107 firms, with 3 047 employees, who voluntarily registered with the fund, and whose numbers were included in the total provided by the council in respect of the provident fund. For the most part, the employees represented administrative workers from allied industries who found this provident fund more competitive than other options.

Six of the provident funds were included in the **main agreements** for the relevant council. The Clothing Industry had separate provident fund agreements for Western and Eastern Cape and KwaZulu-Natal, but other areas were covered in the main agreement. Of those for which the provident fund had a separate agreement, eleven councils said that the provident fund was extended to non-parties, and one said it was extended, but only for metro areas.

Twelve councils said membership of the provident fund was **compulsory** while eight said it was not.

Several funds did not cover all employees in the industry. The Furniture Manufacturing KwaZulu-Natal provident fund excluded managerial, clerical & supervisory staff earning more than R48 000 per annum, and for the Furniture Manufacturing Industry (Eastern Cape) membership was optional if the company employed five or fewer employees. To be eligible for membership of the fund for Hairdressing Cape Peninsula, an employee had to work for a party salon and be a member of the party union. For Hairdressing & Cosmetology semi-national, membership was compulsory for union members, but optional for employers party to the council.

All but two of the councils with provident funds were able to provide estimates of the **number of employees covered**. The Building Industry (Cape of Good Hope) said that provident fund members were included in the estimate provided for their pension fund. The number per fund ranged from 217 in the case of Canvas Goods to 257 000 in the case of Metal & Engineering. Five funds had fewer than 1 000 member each and only two had 100 000 or more members. In total, the 20 funds had 666 859 members. (This estimate excludes inactive members for Building Bloemfontein.)

Sixteen councils specified the employer's monthly **contribution** to the fund as a percentage. For the most part this seemed to be calculated on the minimum or basic remuneration. The percentage ranged between 2,5% of the prescribed minimum salary for Hairdressing & Cosmetology semi-national to 14% for the Building Industry (North & West Boland). In twelve cases the percentage was between 6% and 8%. Three funds specified the contribution

as a rand amount. This ranged from R99,96 per month for unskilled workers in Building East London to R361,60 for skilled workers in Building Southern & Eastern Cape. At least five funds had increased the percentage in the last five years.

For all but five funds, the employee contributions were the same as those of the employer. In all five exceptional cases, employees contributed less than employers. For the Building Industry (North & West Boland) employers contributed 14% of the minimum wage while employees contributed nothing. In the other four, there was an employee contribution, but it was less than that of the employer.

All but four councils were able to provide an estimate of the total amount of contributions received during 2006. These ranged from R485 391 in the case of Hairdressing & Cosmetology semi-national to R1,3bn in the case of Metal & Engineering. The 18 funds between them received contributions of close on R3bn.

The same 18 funds also provided estimates of the number of employees receiving **benefits** during 2006. Unfortunately, we did not specify the type of benefits, but we assume that most funds provided a number reflecting retirement and resignation payments. The number ranged from 11 for the Building Industry (Southern & Eastern Cape) to 35 015 in the case of Metal & Engineering. The total number of beneficiaries was approximately 103 000. Combining the information on beneficiaries and amounts paid out, we get an average of R17 673 per beneficiary. Across funds, the average payout ranged from R3 673 in Building Bloemfontein to R32 837 in Leather Industry of South Africa.

Seventeen councils were able to give the amount of **reserves** in the provident fund. The reserves were said to be nil for Building (North and West Boland). For the remainder, the amount of reserves ranged from R800 000 in the case of the Laundry, Cleaning and Dyeing industry to R208m in the case of the Road Freight industry.

Six councils said that they themselves **administered** the provident fund. In the case of Metal & Engineering, a section 21 company, the Metal Industries Benefit Funds Administrators, had been established for this purpose.

Administration fees varied widely across funds, and less information was provided on this aspect than on most others. Some councils said simply that the fee was negotiated. Some said that they received a quotation per member from the administrators. One council noted that the cost per member varied according to member status. Some fees were calculated as a percentage of employer or total contributions, or of payroll. Some had a combination, such as a set percentage but with a minimum fee each month. Two funds – those of the Motor Industry and Metal & Engineering – said that there was no administration fee as such. Instead, costs were recovered.

Twelve of the 21 provident funds were said to be **registered** under the Pensions Act. A further fund, that of the Meat Trade Gauteng, had a registration application pending.

In terms of recent changes, five councils reported increases in the real value of contributions over the last five years. Four councils reported improving or adding benefits, such as a housing loan provision, care benefit, or increase in the real value of benefits.

Medical and sick benefit funds

Cooper (1979) provides useful insights into the historical background of occupational medical and sick benefit funds, as well as of sick pay funds. In 1979, of the 101 industrial (bargaining) councils then in existence, 16 had medical aids and 29 had medical benefit schemes. The medical aids generally had skilled, higher income workers as members, and provided more comprehensive curative benefits. They were thus, in effect, a form of insurance. The medical benefit funds, in contrast, tended to have lower paid, less skilled members, and focused on preventive rather than curative assistance. There were also racial differences, in that in the late 1970s, 69% of white, coloured and Indian workers falling under industrial (bargaining) councils were covered by medical schemes, compared to only 8% of the Africans to whom agreements had been extended. The difference is partly explained by the fact that Africans could not at the time belong to trade unions and thus could not be formally represented on councils.

Cooper also identifies sectoral differences, which largely reflect skill profiles of the different industries. Thus medical aid schemes were more common in industries in which there were craft unions, such as building, printing, electrical, engineering, hairdressing, and furniture. Medical benefit schemes were more common in industrial unions, such as clothing and knitting. Of 40 468 African workers covered, three-quarters were in clothing and knitting.

In 1979, the average contribution rate of medical benefit schemes was 28,5c per week, but with variation across industries and according to earnings within a particular industry. In all except two, employers paid contributions equal to that of the employee. Of 12 industries with benefit schemes covered, only one provided benefits to dependents. All provided free medical treatment through a panel of doctors, and all provided medicine benefits.

By 1994, Cornell (quoted in Council for Medical Schemes, 2005) reported a total of 34 bargaining council medical schemes. It is not clear if this number includes some sick pay schemes. Some of these schemes, such as Transmed, Medcor and Polmed, which were previously under bargaining councils, subsequently registered as ordinary medical schemes with the Council for Medical Schemes.

In 2007, a much smaller total of 15 councils indicated that they had a medical or sick benefit fund or scheme of some sort. All these funds assist employees in meeting the costs of health care. Ways in which this is done include covering medical fees, providing free or cheap consultations with panel doctors, and provision of care through clinics operated by the fund. Private hospital cover is rarely, if ever, provided by these schemes.

All 14 funds covered only employees from the relevant council. Six councils had **separate agreements** for the medical fund. The Clothing Manufacturing medical fund had a separate agreement for Northern Clothing, while Northern Knitting, KwaZulu-Natal, Free State/Northern Cape and Western Cape were provided for in the main agreement. Of those medical funds in separate agreements, two were not extended to non-parties.

Membership of the medical fund was not **compulsory** in seven councils, while for Clothing it was not compulsory outside of metropolitan areas. In Furniture (both KwaZulu-Natal and

Greater Northern) membership was compulsory only for members of party unions and party employers, and for Hairdressing Trade Cape Peninsula only for union members employed at party shops. In Diamond Cutting membership was compulsory only for new employees, and in the Meat Trade Gauteng only for certain categories. Building (Southern & Eastern Cape) said that membership was completely voluntary.

All but Diamond Cutting provided an estimate of the number of **members** of the medical fund, although Clothing Manufacturing did so only for metro members. The smallest number was in Meat Trade Gauteng, with 300 members, while the largest was in the Motor Industry, with 56 000 members. Together the 13 funds had over 130 000 medical fund members.

The questionnaire did not ask whether funds covered **dependants**. The in-depth interviews suggested that it was very few that did so. For Clothing in the Western Cape coverage of dependants was introduced in 1994 as part of ongoing improvement of benefits. One of the Furniture councils also covered dependants.

All but Building Kimberley provided information on **contributions** by employers. Eight specified a rand amount. This ranged from about R22 per month (or R5,15 per week) for a qualified machinist in Clothing Manufacturing to R317,60 per month in Building (Southern & Eastern Cape). Three councils specified a percentage of the wage – varying from 1,3% to 5%. Of this three, for Furniture Manufacturing KwaZulu-Natal the contribution was 2,25% of the wage, with 30c diverted for mortality benefits. Three councils specified the division between employers and employees rather than the amount or percentage. For all it was 50/50 except for Meat Trade apprentices, in respect of whom the employer made the full contribution, and Diamond Cutting employees earning less than R3 000 per month, where the employer paid two thirds of the contribution.

Four further funds had differing contributions for employers and employees. In three cases the employee contribution was less than that of the employer, although Furniture required additional contributions from the employee for each registered dependent. In Hairdressing & Cosmetology (KwaZulu-Natal), the contribution was higher for the employee than employer. For the former the contributions ranged from R83 to R93, while for the latter the range was R58 to R63.

