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APPENDIX 1:

**SOUTH AFRICAN QUALIFICATIONS AUTHORITY ACT,
1995 (Act 58 of 1995)**

OFFICE OF THE PRESIDENT

No. 1521. 4 October 1995

NO. 58 OF 1995: SOUTH AFRICAN QUALIFICATIONS AUTHORITY ACT, 1995.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

ACT

To provide for the development and implementation of a National Qualifications Framework and for this purpose to establish the South African Qualifications Authority; and to provide for matters connected therewith.

(English text signed by the President.) (Assented to 28 September 1995.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Definitions

1. In this Act, unless the context indicates otherwise-
 - i. "Authority" means the South African Qualifications Authority established by section 3; (viii)
 - ii. "company" means a company or close corporation registered under any law, which provides education or training for its employees or clients; (v)
 - iii. "Director-General" means the Director-General of Education; (i)
 - iv. "Minister" means the Minister of Education and, for the purposes of sections 4(2), 4(3), 4(4), 4(5), 4(6), 5(1)(c), 11, 13(2), 14 and 15(2), the Minister of Education in consultation with the Minister of Labour; (vi)
 - v. "National Qualifications Framework" means the National Qualifications Framework approved by the Minister for the registration of national standards and qualifications; (vii)
 - vi. "organised teaching profession" means an organisation or union which is a member of the Education Labour Relations Council established in terms of the Education Labour Relations Act, 1993 (Act No. 146 of 1993), and is recognised by the Minister for the purposes of this Act; (ii)
 - vii. "prescribe" means prescribe by regulation; (x)
 - viii. "qualification" means the formal recognition of the achievement of the required number and range of credits and such other requirements at specific levels of the National Qualifications Framework as may be determined by the relevant bodies registered for such purpose by the South African Qualifications Authority; (iv)

- ix. "registered" means registered in terms of the National Qualifications Framework; (iii)
- x. "standard" means registered statements of desired education and training outcomes and their associated assessment criteria. (ix)

Objectives of National Qualifications Framework

- 2. The objectives of the National Qualifications Framework are to-
 - a. create an integrated national framework for learning achievements;
 - b. facilitate access to, and mobility and progression within education, training and career paths;
 - c. enhance the quality of education and training;
 - d. accelerate the redress of past unfair discrimination in education, training and employment opportunities; and thereby
 - e. contribute to the full personal development of each learner and the social and economic development of the nation at large.

Establishment of South African Qualifications Authority

There is hereby established a juristic person called the South African Qualifications Authority.

Constitution of Authority

- 4. (1) The Authority shall consist of a chairperson who shall be appointed in terms of subsection (2), such members as shall be appointed in terms of subsections (3) and (4), and an executive officer who shall be appointed in terms of subsection (7).
 - (2) The Minister shall appoint a person of experience and expertise in matters relating to the functions of the Authority, to be the chairperson of the Authority.
 - (3) The Minister shall appoint the following persons as members of the Authority, in the manner provided for in subsection (4)-
 - a. one member nominated by the Director-General;
 - b. one member nominated by the heads of provincial education departments;
 - c. one member nominated by the Director-General: Labour;
 - d. one member nominated by the National Training Board;
 - e. two members nominated by the national organisations representing organised labour;
 - f. two members nominated by national organisations representing organised business;

- g. one member nominated by the Committee of University Principals established by section 6 of the Universities Act, 1955 (Act No. 61 of 1955);
- h. one member nominated by the Committee of Technikon Principals established by section 2 of the Technikons Act, 1993 (Act No. 125 of 1993);
- i. one member nominated by the national body representing teachers' college rectors and recognised by the Minister for this purpose;
- j. one member nominated by the national body representing technical college rectors and recognised by the Minister for this purpose;
- k. one member nominated by national organisations representing colleges other than teachers' colleges and technical colleges and recognised by the Minister for this purpose;
- l. one member nominated by national organisations representing the adult basic education and training sector and recognised by the Minister for this purpose;
- m. one member nominated by national organisations representing the early childhood development sector and recognised by the Minister for this purpose;
- n. two members nominated by the organised teaching profession;
- o. two members nominated by national organisations representing lecturers and trainers and recognised by the Minister for this purpose;
- p. one member nominated by national organisations representing the special education needs sector and recognised by the Minister for this purpose;
- q. not more than six members appointed by the Minister at his or her discretion;
- r. not more than two members co-opted by the Authority at its discretion and recommended to the Minister for appointment.