Diamond Cutting and Building Kimberley were not able to give estimates of total contributions, beneficiaries, benefits paid and reserves for 2006. Among the remaining 13 councils, total **contributions** in 2006 ranged from R546 405 for Canvas Goods to R63,7m for the Motor Industry. Total contributions across the 13 funds stood at more than R165m. Reported beneficiaries across 12 funds ranged from 300 for the Meat Trade Gauteng to 56 000 for the Motor Industry. Unfortunately we did not distinguish between principal members and dependents when asking about dependents, but this should not make a difference in most cases as few of the funds cover dependants. The total number of reported beneficiaries stood at 83 664. This was, however, an undercount to the extent that the 1 002 for Clothing Manufacturing included only those visiting panel doctors. A much larger number, 167 306, attended the fund's clinics and thus benefited from services without the fund paying per individual beneficiary. This larger number almost certainly includes dependents.

Laundry, Cleaning & Dyeing said that the total amount paid out in **benefits** was confidential. Clothing said that they made no payouts to beneficiaries as they provide benefits through panel doctors and clinics rather than through covering patient fees. Among the remaining eleven funds, payouts ranged from R400 000 in Hairdressing & Cosmetology (KwaZulu-Natal) to R46,4m in the Motor Industry. Total payouts across the twelve funds were close to R100m. This is an undercount to the extent that Clothing and other funds provide benefits in ways that would not be reflected as payouts.

The Laundry, Cleaning & Dyeing spokesperson said that they were not required to hold **reserves** because they were not a medical scheme, but instead owned by Netcare. Among the remaining funds, reserves ranged from R328 000 in Hairdressing & Cosmetology (KwaZulu-Natal) to R426,4m in the Motor Industry. The Motor Industry reserves thus amounted to a very large proportion of the total reserves across the 12 funds of R496,4m.

Only three of the medical funds were not **administered** by the council itself. Laundry, Cleaning & Dyeing KwaZulu-Natal and Meat Trade Gauteng were administered by private companies, while the fund of Laundry, Cleaning & Dyeing Cape was administered by the Laundry & Allied Workers Union of South Africa. For Laundry, Cleaning & Dyeing Cape the administration fee was calculated in two parts – R3 000 per month for union member administration, and a separate financial administration fee. For the other two externally administered funds the administration fee was calculated per member. These findings in respect of administration cast doubt on the Council for Medical Scheme's finding (2005) that the administration costs of bargaining council schemes tend to be much larger than the 10% benchmark for registered schemes.

The two Laundry, Cleaning & Dyeing medical funds and that of the Building Industry (Southern & Eastern Cape) were the only ones to be **registered** under the Medical Schemes Act.

Five funds reported real increases in contributions over the past five years, while four reported increased benefits. Clothing had introduced benefits for home workers.

Beyond the bargaining council funds, there are a number of funds that emerged from an earlier period of collective bargaining but are not today linked to a bargaining council. The Food Workers Medical Benefit Fund (currently linked to Food and Allied Workers Union) and the Fishing Industry Medical Scheme (previously the Trawlermen's Medical Fund) are two such funds listed on the website of the Council for Medical Schemes (www.medicalschemes.com).

Sick pay funds

Sick pay funds currently exist alongside provision for payments in respect of longer-term illnesses in the Unemployment Insurance Act, and a provision in the BCEA for full pay in respect of shorter-term illness.

Historically, in June 1972, industrial councils administered 49 sick pay schemes, which between them covered 348 756 workers (Cooper, 1979). Cooper suggests that these funds

were of little benefit to employees, but tended to benefit employers. Most of the funds did not pay for the first few days that a worker was off ill. All required that a worker produce a doctor's certificate. Cooper argues that the schemes afforded employers increased control over absenteeism. Where, as happened in some cases, doctors operated on factory premises, they might often sympathise more with the employer's needs than those of the workers. In the current research, an informant from a council that had closed its sick pay fund said that they had done so because it created a perverse incentive. Because the benefit was only available for illnesses of three days or longer, the doctor sometimes felt pressure to book the worker off for longer than necessary. Meanwhile, the employer "did not mind as they don't see the direct cost".

The early sick pay funds operated at a time when ordinary legislation did not provide the sick pay cover currently provided in the BCEA. From the in-depth interviews, it seems that some funds are currently offering less than is provided by the BCEA. In other cases, however, the sick pay fund offers more. In all cases, having a fund changes the route through which the employer allocates money for this purpose, in that money is set aside in advance. In some cases it also alters the route for payment, in that the employee claims from the fund rather than the employer.

Two examples are useful in illustrating the diversity of practices in respect of sick pay funds:

- In Diamond Cutting the fund amount only covers part of the wage. This is paid over to the employer when they claim for an absent worker, and the employer is then required to top up the amount to equal the full wage in line with the BCEA.
- In Metal & Engineering, the fund provides for full pay for ten days cumulative over a three-year cycle beyond the standard provisions of the BCEA of six weeks cumulative over 36 months. This fund also covers 50% of wages for a period of 26 weeks in respect of maternity cover, to top up Unemployment Insurance Fund (UIF) maternity benefits. There are currently moves to extend the fund to cover compassionate leave days additional to those provided by the BCEA.

In 2007, 14 councils reported that they had sick pay funds. Furniture Manufacturing KwaZulu-Natal had phased out sick pay benefits, which were previously provided alongside the medical benefits.

Seven funds had **separate agreements** for the sick pay fund. In the case of one of these, the Clothing Industry, Northern areas were nevertheless covered in the main agreement. For three funds, the sick pay agreement was not extended to non-parties. For the Electrical Industry it was extended only in respect of Gauteng, Port Elizabeth, East London and Bloemfontein.

In the case of five funds, membership of the sick pay fund was **compulsory**. For Clothing, it was compulsory for metropolitan areas. For five funds only union members working for party employers could join. Electrical had a similar provision in KwaZulu-Natal and Western Cape, but all employees in Gauteng, East London, Port Elizabeth and Bloemfontein were eligible. For Road Freight, the fund was restricted to defined categories of employees. Metal & Engineering said that membership was under review, in consultation with the Department of Labour. The fund was at this point compulsory only for firms that were members of the

party employers association and employees belonging to party trade unions, but the council was hoping to make it compulsory for all in the industry.

Twelve of the funds were able to provide **membership** numbers. These ranged from 650 for Hairdressing & Cosmetology KwaZulu-Natal to 165 000 for Metal & Engineering. Together, the funds had 371 231 members.

Three funds specified the employer **contributions** in terms of a percentage of the wage. This ranged from 0,18% of the wage for Metal & Engineering to 20% in the Road Freight Industry. For two funds, the sick pay fund was funded through the sick benefit contribution. For the five funds in which the employer contribution was specified as a rand amount, the range was from R8,40 for unskilled workers in the Building Industry East London to R45 for Diamond Cutting.

For five funds no employee contribution was required for the sick pay fund. For Building (Southern & Eastern Cape) the employee contribution was R3,20 as against the employer's R19,20, while in Hairdressing & Cosmetology semi-national the employee contributed twice as much as the employer. In the remaining four funds for which information was provided, the employer and employee contributions were identical.

Hairdressing & Cosmetology (KwaZulu-Natal) did not supply any estimates of total contributions because of the inclusion of sick pay in the sick benefit fund. The administrators for Diamond Cutting refused to supply any estimates on the basis that this was not a bargaining council fund. The Electrical Industry's and Building Kimberley's reasons for non-supply of estimates were that our informants simply did not know, while Hairdressing & Cosmetology semi-national reported that they had experienced a break-in and thus lost the relevant information.

Among the nine councils that provided estimates of the total amount of sick pay contributions received during 2006, the lowest amount was R300 000 for Building (East London), while the highest was R25m for Metal & Engineering.

Only five funds provided an estimate of the number of sick pay **beneficiaries**. These ranged from 500 for Hairdressing Cape Peninsula to 33 800 for the Motor Industry. The total amount paid out in sick pay benefits for the eight funds supplying information was more than R74m. The Building Industry East London fund paid out only R380 000 compared to R11m for Metal & Engineering. **Reserves** for these eight funds ranged from R450 000 for Hairdressing Cape Peninsula to R71m for Metal & Engineering. Total reserves across the eight funds were more than R100m.

In all cases except Diamond Cutting, the bargaining council **administered** the sick pay fund. In Metal & Engineering, the section 21 company did the administration.

Only Metal & Engineering, Building Kimberley and Hairdressing Cape Peninsula reported changes in the sick pay fund over the past five years. The last-named had introduced maternity and paternity leave and increased provision for long illnesses. Building Kimberley had changed the value of the stamps, as it had done for several other funds as well. Metal &

Engineering was planning to introduce compassionate leave, but this was still being reviewed by the Department of Labour at the time of the interview.

Disability cover

Disability cover is intended to provide relief when an employee loses earnings as a result of permanent disability. This money is additional to any money that an employee might receive from the Compensation Fund. Unlike in the case of the Compensation Fund, disability cover in the council funds is not restricted to work-related injuries or illness. A further difference from the Compensation Fund is that some bargaining council funds link this benefit to inability to work in the particular industry (Furniture Greater Northern) or even particular occupation (Metal & Industry), even if the person is capable of being employed in another sector or job.

In most cases for which information was obtained, the benefit is the same as the retirement benefit, and the beneficiary loses entitlement to the retirement benefit. In effect, the lump sum or pension payments are paid out early. In Metal & Engineering, beneficiaries receive regular monthly payments of 75% of salary to age 65. Jewellery & Precious Metal also makes some periodic payments.

Seventeen councils said that they had funds that provided disability cover. In virtually all cases, disability was said to be covered under the pension or provident fund. The only exceptions were Furniture Greater Northern, which had a Death and Disability Scheme, and Building Kimberley, which had a Disability Income Scheme.

Clothing and three of the Building councils said that there were no additional **contributions** required for disability cover. Eight councils described the employer contribution as a percentage of the payroll or of wages/salaries. For these, the percentage ranged from 0,12% in the Road Freight industry to 1,88% for Furniture Manufacturing Eastern Cape. Two funds specified the employer contribution as an amount per employee (R4 and R5,85 per month respectively), while Hairdressing & Cosmetology (KwaZulu-Natal) said that the employer contribution was based on the employee risk profile but did not give the amount or percentage. None of the funds required additional contributions from employees for disability cover.

Eight funds were able to provide an estimate of the total contributions in respect of disability cover during 2006. The small number is partly explained by the fact that several funds did not have separate contributions for disability cover. For those that provided the information, the amount ranged from just over R40 000 for Laundry, Cleaning & Dyeing (Natal) to R258,5m for Road Freight.

Three councils with disability cover reported that they had not paid out any **benefits** in respect of disability during 2006. A further three had each paid out to four or fewer beneficiaries in that year. The five other councils that were able to give beneficiary numbers had much higher numbers – 13 for Building Kimberley, 66 for Furniture, 85 for Building (Cape of Good Hope), 151 for Road Freight, 315 for Clothing Manufacturing, and 1 880 for Metal & Engineering. Building Kimberley reported that members received monthly instalments of which a portion was allocated in respect of waiver of contributions. It was

therefore not possible for this council to provide an estimate of total disability payouts for 2006. The other funds reported paying out between R745 000 (Furniture) and R84,2m (Metal & Engineering).

Furniture (Greater Northern) reported that they had over the past five years been forced to reduce benefits as a result of the large number of claims, while the Meat Trade reported increased costs. Road Freight, in contrast, said that they had increased benefits. Jewellery & Precious Metal had changed from paying a single lump sum to monthly payments for two years plus a lump sum after that. Building Kimberley had reduced benefits to increase retirement savings.

Survivor benefits

Survivor benefits provide assistance to family members if the employee dies. These benefits are often referred to as death benefits. Death benefits for surviving dependants are also provided through the Compensation Fund in respect of employees who die as a result of a work-related injury or illness. The bargaining council benefits are not restricted to work-related causes.

The death benefit provided by the bargaining council funds comes in the form of a lump sum. The examples below give a sense of the variation across funds in terms of the amount:

- Furniture Greater Northern: Between R15 000 and R45 000
- Building North & West Boland: Between R70 000 and R140 000
- Metal & Engineering: Between 300 000 and R1m
- Diamond Cutting: Approximately R300 000.

In the case of Diamond Cutting, union members would receive further benefits from the union.

For Building North & West Boland and Metal & Engineering the amount paid is equal to three times the annual salary. For some others, it depends on the rate and length of time over which contributions have been made. Building North & West Boland said, in contrast, that it simply required a certain number of contributions to have been made in the year of death.

Fourteen councils reported that they had an **agreement** which covered survivor benefits for employees. All except two said that survivor benefits were provided through the pension or provident fund. For Furniture, survivor benefits were covered through the Death and Disability Scheme. Restaurant, Catering & Allied reported that survivor benefits were covered through Metropolitan Employee Benefits.

Several funds said that there were no separate **contributions** for survivor benefits, as these were included as part of the contribution to the pension or provident fund. This is similar to many private sector funds, where death benefits are covered by the main pension contributions. However, a representative of the Life Officers' Association said that many insurers were currently encouraging employers to make a separate contribution for risk benefits (disability and death) over and above the normal contributions given the marked increases in claims experienced as a result of HIV&AIDS.

Five funds specified the employer contribution as a percentage of payroll or salary. The percentage ranged from 1,2% for provident fund members in the Meat Trade to 12,14% for Jewellery & Precious Metal (Cape). Three funds specified the employer contribution in terms of a rand amount. This ranged from R11,50 per month for Furniture to R22,50 for Laundry, Cleaning & Dyeing (Natal). None of the funds required separate contributions from employees in respect of survivor benefits.

Seven councils were able to provide an estimate of total contributions in respect of survivor benefits during 2006. These ranged from R118 817 for Laundry, Cleaning & Dyeing (Natal) to a massive R258,5m for the Road Freight Industry. Metal & Engineering had the highest number of beneficiaries during 2006 at 1 880, compared to only two for Jewellery & Precious Metal. In terms of total amount paid out in benefits, Metal & Engineering was again the leader, at R534,3m. In contrast, Laundry, Cleaning & Dyeing (Natal), the lowest payer of those who provided information, paid out R194 249. (The estimates for Laundry, Cleaning & Dyeing were in respect of 11 months rather than the full year, but the addition of the twelfth month would be unlikely to change the ranking.)

Several councils reported improvements in survivor benefits over the past five years. Clothing Manufacturing had increased the death benefit from one year's annual salary to 1,5 years plus a refund of contribution, bonuses and interest. Laundry, Cleaning & Dyeing had changed from share of funds (total contributions less expenses) or R30 000, whichever was the greater, to share of funds plus R20 000. Road Freight had also increased the benefit, although they did not provide details. The Furniture Bargaining Council had decreased contributions from R13,50 to R11,50 per month. The improvements in this particular benefit are interesting given that the HIV&AIDS epidemic has probably resulted in higher rates of death during employment. Indeed, several informants explicitly noted increases in claims for this benefit.

Leave and holiday pay

Leave and holiday pay funds generally provide for extra days – beyond BCEA requirements – of paid leave a year, or for payment of a bonus when the employee goes on annual leave. For these funds, the employer makes contributions to the fund during the year, and the council is then responsible for paying the worker the leave pay. This is different to standard practice under the BCEA where the employer would be responsible for paying this money to the worker.

To some extent leave pay funds may be a historical legacy from the times when basic labour legislation did not guarantee leave pay for all employees. There are, however, reasons why retention of these funds makes sense for some councils. In the case of the building industry, where it is common for employees to have several different employers during the year, the fact that the money is paid to the council increases the likelihood that the employee will get the full amount which is due at the end of the year. A further motivation is that if the employer goes out of business or disappears, the employee will still get their holiday pay for the period in which contributions were paid over. In some cases, these funds also provide benefits beyond what is provided for in the BCEA. In Building Bloemfontein, for example, the employee is entitled in December to three weeks' wages plus an additional three week's bonus. Furniture Greater Northern also has a bonus, which ranged between 5% and 15% of

the weekly pay. The exact percentage depends on the attendance record of the employee concerned. Finally, one informant suggested a further advantage of these funds – that the interest from these advance payments by employers could be used during the year to cover a part of the council's administration costs and so lower the levy to be paid by council members.

Fourteen councils reported that they had a leave or holiday pay fund **agreement**. Three of the councils said that there was a separate agreement in respect of leave pay. For these three councils, the leave pay agreement was not extended to non-parties.

Membership of the leave pay scheme was **compulsory** for most councils. The exceptions were Diamond Cutting and the two Building Industry councils that had separate agreements for leave pay. For Furniture Manufacturing (Eastern Cape) membership was compulsory only for employees working for employers with more than five employees. For the Motor Industry, it was compulsory only for apprentices. Metal & Engineering reported that a company could be exempted if it was struggling. During the time it was exempted it would, however, have to contribute to a trust fund. It would also not be allowed to apply a second time for exemption.

The Diamond Cutting fund was open only to members of registered unions employed by employers party to the council. Road Freight said that eligibility was only open to employees in certain geographical areas.

All fourteen funds were able to estimate the number of leave/holiday pay fund **members**. The number ranged from 446 in Furniture Manufacturing (Eastern Cape) to 284 000 in Metal & Engineering. In total, the thirteen councils had 433 125 leave or holiday pay fund members. This is equal to about half of all employees covered by the bargaining councils that have funds of any kind.

Four councils specified the employer **contribution** to the fund in terms of a rand amount. This ranged from R63,83 per month for the lowest-paid Motor Industry employees to R399,40 for skilled workers under the Building Industry (Southern & Eastern Cape) fund. Eight funds specified the employer contribution in terms of a percentage. For the six with a relatively simple calculation, the percentage ranged from less than 2% for the Building Industry (Cape of Good Hope) to 12,5% for some employees in Furniture Manufacturing. Furniture Manufacturing (Greater Northern) had a sliding scale depending on how many hours of work the employee had 'lost' in a particular week, with the percentage ranging between 5% and 15%. Road Freight required a contribution of 15% of the weekly wage per 21-shift cycle. For Metal & Engineering there were no employer contributions. Instead, holiday pay was part of the main agreement and took the form of a thirteenth cheque for which employers paid into a trust/suspense account each month. Only Building Kimberley required a contribution from the employee. This was said to vary according to the employee's job description.

Ten of the councils were able to give some estimates in respect of total contributions received during 2006, total beneficiaries, total amount of benefits paid out, and total payout. Some of the ten were not, however, able to provide all of these items. The Motor Industry said it could not provide any of this information as employers regarded it as 'privileged'.