(4) For the purpose of seeking nominations as contemplated in subsection (3), the Minister shall give notice in the Gazette of his or her intention to appoint members of the Authority, and shall request any body or organisation in the fields referred to in subsection (3) to submit the names of persons who, on account of their experience and expertise in matters relating to the functions of the Authority may be suitable candidates for appointment as members of the Authority and in submitting the names of candidates due recognition shall be given to the principle of representivity.

(5) For the purpose of the nominations contemplated in paragraph (n) of subsection (3), not more than one nomination shall be made by any one organisation or union.

(6) A member of the Authority excluding the executive officer, shall hold office for such period which shall not exceed three years, as the Minister may determine at the time of his or her appointment, and a member may be re-appointed for one further term of office when his or her initial term of office expires.

(7) The Minister shall, in filling any vacancy, take the provisions of subsection (3) into account.

(8) The members contemplated in subsections (2) and (3), shall, with the approval of the Minister, appoint a competent person to be executive officer on such conditions of service as may be determined by the Authority with the approval of the Minister, granted with the concurrence of the Minister of Finance.

Functions of Authority

5. (1) Subject to the provisions of subsection (2), the Authority shall-
- a. (i) oversee the development of the National Qualifications Framework; and
 - (ii) formulate and publish policies and criteria for-
 - aa. the registration of bodies responsible for establishing education and training standards or qualifications; and
 - bbb. the accreditation of bodies responsible for monitoring and auditing achievements in terms of such standards or qualifications;
 - b. oversee the implementation of the National Qualifications Framework, including-
 - i. the registration or accreditation of bodies referred to in paragraph (a) and the assignment of functions to them;
 - ii. the registration of national standards and qualifications;
 - iii. steps to ensure compliance with provisions for accreditation; and
 - iv. steps to ensure that standards and registered qualifications are internationally comparable;
 - c. advise the Minister on matters affecting the registration of standards and qualifications; and
 - d. be responsible for the control of the finances of the Authority.

(2) The Authority shall pursue the objectives of the National Qualifications Framework as provided in section 2 and execute the functions of the Authority as provided in subsection (1)-

- a. after consultation and in co-operation with the departments of state, statutory bodies, companies, bodies and institutions responsible for education, training and the certification of standards which will be affected by the National Qualifications Framework;
- b. with due regard for the respective competence of Parliament and the provincial legislatures in terms of section 126 of the Constitution, and the rights,

powers and functions of the governing bodies of a university or universities and a technikon or technikons as provided in any Act of Parliament.

Functions of executive officer

6. (1) The executive officer shall-
- a. be responsible to the Authority for the execution of its functions in terms of this Act;
 - b. supervise the officers and employees of the Authority; and
 - c. be the accounting officer of the Authority charged with accounting for moneys received, payments made and movable property purchased by the Authority.

(2) The executive officer shall be assisted in the performance of his or her duties in terms of subsection (1) by such officers and employees of the Authority as the executive officer may designate for this purpose.

Powers of Authority

7. (1)
- a. The Authority may establish committees and appoint persons who are not members of the Authority to the committees.
 - b. The Authority shall appoint the chairperson of every committee.
 - c. The Authority may dissolve or reconstitute a committee.
 - d. The Authority may delegate any of its powers, excluding the powers referred to in this section, to any of its committees, but shall not be divested of a power so delegated and may at any time withdraw such a delegation.
 - e. The Authority may amend or set aside any decision of such a committee.

(2) The Authority may resolve disputes relating to the performance of its functions referred to in section 5.

(3) The Authority may acquire and dispose of assets.

(4) The Authority may cause research to be done which it considers relevant to the performance of its functions.