In terms of total **contributions**, the amount ranged between R1,3m for Furniture Manufacturing (Eastern Cape) and R71,5m for Road Freight among the eight that provided information. The number of beneficiaries was provided by ten councils. This number ranged from 466 for Furniture Manufacturing (Eastern Cape) to 270 000 for Metal & Engineering. Total amount paid out for leave pay was provided by nine councils (Metal & Engineering did not provide this information). The amount ranged from R1,3m for Furniture Manufacturing (Eastern Cape) to R49m for Furniture (Greater Northern).

Five councils said that the leave/holiday pay fund did not have any **reserves**. Actual amounts were reported only for four of the Building Industry councils. These ranged from R157 038 for North & West Boland to R3m for Southern & Eastern Cape.

All except one of the funds was said to be **administered** by the council itself or by its executive committee. The exception was Furniture Manufacturing (Eastern Cape), which was administered by South City Employee Benefit Consultants. When asked about the administration fee, this council said only that it was 'negotiated'.

The Motor Industry informant said that there had been discussions about phasing out the leave pay fund and the associated benefits. Employees had opposed this and had instead wanted additional benefits. Additional benefits were, however, not being considered.

Unemployment benefits

The Unemployment Insurance Fund (UIF) provides cover across all industries for those who become unemployed, as well as for maternity and illness. An amount equal to 1% of earnings is deducted from the earnings of all employees, with the employer making a matching contribution. The Fund pays between 38% and 60% of the previous earnings of the unemployed person, with a higher percentage being paid to low-paid workers. The period for which the payment is paid depends on the number of contributions previously made in respect of the employee concerned, with a limit on the total number of weeks to be paid.

Only one council – Diamond Cutting – reported having an unemployment fund. Employers contributed R4 per month for employees earning less than R1 000 per month to this fund, and R6 for those earning above this amount. Employees contributed half of the employer amount. The benefit is paid for a maximum of six weeks, and is equal to 65% of the earnings. This percentage was set at a time when the UIF had a flat rate of 33% for all earnings levels, and thus gave the unemployed person almost 100% of the former earnings. The percentage has not been changed since the amendment to the UIF Act.

Other funds

In respect of maternity, housing, and funeral benefits, the only questions we asked were whether the council had such provisions and, if so, under which fund these benefits were covered.

Five councils reported providing **maternity** benefits. Restaurant, Catering & Allied said that negotiations were taking place about establishing such benefits. For the most part the maternity benefits were provided through sick pay or sick benefit funds. The Motor Industry had a separate maternity fund, while in Clothing Manufacturing these benefits were covered in the Eastern Cape through a Supplementary Benefits Fund.

Nine councils provided some sort of **housing** benefits. For the most part, the benefits probably consisted of underwriting loans or assisting in some other way with facilitating access to housing finance. Seven funds provided housing benefits through the pension or provident fund. Clothing Manufacturing also utilised their provident fund, but did not cover employees in all geographical areas. The Furniture Bargaining Council (Greater Northern) had a special Home Ownership Scheme.

Twenty funds provided **funeral** benefits. In most cases, these benefits were provided through the provident or pension funds. Furniture (Greater Northern) provided the benefits through their Death and Disability Scheme, Hairdressing & Cosmetology (KwaZulu-Natal) through the Sick Benefit Fund, Restaurant, Catering & Allied Trades through Metropolitan Employee Benefits, Meat Trade Gauteng through Safrican insurance brokers, and Building Kimberley through the bargaining council itself. We obtained details of the nature of the benefit in only one case as an illustration. Furniture KwaZulu-Natal's fund requires a 30c per week contribution from both side, which the fund subsidises with a further R5,40 per week. The benefit ranges from R500 to R6 000, depending on the length of contributions.

Five councils named further funds when asked if there were any that had not already been covered in the questionnaire. These were as follows:

- Clothing Manufacturing: Supplementary Benefits in Eastern Cape, Industry Protection Fund in Northern and Western Cape, and Trade Union Capacity Building Fund in Western Cape
- Furniture Bargaining Council (Greater Northern): Emergency, Trauma, Disaster & Education Fund
- Furniture Manufacturing (Western Cape): Bursary Grant Assistance Scheme
- Metal & Engineering: Compliance Fund
- Road Freight: Wellness Fund.

Employee benefit funds beyond the bargaining councils

Funds covering public sector workers

In early April 2004, the public sector (national and provincial government) employed just under 1,1 million workers. Of these, about 291 000 were employed by national departments, with the rest employed by the provincial governments.

There are five public sector bargaining councils, of which the Public Service Co-ordinating Bargaining Council acts as the overarching body. The other public sector councils are the Education Labour Relations Council, the General Public Service Sectoral Bargaining

Council, the Public Health and Welfare Bargaining Council and the Safety and Security Sectoral Bargaining Council.

The public sector bargaining councils do not have any funds under their direct control. There are, however, two funds which cover significant numbers of public sector employees. These are the Government Employees Pension Fund (GEPF) and the Government Employees Medical Scheme (GEMS). These are described briefly below.

The South African Local Government Bargaining Council covers workers at municipal level, who are currently not regarded as public servants. This council does not have any benefit funds. The South African Municipal Workers' Union has, however, managed a medical benefit scheme for many years.

Government Employees Pension Fund

The GEPF was established in 1996, and membership is compulsory for all employees of national and provincial governments who are not required by legislation to become a member of another pension fund, or excluded from the pension fund. The Fund is not a bargaining council agreement, but covers employees who are part of the public sector bargaining councils. As at 31 March 2007, GEPF had 1 126 000 contributing members and 303 977 pensioners.

Government contributes 13% of the employee's gross salary to the fund each month, while the employee contributes 7,5%. The fund's benefits include cover for survivors and in respect of funerals. The GEPF is not registered under the Pensions Funds Act.

Government Employees Medical Scheme

GEMS is a relatively new fund, as it was registered on 1 January 2005 but only started enrolling members on 1 January 2006. The fund is not in a bargaining council agreement in that it was not established in terms of section 28(1)(g) of the LRA. Nevertheless, the medical subsidy (i.e. employer contribution) policy was agreed to in the Public Service Co-ordinating Bargaining Council by government and the public sector trade unions.

Membership of GEMS is not compulsory. Employees appointed before 1 July 2006 can choose whether they want to belong to a medical scheme and, if so, which scheme they belong to. Employees appointed from 1 July 2006 onwards will only receive the employer subsidy if they enrol on GEMS but can choose to enrol on other medical schemes if they so wish.

GEMS is open to all those employed for at least 12 months in national departments, provincial departments, provincial administrations, and 'organisational components' listed in schedules 1, 2 and 3 of the Public Service Act. Employees of the South African Secret Service, the National Intelligence Agency and the South African National Defence Force are, however, excluded, as are departments that have their own conditions of service, such as the South African Police Service. Employees of the National Prosecuting Authority, the South African Social Security Agency and GEMS itself are eligible, as are former public service employees whose services were terminated due to ill-health, retrenchment, a voluntary severance package and retirement.

In April 2007, approximately 971 000 public service employees were eligible to enrol on GEMS, of whom 514 000 were receiving the subsidy. In total, GEMS covered 114 000 employees and approximately 310 000 dependents. An estimated 40% of the 52 594 members covered by GEMS by November 2006 were previously not covered by a medical aid.

The employer contribution varies across members. For active employees, the subsidy is set at 75% of the contribution up to R1 900 per month for a family of five. The contribution itself depends on family size, income level and the benefit option chosen by the member. Among pensioners, some receive a full subsidy, some receive a partial subsidy and some receive no subsidy.

In 2006, total contributions received amounted to R223m, and 45 520 principal members received benefits from the fund in the total amount of R151m. Total reserves as at end 2006 stood at R81m.

GEMS is administered by the Metropolitan Health Group. The fee is based on the number of members at a given point in time. The fund is registered under the Medical Schemes Act.

Funds in sectoral determination

Bargaining councils are established in terms of the LRA. Sectoral determinations, in contrast, are promulgated under the Basic Conditions of Employment Act (BCEA) to govern sectors which are not well organised enough to have self-government under a bargaining council. Godfrey et al (2006) estimate that while all bargaining councils between them cover approximately 25% of the 9,5 million employees falling under the LRA and BCEA, the nine sectoral determinations that have come into effect since the BCEA was introduced cover approximately 36%, or about 3,4 million employees. This estimate excludes the old wage determinations which automatically became sectoral determinations. The recent promulgation of the hospitality sector determination will have increased the number of employees covered by determinations.

Only two sectoral determinations – those for the private security industry and contract cleaning – provide for provident funds. The private security determination covers the whole country. The contract cleaning determination covers all parts of the country other than those parts of KwaZulu-Natal covered by the relevant bargaining council. No other funds are provided for in these or the other sectoral determinations.

In March 2007 the **private security** provident fund had approximately 200 000 members, from about 15 000 employers. Membership of the fund is compulsory, but only for security guards. Employer and employee contributions are equal, at 6,5% each of the monthly salary. In 2006 total contributions received stood at R30m. During 2006, 69 358 members received benefits, in a total amount of R72m. The fund reportedly has no reserves. The fund is registered under the Pension Funds Act.

Membership of the **contract cleaning** fund is compulsory for all employees in the contract cleaning sector outside of the area covered by the bargaining council. In March 2007, the fund had 65 815 members. Employer and employee contributions are equal. The rate was

increased from 5% to 5,25% each of the monthly salary as from 1 December 2006. In 2006 total contributions stood at R41,4m. During 2006, 4 288 members received benefits, in a total amount of R11m. The fund reportedly has no reserves. The fund is registered under the Pension Funds Act. Administration fees are made up of a set rand amount per member.

Statutory councils

The LRA makes provision for statutory councils alongside bargaining councils. Section 43 of the Act states that the powers of such councils include the establishment and administration of pension, provident, medical aid, sick pay, holiday, unemployment schemes or funds “or any similar schemes or funds for the benefit of one or more of the parties to the statutory council or their members”.

At this point, there are only two statutory councils. The first is Amanzi Water Board, which does not have any benefit funds. The second is Printing and Packaging, which was established some years after the corresponding industrial council was deregistered. At the time of deregistration, the South African Typographical Union (SATU), which was the employee party to the industrial council, took over administration of its funds. The Union currently administers four funds, namely the Printing Industries Pension Fund, SATU National Provident Fund, Employee Benefit Fund and a medical aid. The first two funds are registered under the Pension Funds Act and the Employee Benefit Fund is registered in terms of the Friendly Societies Act. The medical aid is administered jointly with Old Mutual and Oxygen. SATU does not see any of these funds as bargaining council funds and was therefore unwilling to provide detailed information on them for this research. The union currently has approximately 12 000 members.

Issues for discussion

The findings from the research reported above illustrate the wide diversity in funds across industries, across types of fund, and within industries and types of fund. In short, it is very difficult to make any generalised statements about any type of fund or any aspect of the funds. The following paragraphs focus instead on raising some of the issues that might be of interest to the National Treasury and others interested in the social security arrangements available to relatively low-paid employees who would, without these schemes, usually not be able to afford the various forms of coverage. The discussion is based primarily on the third phase interviews, but draws on information from previous phases. Because third phase interviews were conducted primarily with those involved and interested in bargaining councils, there is a danger of some bias in favour of these funds. The interviews did, however, include some critical voices, and an effort has been made below to present all sides of the arguments.

Value for money

When asked about value for money, many informants stressed that the economies of scale involved because of the large number of employers resulted in lower costs for better benefits than any individual company would be able to negotiate on its own. Rusconi’s regressions (quoted in Department of Social Development, 2007: 75) confirm the strong relationship between the size of a fund and administration costs expressed as a proportion of

contributions. Rusconi found that, on average, this proportion was twice as high for a fund with 40 members as for one with 700 members. As discussed in relation to Table 1 above, many of the companies covered by the councils will have less than 40 employees. In contrast, all but one of the councils cover more than 700 employees.

Where funds are internally administered, there is a further cost saving in that only actual costs have to be covered, with no provision for profits. In the Metals & Engineering Industry, with its specialised internal agency, and about half of the investments done in-house, the administration cost for the provident fund was estimated at about R20 per member per month. There might well be further savings related to specific institutional characteristics of these funds. Thus the recent Department of Social Development report (2007: 31) quotes Whitehouse's observation in respect of industrial pension schemes in Australia that seem similar to the bargaining council ones. Whitehouse notes that these schemes tend to have lower costs because the captive market reduces the need for marketing and sales.

The Clothing Health Care Fund in the Western Cape provided figures to support its claims of value for money. The fund pays an average of R98 for a visit to a doctor, whereas the doctors concerned would usually charge about R120. This lower cost allows workers to visit the doctor more often than they might otherwise do. In addition, members have unlimited use of clinics that include social workers, physiotherapy students, psychology students, an oral hygienist, among others. This grouping of skills and services would be found in few, if any, private group practices. In terms of overall cost, the fund currently brings in contributions of R29m and has expenditure of R35m. Internal calculations suggest that if the service was costed out, it would be valued at around R100m. An external reviewer found similarly that the cost stood at around 33-35% of the market cost.

The estimates above raise another, partly non-monetary, aspect of value for money, namely the ability of these funds to adapt to particular circumstances. The two figures above in respect of Clothing contributions and expenditure are obviously not sustainable on a long-term basis. They are the result of keeping contributions constant for several years in light of the severe economic difficulties facing the industry. The shortfall has for these years been covered by reserves. These will soon run out and contributions will need to be increased if the fund is to survive. There are differing views whether such strategies are a good idea. The strategies might not be possible in a private sector fund.

The Clothing fund attributes its achievement to its relatively large membership base. Other council medical schemes would not have the same level of services. Some do, however, offer benefits such as basic blood tests and pathology which the Clothing Fund does not offer.

Another contributor to the relative efficiency and effectiveness of the funds is the collection system for contributions. The fact that a single body and set of agents is responsible for monitoring and collection of a range of different monies brings economies of scale. The agents also acquire an in-depth knowledge of the particular industry which facilitates monitoring and enforcement.

Two caveats were raised in respect of value for money. Firstly, one informant noted that while panel doctors and similar approaches within council medical schemes could bring

value for money because doctors would offer services at 'discounted' rates, he felt that the 'parochial' arrangements involved were likely to encourage corruption. Secondly, recent interviews by LEP among small businesses uncovered some complaints about the low rate of interest that the council funds earned. It seems that these complaints probably related to funds administered by the councils, where the staff responsible may in some cases lack skills and knowledge about investments.

Differences from private sector funds

When asked how the council funds differed from those in the private sector, virtually all informants stressed two, related, points. The first point was that these funds are negotiated. This meant that the contributions and benefits were likely to be more acceptable to all parties than externally imposed conditions, and more likely to suit the particular needs and circumstances. The second point was the way the funds were adapted to meet the particular needs of a particular industry.

One striking example of such an adaptation was given in the Clothing Industry, where the medical scheme found that employees were using services less and felt that this might reflect workers' fear of losing their jobs and losing wages in an industry under great stress. In order to assist workers, the fund started providing family planning services and counselling in the factories, so that workers did not need to take time off. The clinic has also been seeing increased numbers of workers on Saturdays, as this is not a usual working day.

A third commonly reported difference related to enforcement. All bargaining councils have established mechanisms through which they collect the various monies owing to them, including levies to the council as well as contributions to the schemes. All councils also have agents who are responsible for inspection, monitoring and enforcement, including of collections. One fund representative said that collection of arrear funds was one of the council's main compliance priorities. Between them the councils employ more than 500 agents. Where companies default, compliance is immediately pursued through LRA-prescribed procedures, which start with the issuing of a compliance order, and extend to arbitration where necessary. The process is thus different from that for private funds, where compliance is pursued through the courts. Informants felt that the council system was more likely to get good results. They also pointed out that the FSB did not have anywhere near the number of monitoring and enforcement agents that the councils had, despite the much larger number of funds for which the Board is responsible.

Godfrey et al (2006) found that, as might be expected, the large national councils tended to employ more agents (inspectors) to monitor compliance. The number of agents employed did not, however, increase proportionally to the increase in employees, so that there tended to be a larger number of employees per agent in the larger councils than in the smaller local ones. Nevertheless, the large national councils tended to issue more compliance orders than the smaller ones.

There are advantages, including cost-related ones, in the council funds using these mechanisms. But these mechanisms also have their drawbacks. One particular challenge for many councils is the seven-day window period in which the Pension Funds Act stipulates that contributions must be paid over. Councils generally have a longer window period and

would find it difficult to shorten it, or to have different periods for different funds. One fund explained the difficulty as relating to the priority for the agents checking on wage payments. Metal & Engineering reported, however, that it had been able to change the window period from two weeks to seven days.

A fourth – and very important – difference between private and council funds relates to the level of contributions, which tend to be lower than those for other private funds in terms of both percentage of earnings and absolute amount. This is what makes cover through these funds affordable to relatively low-paid workers.

A final difference – mentioned by only one informant – is that the funds are negotiated for a set period, after which they must be renegotiated. The informant who raised this point noted that it gave the funds an ‘element of surprise’ and created anxiety for those responsible. The concern here would be greatest in respect of funds that are part of the main agreement, as the main agreement will be re-negotiated relatively frequently.

Knowledge of benefits

Informants felt that most members would be aware that they were entitled to benefits because they would know that deductions were being made from their wages. Information provision would happen initially when workers were signed up by agents, and there might be further queries and provision of information when they received each pay slip. Companies would also be provided with the information by the agents when registering with the council, and some employers would pass on this information to their employees. There might be further communication through employers informing employees about deductions and payments. For pension and provident funds, it seems common to send a benefit statement to members. Some informants noted that members could and did query with them what the exact entitlements were. Perhaps most important is the role that is played by trade unions in educating members about their benefits. The effectiveness of this would depend on the energy and reach of the unions concerned.

Despite the multiple possible routes for communication, some informants noted that communication could be improved. In Clothing Western Cape, for example, the medical scheme does not have a booklet and does not issue statements as the provident fund does. Communication and knowledge of benefits would also be weak for funds, such as those in the building industry, which provide for dormant members.

Governance

As discussed in detail above in relation to the different types of funds, administration of funds is often contracted out to an insurance company or specialised agency, but in some cases is handled in-house by the bargaining council itself or a specially-established body. Governance of the funds takes two forms. Some funds are governed by a board of trustees known as a management board. Other funds are governed by the council itself. A separate management board is likely where the fund has been extended, in that these funds cover non-parties whereas the council itself only has party representation. Where funds are part of a main agreement, governance will be by the council itself. In the case of both management

boards and councils, there is 50:50 representation of employers and employees/unions on the governing body.