(5) The Authority may perform any other function which the Minister may designate which is relevant to the National Qualifications Framework.

Meetings of Authority and committees

8. (1) The meetings of the Authority or of a committee shall be held at such times and places as the chairperson of the Authority or the committee, as the case may be, may determine.
- (2) The proceedings of the Authority or of a committee shall not be invalid by reason of a vacancy on the Authority or the committee, as the case may be.
- (3) If the chairperson of the Authority or of a committee is absent from any meeting of the Authority or a committee, as the case may be, the members present shall elect from among themselves a person to preside at that meeting.
- (4) The Authority may prescribe rules relating to the procedures at its meetings or at the meetings of a committee, including the quorum for such meetings.

Vacation of office by members of Authority

The chairperson or any member of the Authority referred to in section 4(3) shall vacate his or her office if-

- a. his or her estate is sequestrated or he or she enters into a compromise with his or her creditors;
- b. he or she is detained as a mentally disordered person in terms of any law;
- c. he or she is absent from three consecutive meetings of the Authority without leave from the Authority;
- d. he or she resigns by giving notice in writing to the Minister; or
- e. he or she, during the course of his or her term of office, is found guilty of an offence and sentenced to imprisonment without the option of a fine.

Funds of Authority

- (1) The funds of the Authority shall consist of-
- moneys appropriated by Parliament for the achievement of the objectives of the Authority;
- moneys received by the Authority by virtue of the regulations made in terms of section 14;
- moneys obtained by means of loans raised by the Authority with the approval of the Minister, granted with the concurrence of the Minister of Finance;
- donations, contributions or royalties received by the Authority; and
- interest on investments.
- (2) The Authority shall employ its funds to defray expenses in connection with the performance of its functions.
- (3)

(a) The Authority shall in each financial year, at such time and in such form as the Minister may determine, submit a statement of its estimated income and expenditure for the ensuing financial year to the Minister for approval.

(b) The moneys contemplated in subsection (1)(a) shall be employed by the Authority in accordance with the approved statement referred to in paragraph (a), and any unexpended balance shall be carried forward as a credit to the following financial year.

(4) Subject to the provisions of subsection (3)(b), the Authority may invest any portion of its funds in such manner as the Minister, with the concurrence of the Minister of Finance, may approve.

(5) The Authority may charge or waive fees-

- a. for the granting of any registration or accreditation; and
- b. for any services provided by the Authority.

Officers and employees of Authority

The Authority may, subject to the conditions of service determined by the Authority with the approval of the Minister and the concurrence of the Minister of Finance, appoint such officers and employees as the Authority may deem necessary for the performance of its functions in terms of this Act.

Allowances and remuneration of members of Authority and committees

12. The chairperson, every other member of the Authority and any person appointed as a member of a committee under section 7(1) who is not in the full-time service of the State may, in respect of services rendered by him or her in connection with the affairs of the Authority or a committee, be paid by the Authority-

such travelling, subsistence and other allowances; and
in the case of the chairperson of the Authority, such additional remuneration, as the Minister with the concurrence of the Minister of Finance may determine.

Auditing and annual report

13. (1) The books of account and financial statements of the Authority shall be audited at the end of each financial year by the Auditor-General.

(2) The Authority shall not later than six months after the end of each financial year submit to the Minister a report in such form as the Minister may determine on its functions during that financial year, including an audited balance sheet and a statement of income and expenditure.

(3) The Minister shall table copies of the report, including the balance sheet and statement of income and expenditure referred to in subsection (2), in Parliament within 14 days after the receipt thereof if Parliament is in ordinary session, or, if Parliament is not in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

Regulations

14. The Authority may, with the approval of the Minister, make regulations relating to-
- a. any matter which by this Act is required or permitted to be prescribed;
 - b. the moneys payable to the Authority in respect of matters referred to in section 10(5)(a) and (b); and
 - c. any other matter the regulation of which is necessary or expedient to give effect to the provisions of this Act.