Most informants felt that, if anything, governance of funds falling under bargaining councils was likely to be better than that of the average private sector fund. They attributed this, firstly, to the 50:50 representation. Secondly, they noted that members tended to be much closer to governance of bargaining council funds than of private sector funds, where an individual member had virtually no say and had to “take it or leave it” In bargaining councils, in contrast, members had access through their unions and representatives. In some cases, it seems that the funds also allow delegates beyond the trustees to raise problems with the administrators. In addition, the trustees often take a personal interest in each case. Thus in Diamond Cutting, we were told that trustees check carefully against “strict rules” who is nominated as beneficiaries in the case of death to ensure that appropriate people benefit.

Several informants said that unions kept a very close watch over what happened in the funds, and were always ready to question administrators. One informant commented that the combination of employers and employees made it likely that the best interests of members would be served. He argued that employers were always “very stingy” about how money that they had contributed was spent, whereas employees would ensure that they got the best deal possible. The employer representative interviewed noted explicitly that management board members pay a lot of attention to the investment side.

While the overall feeling was positive in relation to governance, there were a few caveats. One informant noted the importance of proper training of trustees, so that they understood the intricacies of funds. A second informant felt uncomfortable with the fact that union representatives on the management boards were not necessarily themselves members of the funds concerned. A third informant acknowledged that there was scope for further improvement in oversight, but noted as well that most of the big scandals had occurred in private funds.

Oversight

Beyond the management boards, further oversight over both administrators and management is exercised by the auditors which all funds are required to have. There is still further oversight by the official regulatory bodies. These include the Financial Services Board, Council for Medical Schemes, and Registrar of Labour Relations in the Department of Labour.

The relevant unit of the **Department of Labour** has a total staff complement of 24 people. The unit is responsible for registration of trade unions, employer organisations and bargaining councils, overseeing the activities of bargaining councils, monitoring representivity, and submitting and processing agreements to the Minister for approval.

The councils are required to submit the financial statements of the council and of all the social benefit funds on an annual basis. This requirement holds whether or not the funds are externally administered. According to the Registrar, virtually all funds observe this requirement. The exceptions include some smaller and non-functioning councils which the Registrar is in the process of closing down.

A separate financial report is required for each fund, with its own independent audited statement. If there are any qualifications or negative comments, the Department writes to the council asking it to explain the reasons and what steps they are taking to address the problems. In these cases, the Department also asks for a copy of the auditors' management report. Overall, the Department finds that problems are far less common for the bargaining councils than for the unions and employer organisations. Most councils are felt to have solid financial systems and said to see themselves as "public organisations". The Department's oversight and knowledge of individual councils is strengthened by annual or more frequent visits to each and every council.

Unlike the other regulatory bodies, the Department of Labour's unit does not have staff with specialised accounting or bookkeeping skills. In the past, there was a financial section, but this disappeared during the restructuring. The Department has plans to reconstitute such a unit, but at present it still overwhelmed by the task of dealing with the increase in applications for registrations that resulted from changes to the Labour Relations Act. The Registrar would like to monitor administration fees, but does not currently have the capacity to do so.

The Registrar is aware that the Department does not have the same specialised knowledge and skills as the other regulatory bodies. The Department does, however, have knowledge that the other bodies do not have. The Registrar and others argue further that the councils are a "different animal". In particular, many informants emphasised the fact that the funds were developed and maintained through collective bargaining. They also emphasised that the particular situation of beneficiaries of these funds – and in particular the low wages – meant that requirements that were sensible for other funds were not necessarily advisable for bargaining councils. Instead, the parties were in the best position to decide what was affordable and what trade-offs they wanted to make. As a result, the Department is loath to interfere with decisions as to how the benefits and contributions should be structured. The Department would, for example, not argue against employers and unions agreeing to trade off a wage increase for an increase in contributions. The Department does, however, discourage cross-subsidisation of one fund by another.

The **Council for Medical Schemes** keeps close scrutiny over the medical funds that are registered with it. In 2005, this amounted to a total of 131 schemes – 47 open and 84 restricted. Between them these schemes had 2,8m principal members and 6,8m total beneficiaries (Council for Medical Schemes, 2006: 16; 47). These numbers do not include any bargaining council schemes.

Since 2000, all registered funds have been required to submit management accounts on a quarterly basis using a standard format. The Council has a financial services unit and the funds are apportioned out between staff, with the bigger ones given to the senior accountants. This system means that the staff member builds up good knowledge of the funds under his/her control. The quarterly accounts are evaluated for solvency. At the end of the year, funds are required to submit an audited statement and data relating to the past twelve months, again using a standard format. Where funds do not submit on time, they are subject to a routine penalty of R1 000 per day. The failure can be made public, the principal officer and trustees can be charged with a criminal offence, and the penalty will be reflected

in the accounts. Most funds are said to comply, although some are suspected of trying to hide information. The Council feels that the quarterly reports also allow better scrutiny over auditors, who sometimes become “too cosy” with administrators. Where schemes appear to be in trouble, they are required to appear before the Council and draw up a business plan showing how they will deal with the problems.

Oversight by the Council extends to ensuring that minimum reserve requirements of 25% of gross contribution income are observed. The Council also scrutinises administration fees. For this purpose, it has a guideline of 10% of gross contribution. In practice, it expects the larger schemes to have economies of scale that allow a lower rate than this. The Act gives the Council the ability to constrain fees. At the time of the interview two schemes were being investigated in this respect.

The above system does not currently apply to bargaining council medical schemes because they do not fall under the Medical Schemes Act. Some schemes do submit data to the Council. This information is, however, not included in the annual reports of the Council.

The **Financial Services Board** is designated in the relevant Act to serve as the Registrar of Pension Funds. The Board employs a range of professional staff with specialised skills, including actuaries, accountants and lawyers for this purpose. Funds are required to submit their rules when applying for registration, and these rules must be approved by the FSB before being put into effect. Later rule amendments must also be submitted for approval. Funds are also required to submit annual returns using a prescribed format. These include audited financial statement and the ‘Req 28’ that confirms that they are complying with asset requirements. These documents are scrutinised, and the FSB can take regulatory action if there are any untoward findings. The Deputy Registrar could not say in what percentage of cases this happens, but said there were cases where it did, some of them involving large amounts. The most common action is to apply to court to have the trustees removed and a curator appointed. Where money appears to have been misappropriated, the Board informs the National Prosecuting Authority. The Registrar did not have a sense as to whether bargaining council funds might be more or less likely than other funds to contravene regulations.

Underwritten funds with assets below a certain value were previously exempt from oversight by the FSB, but this exemption was abolished about two years ago. All retirement funds thus now fall under the Act, except the bargaining council funds found to fall outside in the recent court case. Currently there are about 13 500 funds registered with the FSB, of which 60-70% have fewer than 100 members. An estimated 65% of these funds submit returns as required by the law.

As described in an earlier section, there are different interpretations of whether amendments to the LRA in 1998 and 2002 placed bargaining council funds under the Pension Funds Act. Nevertheless, several funds did register under the Act, including the two later implicated in the court case. These funds said that they registered to show their strong belief in the need for good governance. After the passing of the amendments, the annual report for 2003 of the Registrar read as follows (Registrar of Pension Funds, 2003: 4), supporting the understanding that some funds do register although not required to, but that all funds are required to submit statistics:

Bargaining council funds that have opted not to register are not supervised by the Registrar. The Department of Labour supervises these funds, which are exempted in terms of section 2(1) of the Act from the provisions of the Act other than the requirement to furnish certain statistical information.

In line with their exclusion from oversight by the Registrar, members of bargaining council funds have not in recent years been entitled to use the services of the Adjudicator. Up until 2003, however, the then Adjudicator, John Murphy, had an informal arrangement whereby these services were provided if the fund and the member agreed. An informant who worked for the Adjudicator during that period confirmed that there were complaints from members of bargaining council funds. He could not say whether complaints were more or less frequent from these funds than from others. He also confirmed that the nature of the complaints was not noticeably different to that for other funds. The informant said that the Adjudicator favoured the funds coming under their jurisdiction. But, should this happen, they would want the member first to attempt to use the council's own dispute resolution mechanism.

Minimum requirements

In respect of registration under both the Medical Schemes and Pensions Funds Act, a major impediment to registration for many of the bargaining council schemes takes the form of minimum requirements which appear too onerous. In the case of Medical Schemes, it seems that a solution acceptable to most people involved is close at hand. In the case of pensions, this is not the case. The finding of a solution in respect of medical schemes has no doubt been facilitated by the Council for Medical Schemes' acknowledgement of the key role to be played by the Department of Labour in ongoing oversight of the bargaining council schemes (Council for Medical Schemes, 2005).

The main impediment in respect of the Medical Schemes Act is the prescribed minimum benefits (PMB) that all registered funds are required to provide. These include provision of a certain level of specified benefits as well as coverage of dependents.

One of the main differences between the council schemes and most others is the council schemes' focus on primary health care rather than hospital care. Related to this, is a common practice of having a panel of doctors who provide services or even, in a few cases, employing doctors. When members visit these doctors, they are generally not required to pay out-of-pocket beyond what they have already contributed, except perhaps in respect of medicine. The panel doctors are paid in different ways, including fee for service, a fixed fee, and a per-item fee. The advantage for the doctors is a more or less captive market. The advantage for the funds is that the doctors are prepared to charge lower rates. Some restriction is usually placed on the number of visits that any one member can make. As a result, where funds have both panel doctors and a clinic, the former tend to deal mainly with acute care, while the clinics – where visits are unlimited – provide service for chronic conditions.

The underlying problem in providing the PMB is that households and individuals will usually not take out insurance if the amount exceeds a certain proportion of their income. In respect of medical schemes, this proportion is thought to be around 16% of household income. On

an average wage for those covered by bargaining councils, 16% of income will not provide standard medical insurance that includes PMB. Recognition of this inability of low-income people to pay contributions at a level that would provide such cover resulted in the commissioning of the Consultative Investigation into Low Income Medical Schemes (LIMS) by the Ministerial Task Team on Social Health Insurance in April 2005. The report on this investigation (Broomberg, 2006) confirms the existence of the problem and proposes solutions.

The 'target population' for the LIMS investigation was households with a gross monthly income between R2 500 and R6 000. One part of the investigation involved a household survey the targeted households with incomes of R6 000 per month, estimated to represent more than 5m non-rural households in the country as a whole. The survey revealed that about half of the households had at least one member who was employed in the formal sector. For households with incomes over R2 500, 86% had one or more members employed in the formal sector, and 13% of individuals belonged to medical schemes. The report suggests that many of these individuals would have been members of bargaining council schemes or others with relatively limited benefits. Among households with a member in formal employment, 15% of those who did not belong to a medical scheme gave high costs as the reason. A further quarter had employers who did not offer medical scheme membership.

Households in the target income bracket and with a member in formal employment put the value of a comprehensive primary health care package at R105. They expressed strong preference for non-hospital cover. This preference was supported by the average cost of a visit to a general practitioner of R112 for non-covered households, compared to R27 for those that were covered.

On the basis of these findings and fairly detailed costings, the Benefit Design Task Group recommended a LIMS Minimum Package that would be affordable at a premium of around R150 per person per month, and which assumed a 50% employer subsidy would be likely. The package was designed so as to be largely consistent with the Department of Health's essential care package, including primary health care, emergency hospital care, and HIV&AIDS care. The Task Group recognised that the minimum package was less generous than the standard PMB. Nevertheless, the package encouraged risk pooling among a group that would otherwise not be able to afford any cover and would thus be totally dependent on the state. Members of funds offering the LIMS could theoretically enjoy the same standard of care by obtaining elements of care that were not covered from the public sector.

It appears that there is now widespread agreement with this approach, and an appropriate amendment to legislation is expected in the foreseeable future. Once this happens, an important impediment to coverage of bargaining council medical schemes by the Act will have been removed.

There might, however, be further impediments. One of these is that some councils might have to undertake major restructuring in order to be able to administer the medical scheme separately, as required under the Act. The Clothing Industry Health Care Fund estimated that this restructuring would entail additional costs in the order of R2m per annum in that the Clothing Industry Bargaining Council could no longer act as the collecting agent in the

same way that it does at present. Similarly, there would not be the same economies of scale as before in having the same agents monitoring all funds. A third problem relates to section 28(a) of the Act, which disallows coverage by more than one scheme. The Clothing Fund again serves as an example here, in that they estimate that about 12% of their members, most of whom are women, are registered as dependent on other medical funds, for example those of their spouses. If the fund came under the Act, these members might choose to leave the Clothing Fund. This would result in a loss to the fund in terms of contributions, and a loss in benefits to the employees as currently these employees can benefit from a range of services offered by the Clothing Fund and not offered by other schemes.

In the case of the Pension Funds Act, at face value the impediments seem less severe, but the feelings appear to be much stronger. Things came to a head with the recent judgment of the Supreme Court of Appeal (Reportable case no 677/05) rejecting the appeal of the FSB against an earlier court finding that the bargaining council funds are not covered by the Pensions Fund Act, whether established as part of a council agreement or separately. The funds directly involved in the case were the Engineering Industries Pension Fund and the Metal Industries Provident Fund, but the finding obviously extends to all council pension and provident funds. The fact that these two funds were involved is in some sense ironic, in that both funds had registered voluntarily under the Act and submitted regular reports. The immediate issue at stake was the council's agreed decision around distribution of funds, which the FSB maintained was contrary to the provisions of the Act in relation to apportionment of actuarial surplus and payment of minimum benefits to pensioners and former employees.

This immediate issue reflects a deeper issue raised by several informants relating to the leeway that parties have to make decisions that might be in the interests of the council or its parties, but not necessarily in the interests of particular members. A further example of this was given by another informant who referred to the forfeiture clauses that are part of many funds. These clauses state that, when a person resigns, they get only a portion of their contributions. The informant said that some funds might experience cash flow difficulties if such clauses were abolished in line with the Pension Funds Act. Yet another example – referred to by two informants – related to cases where trustees agreed to use money from one fund to cross-subsidise another fund, or to trade off against wages. These examples raise questions as to which and whose interests need safeguarding when it comes to the bargaining council funds. The argument is not as simple as for other funds, as the examples above involve choices between different groups of employees, rather than between beneficiaries and a profit-making institution.

The underlying driver in the appeal was the FSB's wish to have regulatory oversight over all pension and provident funds, while the perception among many bargaining council players is that the FSB does not sufficiently understand the particular circumstances of bargaining council funds. The FSB's counter to this hesitation is to refer to the 156 council funds that it currently estimates it is covering. It feels that if these funds can be accommodated with the regulatory framework, there is no reason that others cannot be covered. This estimate is discussed further below.

The FSB is correct in stating that the Registrar of Labour Relations does not have the same skills and knowledge as the Board in respect of pensions and related issues. There are,

however, other characteristics on which the Department of Labour outperforms the FSB. For example, the Department reports that it is only the occasional fund – mostly those that are more or less defunct – that does not submit reports regularly as required. The FSB, in contrast, reports that only about 65% of the funds required to report to them do so.

In addition, some of the facts on which the FSB case was based, while not questioned by the court, support the suspicion that the FSB does not have a good understanding of some of the basic facts relating to these funds. For example, the judgement cites the Deputy Registrar of Pension Funds to the effect that the bargaining council pension and provident funds between them cover about 1,5m members and pensioners. Yet Table 1 above shows that all bargaining councils with funds together have only just over 800 000 members. The number covered by bargaining councils would be less than this because one council does not have a retirement fund, some funds are not extended to non-parties, and some funds only cover certain categories of worker within the relevant council's scope. Even if pensioners were added, it does not seem possible that the funds would have anywhere near 1,5m members and pensioners. The Deputy Registrar states further that the assets of these funds “run into several hundred billion Rand” (paragraph 23). This again contradicts the findings of this research.

The Deputy Registrar arrived at the 1,5m figure by going through the names of the 13 500-odd funds that are registered with the FSB and guessing which of the names referred to bargaining council funds. This method gave them an estimate of 156 such funds – nearly three times the number of bargaining councils in existence in the country, and six times the number of councils with pension or provident funds.

The Registrar's report for 2003 (Registrar of Pension Funds, 2003: 20-1) provides statistics in respect of bargaining councils that seem to relate only to those that fall directly under the bargaining councils. The number of active members is given as 113 780 in 2003, with zero pensioners for 2003. This gave these funds 1,3% of total membership of pension funds of 9,8m members. The number of bargaining council funds is given as five in 2003, as against nine in 2002, with the remaining four named as cancelled. Aggregate assets of the council funds in 2003 are given as R1 388m. These figures clearly exclude the great majority of funds established by bargaining councils. The numbers cited are also less than the number of funds reported as registered in this research.

Council representatives called into question the FSB's ability to understand their particular needs, as well as the overall capacity of the Board given the large number of funds under its supervision and its limited staff. Several referred to the case of Fidentia, which they felt proved that the Board had no early warning system. Several also complained about the unhelpful attitude of the Board. One suggested that the only real guarantee that funds operated effectively was stakeholder activism, and felt that the union members of the council funds were in a far better position to implement this than most other actors.

At the time of writing, legislation is before parliament which would bring the bargaining council funds under the Pension Funds Act. At a recent meeting of the National Association of Bargaining Councils, a sub-committee was appointed and mandated to meet with the FSB to try to explain the position of the councils and find a mutually agreeable solution.

Organised labour was initially opposed to the idea of falling under the Pensions Funds Act at the time of discussions around the LRA amendments in 2000. The primary reason was that the tax implications were felt to be unhelpful to bargaining councils. Labour is, however, in favour of proper corporate governance and has no objection in principle to having a single regulatory body, such as the FSB. Were this to happen, however, they would want organised labour to have meaningful representation on the FSB so that their concerns can be taken into account. The National Labour Summit held in February 2007 agreed to start discussions on the composition of the FSB before the end of the year.

Overall, it seems that there would be room for covering the council funds by the two Acts if appropriate concessions and motivated exemptions were provided that took into account special circumstances such as differences in their decision-making and governance, and the relatively low earnings of the employees concerned. If this is done, and funds remained under the parallel governance of the Department of Labour, all could gain. The members of the funds would gain by having the extra layer of oversight. The regulatory agencies would gain by having other specialised bodies to check on aspects where they do not have expertise. Society would benefit by not losing the risk pooling that these funds represent among workers who would not normally be covered.