Transitional provision relating to existing bodies

15. (1) Any body established by law which performs functions similar to those of the Authority as provided in section 5 shall continue to perform such functions until the body is abolished or its functions are changed by law.

(2) No body contemplated in subsection (1) shall be abolished nor shall the functions of any such body be changed until the Authority and the body have jointly examined the implications of such abolition or change and the implementation of the National Qualifications Framework and made recommendations to the Minister.

(3) This section shall not apply to any body established by a private law of a university.

Short title

16. This Act shall be called the South African Qualifications Authority Act, 1995.

APPENDIX 2:

SKILLS DEVELOPMENT ACT, 1998 (Act NO. 97 OF 1998)

**SKILLS DEVELOPMENT ACT
NO. 97 OF 1998**

[ASSENTED TO 20 OCTOBER, 1998]
[DATE OF COMMENCEMENT TO BE PROCLAIMED]

(Unless otherwise indicated)

(English text signed by the President)

ACT

To provide an institutional framework to devise and implement national, sector and workplace strategies to develop and improve the skills of the South African workforce; to integrate those strategies within the National Qualifications Framework contemplated in the South African Qualifications Authority Act, 1995; to provide for learnerships that lead to recognised occupational qualifications; to provide for the financing of skills development by means of a levy-grant scheme and a National Skills Fund; to provide for and regulate employment services; and to provide for matters connected therewith.

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CHAPTER 1 DEFINITIONS, PURPOSE AND APPLICATION OF ACT

1. Definitions.--In this Act, unless the context otherwise indicates--

"**Basic Conditions of Employment Act**" means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

"**Department**" means the Department of Labour;

"**Director-General**" means the Director-General of Labour;

"**employee**" means--

- a. any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; or
- b. any other person who in any manner assists in carrying on or conducting the business of an employer, and "employed" and "employment" have corresponding meanings;

"employment services" means the provision of the service of--

advising or counselling of workers on career choices either by the provision of information or other approaches;

assessment of work-seekers for--

entry or re-entry into the labour market; or

education and training;

the reference of work-seekers--

to employers to apply for vacancies; or

to training providers for education and training;

assistance of employers by--

providing recruitment and placement services;

advising them on the availability of work-seekers with skills that match their needs;

(advising them on the retrenchment of employees and the development of social plans; or

any other prescribed employment service;

"government department" means any department or organisational component referred to in Schedule 1 or 2 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

"Labour Court" means the Labour Court established by section 151 of the Labour Relations Act, 1995 (Act No. 66 of 1995);

"Minister" means the Minister of Labour;

"National Skills Authority" means the National Skills Authority established by section 4;

"national skills development policy" means the national skills development policy referred to in section 5 (1) (a) (i);

"national skills development strategy" means the national skills development strategy referred to in section 5 (1) (a) (ii);

"National Skills Fund" means the National Skills Fund established by section 27;

"NEDLAC" means the National Economic Development and Labour Council established by section 2 of the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994);

"prescribed" means prescribed by regulation;

"regulation" means a regulation made and in force in terms of section 36;

"SETA" means a sector education and training authority established in terms of section 9 (1);

"Skills Development Levies Act" means national legislation imposing levies for skills development;

"skills development levies" means the skills development levies payable in terms of the Skills Development Levies Act;

"South African Qualifications Authority" means the South African Qualification Authority established by section 3 of the South African Qualifications Authority Act;

"South African Qualifications Authority Act" means the South Africa Qualifications Authority Act, 1995 (Act No. 58 of 1995);

"this Act" includes any regulations but does not include the footnotes; and

"worker" includes an employee, an unemployed person and a work-seeker.

(Date of commencement of s. 1: 2 February, 1999.)

2. Purposes of Act.--(1) The purposes of this Act are--

(a) to develop the skills of the South African workforce--

- i. to improve the quality of life of workers, their prospects of work and labour mobility;
- ii. to improve productivity in the workplace and the competitiveness of employers;
- iii. to promote self-employment; and
- iv. to improve the delivery of social services;

(b) to increase the levels of investment in education and training in the labour market and to improve the return on that investment;

(c) to encourage employers--

- i. to use the workplace as an active learning environment;
- ii. to provide employees with the opportunities to acquire new skills;
- iii. to provide opportunities for new entrants to the labour market to gain work experience; and
- iv. to employ persons who find it difficult to be employed;

(d) to encourage workers to participate in learnership and other training programmes;

(e) to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education;

(f) to ensure the quality of education and training in and for the workplace;

(g) to assist--

- i. work-seekers to find work;
- ii. retrenched workers to re-enter the labour market;
- iii. employers to find qualified employees; and

(h) to provide and regulate employment services.

(2) Those purposes are to be achieved by--

(a) establishing an institutional and financial framework comprising--

- i. the National Skills Authority;
- ii. the National Skills Fund;
- iii. a skills development levy-grant scheme as contemplated in the Skills Development Levies Act;
- iv. SETAs;

- v. labour centres; and
- vi. the Skills Development Planning Unit;

(b) encouraging partnerships between the public and private sectors of the economy to provide education and training in and for the workplace; and

(c) co-operating with the South African Qualifications Authority.

(Date of commencement of s. 2: 2 February, 1999.)

3. Interpretation.--Any person applying this Act must interpret its provisions to give effect to--

(a) its purposes; and

(b) the objects of the South African Qualifications Authority Act.

(Date of commencement of s. 3: 2 February, 1999.)

CHAPTER NATIONAL SKILLS AUTHORITY

2

4. Establishment of National Skills Authority.--The National Skills Authority is hereby established.

(Date of commencement: 2 February, 1999.)

5. Functions of National Skills Authority.--(1) The functions of the National Skills Authority are--

(a) to advise the Minister on--

- i. a national skills development policy;
- ii. a national skills development strategy;
- iii. guidelines on the implementation of the national skills development strategy;
- iv. the allocation of subsidies from the National Skills Fund; and
- v. any regulations to be made;

(b) to liaise with SETAs on--

- i. the national skills development policy; and
- ii. (the national skills development strategy;

(c) to report to the Minister in the prescribed manner on the progress made in the implementation of the national skills development strategy;

(d) to conduct investigations on any matter arising out of the application of this Act; and

(e) to exercise any other powers and perform any other duties conferred or imposed on the Authority by this Act.

(2) For the purposes of investigations referred to in subsection (1) (d), the Authority has the prescribed powers of entry and to question and inspect.

(3) The Authority must perform its functions in accordance with this Act and its constitution.

(Date of commencement of s. 5: 2 February, 1999.)

6. Composition of National Skills Authority and term and vacation of office.--

(1) The National Skills Authority consists of--

- a. a voting chairperson appointed by the Minister;
- b. 24 voting and three non-voting members appointed by the Minister; and
- c. its non-voting executive officer appointed in terms of section 8 (2) (a).

(2) The members referred to in subsection (1) (b) are--

five voting members nominated by NEDLAC and appointed by the Minister to represent organised labour;

five voting members nominated by NEDLAC and appointed by the Minister to represent organised business;

five voting members nominated by NEDLAC and appointed by the Minister to represent organisations of community and development interests, which must include--

a woman who represents the interests of women;

a person who represents the interests of the youth; and

a disabled person who represents the interests of people with disabilities;

five voting members appointed by the Minister to represent the interests of the State;

four voting members appointed by the Minister to represent the interests of education and training providers;

two non-voting members, who have expertise in the provision of employment services, appointed by the Minister; and

a non-voting member nominated by the South African Qualifications Authority and appointed by the Minister to represent that Authority.

(3) The Minister must designate four members as deputy chairpersons, one deputy chairperson each from the members to be appointed to represent--

organised labour;

organised business;

organisations of community and development interests; and
the interests of the State.

(4) A member of the Authority holds office for a period of three years and is eligible for re-appointment.

(5) A member of the Authority vacates office if that member--

a. is removed from office by the Minister as contemplated in subsection (6); or

b. resigns by written notice addressed to the Minister.