Communication between funds

Informants in the in-depth interviews were asked whether they met with those responsible for other funds. The most common response was that they met during the annual meetings of the National Association of Bargaining Councils. Contact beyond this seemed minimal. Two of the building council funds were in close contact because of geographical proximity and the fact that one utilised the mainframe computer belonging to the other. One of the furniture informants noted that the parties to the different furniture councils tended to be the same, so there was communication and knowledge shared within the industry. The Metal & Engineering pension fund has good communication with the Motor Industry fund, as well as the non-council fund for the mining industry.

On the medical scheme side, there was a medical benefit fund forum in the late 1990s that brought together bargaining council and similar schemes. The forum was informal and was formed in response to the various policy debates of the time. Participants also used the space to share experiences on operational issues. The forum has not met since about 2000.

Establishment and closure of funds

From the in-depth interviews, it seems that most of the existing funds were created at least a decade ago. Many were created even earlier. In particular, some of the funds were established to provide benefits that were not then available to workers either because the basic labour laws did not provide these benefits at all, or because certain workers (African and unskilled in particular) were excluded. Provident funds were those most likely to have been established more recently, commonly in the early 1990s. This often reflected a shift away from the pension funds that had previously benefited only skilled (and largely non-African) workers, to funds that would cover everyone. African workers, in particular, wanted their full benefit on leaving employment so that they could use it to support themselves during a period of likely unemployment.

There were few mentions of closure of funds in recent times. The main reason for closure would be the collapse of the relevant council. The councils that reported currently having funds appeared, for the most part, to be stable. The Registrar did, however, give one or two examples of cases where councils had wanted to liquidate the assets of funds in order to sustain the council itself. He reported that they discouraged this practice as financial problems or poor management were not good reasons for closing funds.

There was only one indication of new funds being created, in the council for the Restaurant Catering and Allied Trades. There were, however, far more indications of benefits being changed and improved in recent times. These changes suggest that the funds are far more than a historical relic. Instead, they bring benefits which workers find meaningful and would like to see retained and perhaps further improved.

There were few reports of changes in demand and usage of funds over recent times. The most commonly reported change in demand related to an increase in death and funeral benefit claims, which informants attributed to HIV&AIDS. Clothing reported a fall-off in usage of the medical scheme benefits, which was attributed to workers' concern about losing their jobs in an industry under severe stress.

Implications of the National Treasury proposal

Informants in the follow-up phase were asked what the implications would be for the bargaining councils if the National Treasury proposals were implemented. Where informants did not know about the proposals, they were asked what it would mean if they were all required to be part of a single fund.

Neither organised labour nor organised business were said to have come up with a formal position on the proposals. Business had, however, discussed the pros and cons, and Business Unity South Africa has plans to establish a committee to come up with a consolidated employer view.

One of the most common concerns was whether and how a single fund would cater for the specific needs of low-paid workers, as well as for the specific needs of particular sectors that are currently provided for by the different council funds. This concern is not minor given the great diversity of provisions noted above. There was a related concern about the loss of decision-making power and oversight currently held by employees and employers.

A contrasting concern, from someone who knew more about the Treasury proposal, was that if employees with earnings below a certain threshold were covered, this would leave very few workers contributing to and benefiting from the council funds. This would make the funds unviable. It would also remove an important aspect of the council system, one that is generally seen as an attraction to participate.

Removal of the funds would have further implications for the councils. Firstly, for the smaller funds in particular, being able to split the costs of various staff between the funds and other council functions is what enables them to have a viable staff. Without this extra

income, some councils would struggle to provide basic council services, or perhaps even to survive.

Looking beyond the councils, replacing these funds with other mechanisms might well result in deterioration in compliance, if the 65% reporting rate for private sector funds estimated by the FSB is a good indication. This would happen because of the lack of attention to individual employers currently found in many councils, as well as the loss of economies of scale in monitoring a range of different funds as well as other aspects of compliance with one set of staff. It would probably also result in poorer individual service for the employees covered in many of the council funds.

There were several challenges that were not mentioned by informants, but which could be important. The first is the fact that the low-paid workers covered by these funds overwhelmingly prefer to take a lump-sum benefit on retirement rather than ongoing monthly payments. This preference is understandable given the immediate needs facing low-paid people and was perhaps the most important motivating factor for the establishment of provident funds in the early 1990s and conversion of several pension funds into provident funds. A related issue is that of lump-sum resignation payments, which are paid when a worker leaves the industry. These payments are probably increasingly common given the world-wide trend away from life-long employment in a single job. Any system which is intended to replace the bargaining council provident funds would need to find a way of replicating these benefits.

A second unmentioned concern arises from the fact that many of the council provident and pension funds include provision for a range of subsidiary benefits. The benefits concerned are usually provided with no extra employee contribution, and a very small contribution, if any, on the part of employers. These benefits, which employers and employees have considered important enough to bargain over, would be lost.

Beyond the immediate losses to the employees (and probably employers in terms of efficiency of use of funds), there is a larger question as to what dissolution of the funds (and perhaps councils) as a result of insensitive design of the National Treasury approach would mean for the country's belief in the importance of collective bargaining and participation in decision-making more generally.

The overall finding at this stage is that the council funds are providing a wide range of benefits to workers who would not otherwise receive them, and certainly not for the given size of contributions. These benefits are often tailored to meet particular needs. There are several characteristics of the councils and funds that mean that these funds are likely, if anything, to be more efficiently run than many private sector funds, and better governed. Design of a new system needs to avoid losing these good elements in a one-size-fits-all approach. The openness of the Council for Medical Schemes to explore ways of accommodating the specificity of the needs of these funds might well be a good example to follow.

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Appendix I: Councils with no benefit funds

Chemical Industry (National)
Entertainment Industry of SA
Fishing Industry (National)
Furniture Manufacturing, South Western Districts
Graankoopasiebedryf (National)
Hairdressing & Cosmetology Trade, Pretoria
Motor Ferry Industry of South Africa (National)
New Tyre Manufacturing Industry (National)
South African Local Government
South African Road Passenger (SARPBAC)
Sugar Manufacturing & Refining Industry
Tearoom, Restaurant & Catering Trade, Pretoria
Textile Bargaining Council (National)
Transnet
Wood and Paper Sector (National)

Appendix II: Private sector bargaining councils with funds

Bargaining Council	Pension	Provident	Medical	Sick pay	Disability	Survivors	Leave	Number
Building Industry (Bloemfontein)		√			√	√	√	4
Building Industry (East London)	√	√		√	√	√	√	6
Building Industry (Kimberley)	√		√	√	√		√	5
Building Industry (North and West Boland)	√	√		√	√	√	√	6
Building Industry (Southern & Eastern Cape)	√	√	√	√	√	√	√	7
Building Industry (Cape of Good Hope)	√	√	√	√	√	√	√	7
Canvas Goods Industry (Witwatersrand & Pretoria)		√	√					2
Clothing Manufacturing Industry National		√	√	√	√	√		5
Contract Cleaning Industry (Natal)		√			√			2
Diamond Cutting Industry (South Africa)	√		√	√			√	4
Electrical Industry of SA (National)	√	√		√	√			4
Furniture Bargaining Council		√	√		√	√	√	5
Furniture Manufacturing Industry (Eastern Cape)		√			√		√	3
Furniture Manufacturing Industry KwaZulu-Natal		√	√				√	3
Furniture Manufacturing Industry Western Cape	√	√					√	3
Hairdressing & Cosmetology (KwaZulu-Natal)	√		√	√	√			4
Hairdressing Trade, Cape Peninsula		√	√	√				3
Hairdressing & Cosmetology Services Semi National		√		√				2
Jewellery & Precious Metal Industry (Cape)	√				√	√		3
Laundry, Cleaning and Dyeing Industry (Cape)		√	√					2
Laundry, Cleaning and Dyeing Industry (Natal)		√	√		√	√		4
Leather Industry of South Africa		√	√			√		3
Meat Trade Gauteng	√	√	√		√	√		5
Metal & Engineering Industries	√	√		√	√	√	√	6
Motor Industry (National)	√	√	√	√			√	5
Restaurant Catering and Allied Trades						√		1
Road Freight Industry (National)		√		√	√	√	√	5
Number of councils with funds	13	22	15	14	17	14	14	

Appendix III: Third phase informants

Brain Angus, Steel & Engineering Industries Federation of South Africa

Cheryl Berry, Diamand Cutting Bargaining Council

Jurgen Boyd, Financial Services Board

Harvey Blignaut, Furniture Bargaining Council, KwaZulu-Natal

Johan Crouse, Department of Labour

Naleen Jeram, Pension Funds Adjudicator

Reno Morar, Clothing Industry Health Care Fund

Ebrahim Patel, South African Clothing & Textile Workers Union

Anna Rosenberg, Life Officers' Association

Alistair Smith, Metal & Engineering Industries Bargaining Council

Wynand Stapelberg, National Association of Bargaining Councils

Rod Stevenson, Old Mutual

Alex van den Heever, Council on Medical Schemes

Tilla van Vuuren, Building Bargaining Council, Bloemfontein

Mark Willemse, Furniture Bargaining Council, Greater Northern