(6) The Minister may remove a member of the Authority--

a. on the written request of the body that nominated that member in terms of subsection (2);

b. for serious misconduct;

c. for permanent incapacity;

d. for absence from three consecutive meetings of the Authority--

i. without the prior permission of the Authority; or

e. unless the member shows good cause; or

f. for engaging in any activity that may undermine the functions of the Authority.

(7) If a member of the Authority vacates office before the expiry of the period of office, the Minister must, in terms of subsection (2), appoint a new member for the unexpired portion of that period.

(Date of commencement of s. 6: 2 February, 1999.)

7. Constitution of National Skills Authority.--(1) The National Skills Authority must, as soon as possible after the appointment of its members, adopt its constitution.

(2) Subject to this Act, the constitution of the Authority--

- a. must provide for--
 - i. procedures for the nominations of members of the Authority referred to in section 6 (2) (a), (b), (c) and (g);
 - ii. the establishment and functioning of committees, including an executive committee;
 - iii. subject to subsection (3), the rules for convening and conducting of meetings of the Authority and its committees, including the quorum required for and the minutes to be kept of those meetings;
 - iv. the voting rights of the different members and the manner in which decisions are to be taken by the Authority and its committees;
 - v. a code of conduct for the members of the Authority;
 - vi. the determination through arbitration of any dispute concerning the interpretation or application of the constitution; and
 - vii. subject to subsections (4) and (5), a procedure for amending the constitution and advising the Minister on regulations to be made; and
- b. may provide for--
 - i. the delegation of powers and duties of the Authority to its members, committees and employees, provided that the Authority may impose conditions for the delegation, may not be divested of any power or duty by virtue of the delegation and may vary or set aside any decision made under any delegation; and
 - ii. any other matter necessary for the performance of the functions of the Authority.

(3) At least 30 days notice must be given for a meeting of the Authority at which an amendment of the constitution or a regulation to be made is to be considered.

(4) A supporting vote of at least two thirds of the Authority's members and the approval of the Minister is required for an amendment to its constitution.

(5) A supporting vote of at least two-thirds of the Authority's members is required for advising the Minister on regulations to be made.

(6) Despite subsection (2) (a) (i), the Minister must determine the procedure for the nominations for the first appointment of members of the Authority referred to in section 6 (2) (a), (b), (c) and (g).

(Date of commencement of s. 7: 2 February, 1999.)

8. Remuneration and administration of National Skills Authority.--(1) A member of the National Skills Authority who is not in the full-time employment of the State may be paid the remuneration and allowances determined by the Minister with the approval of the Minister of Finance.

(2) Subject to the laws governing the public service, the Director-General must--

- a. appoint a person to be the executive officer of the National Skills Authority who will, upon such appointment, be in the employ of the public service; and
- b. provide the Authority with the personnel and financial resources that the Minister considers necessary for the performance of its functions.

(Date of commencement of s. 8: 2 February, 1999.)

CHAPTER 3 SECTOR EDUCATION AND TRAINING AUTHORITIES

9. Establishment of SETA.--(1) The Minister may, in the prescribed manner, establish a sector education and training authority with a constitution for any national economic sector.

(2) The Minister must determine a discrete sector for the purposes of subsection (1) by reference to categories of employers and for the purposes of that determination take into account--

- a. the education and training needs of employers and employees that--
 - i. use similar materials, processes and technologies;
 - ii. make similar products; or
 - iii. render similar services;
- b. the potential of the proposed sector for coherent occupational structures and career pathing;
- c. the scope of any national strategies for economic growth and development;
- d. the organisational structures of the trade unions, employer organisations and government in closely related sectors;
- e. any consensus that there may be between organised labour, organised employers and relevant government departments as to the definition of any sector; and
- f. the financial and organisational ability of the proposed sector to support a SETA.

(3) On the establishment of a SETA, the Minister may provide assistance to the SETA to enable it to perform its functions.

10. Functions of SETA.--(1) A SETA must--

- a. develop a sector skills plan within the framework of the national skills development strategy;
- b. implement its sector skills plan by--
 - i. establishing learnerships;
 - ii. approving workplace skills plans;
 - iii. allocating grants in the prescribed manner to employers, education and training providers and workers; and
 - iv. monitoring education and training in the sector;
- c. promote learnerships by--
 - i. identifying workplaces for practical work experience;
 - ii. supporting the development of learning materials;
 - iii. improving the facilitation of learning; and
 - iv. assisting in the conclusion of learnership agreements;
- d. register learnership agreements;
- e. within a week from its establishment, apply to the South African Qualifications Authority for accreditation as a body contemplated in section 5 (1) (a) (ii) (bb) and must, within 18 months from the date of that application, be so accredited;
- f. collect and disburse the skills development levies in its sector;

- g. liaise with the National Skills Authority on--
 - i. the national skills development policy;
 - ii. the national skills development strategy; and
 - iii. its sector skills plan;
- h. report to the Director-General on--
 - i. its income and expenditure; and
 - ii. the implementation of its sector skills plan;
- i. liaise with the employment services of the Department and any education body established under any law regulating education in the Republic to improve information--
 - i. about employment opportunities; and
 - ii. between education and training providers and the labour market;
- j. appoint staff necessary for the performance of its functions; and
- k. perform any other duties imposed by this Act or consistent with the purposes of this Act.

(2) A SETA has--

- a. all such powers as are necessary to enable it to perform its duties referred to in subsection (1); and
- b. the other powers conferred on the SETA by this Act.

(3) A SETA must perform its functions in accordance with this Act and its constitution.

11. Composition of SETA.--A SETA may consist only of members representing--

- a. organised labour;
- b. organised employers, including small business;
- c. relevant government departments; and
- d. if the Minister, after consultation with the members referred to in paragraph (a), (b) and (c), considers it appropriate for the sector--
 - i. any interested professional body;
 - ii. any bargaining council with jurisdiction in the sector.

12. Chambers of SETA.--(1) A SETA may, with the Minister's approval, establish in its sector chambers.

(2) A chamber so established must consist of an equal number of members representing employees and employers and may include such additional members as the SETA determines.

(3) That chamber must perform those functions of the SETA as delegated to it in terms of the constitution of the SETA.

(4) A chamber of a SETA is entitled to such percentage of the skills development levies collected in its jurisdiction as the Minister after consultation with the SETA determines.

13. Constitution of SETA.--(1) For the purpose of the establishment of a SETA, the Minister must approve the constitution of the SETA.

(2) The Minister may, after consultation with the SETA, amend its constitution in the prescribed manner.

(3) Subject to this Act, the constitution of a SETA--

- a. must specify--

- i. the trade unions, employer organisations and relevant government departments in the sector;
- ii. the circumstances and manner in which a member of SETA may be replaced;
- iii. the number of members to be appointed to the SETA, provided that the SETA must consist of an equal number of members representing employees and employers;
- iv. the procedure for the replacement of a member of the SETA by the organisation that nominated that member;
- v. the circumstances and manner in which a member may be replaced by the SETA;
- vi. the election of office-bearers by the members of the SETA and of persons to act during their absence or incapacity, their term of office and functions and the circumstances and manner in which they may be replaced;
- vii. the establishment and functioning of committees, including an executive committee;
- viii. the rules for convening and conducting of meetings of the SETA and its chambers and committees, including the quorum required for and the minutes to be kept of those meetings;
- ix. the voting rights of the different members and the manner in which decisions are to be taken by the SETA and its chambers and committees;
- x. a code of conduct for members of the SETA and its chambers;
- xi. the appointment of an executive officer, and such other employees necessary for the effective performance of the functions of the SETA, by its members, including the determination of their terms and conditions of employment; and
- xii. the determination through arbitration of any dispute concerning the interpretation or application of the constitution; and
 - b. may provide for--
 - i. the delegation of powers and duties of the SETA to its members, chambers, committees and employees, provided that the SETA may impose conditions for the delegation, may not be divested of any power or duty by virtue of the delegation and may vary or set aside any decision made under any delegation; and
 - ii. any other matter necessary for the performance of the functions of the SETA.

14. Finances of SETA.--(1) A SETA is financed from--

- a. the skills development levies collected in its sector;
- b. moneys paid to it from the National Skills Fund;
- c. grants, donations and bequests made to it;
- d. income earned on surplus moneys deposited or invested;
- e. income earned on services rendered in the prescribed manner; and
- f. money received from any other source.

(2) The money received by a SETA must be paid into a banking account at any registered bank and may be invested only in--

- a. savings accounts, permanent shares or fixed deposits in any registered bank or other financial institution;
- b. internal registered stock contemplated in section 21 (1) of the Exchequer Act, 1975 (Act No. 66 of 1975);

- c. a unit trust scheme managed by a company which has been registered as a management company in terms of section 4 or 30 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981); and
- d. any other manner approved by the Minister.

(3) The moneys received by a SETA may be used only in the prescribed manner and to--

- a. fund the performance of its functions; and
- b. pay for its administration within the prescribed limit.

(4) In each financial year, ending on the prescribed date, every SETA must, at a time determined by the Minister, submit to the Minister a statement of the SETA's estimated income and expenditure for the following financial year.

(5) Every SETA must, in accordance with the standards of generally accepted accounting practice--

keep proper record of all its financial transactions, assets and liabilities; and
within six months after the end of each financial year, prepare accounts reflecting income and expenditure and a balance sheet showing its assets, liabilities and financial position as at the end of that financial year.

(6) The Auditor-General must--

- a. audit the accounts, financial statements and financial management of a SETA; and
- b. report on that audit to the SETA and to the Minister and in that report express an opinion as to whether the SETA has complied with the provisions of this Act, and its constitution, relating to financial matters.

15. Taking over administration of SETA.--(1) The Minister may, after consultation with the National Skills Authority, by notice in the Gazette, direct the Director-General to appoint an administrator to take over the administration of a SETA if the Minister is of the opinion that--

- a. the SETA fails to perform its functions;
- b. there is mismanagement of its finances; or
- c. its membership no longer substantially represents the composition contemplated in section 11.

(2) In that notice the Minister--

- a. must determine the powers and duties of the administrator appointed in terms of subsection (1);
- b. may suspend or replace one or more members of the SETA for a reason contemplated in subsection (1) (a), (b) or (c);
- c. may suspend the operation of the constitution of the SETA; and
- d. may, in the prescribed manner, transfer funds in the SETA's bank account to the National Skills Fund.

(3) If a notice is published in terms of subsection (1), the Minister may, to ensure that the SETA resumes the performance of its functions--

- a. amend its constitution;
- b. reinstate any of its members; and

c. withdraw or amend any provision of the notice contemplated in subsection (2) on such conditions as the Minister considers appropriate.

CHAPTER 4 LEARNERSHIPS

16. Learnerships.--A SETA may establish a learnership if--

- a. the learnership consists of a structured learning component; the learnership includes practical work experience of a specified nature and duration;
- b. the learnership would lead to a qualification registered by the South African Qualifications Authority and related to an occupation; and
- c. the intended learnership is registered with the Director-General in the prescribed manner.

17. Learnership agreements.--(1) For the purposes of this Chapter, a "learnership agreement" means an agreement entered into for a specified period between--

- a learner;
 - an employer or a group of employers (in this section referred to as "the employer");
- and
- a training provider accredited by a body contemplated in section 5 (1) (a) (ii) (bb) of the South African Qualifications Authority Act or group of such training providers.

(2) The terms of a learnership agreement must oblige--

- a. the employer to--
 - i. employ the learner for the period specified in the agreement;
 - ii. provide the learner with the specified practical work experience; and
 - iii. release the learner to attend the education and training specified in the agreement;
- b. the learner to--
 - i. work for the employer; and
 - ii. attend the specified education and training; and
- c. the training provider to provide--
 - i. the education and training specified in the agreement; and
 - ii. the learner support specified in the agreement.

(3) A learnership agreement must be in the prescribed form and registered with a SETA in the prescribed manner.

(4) A learnership agreement may not be terminated before the expiry of the period of duration specified in the agreement unless--

- a. the learner meets the requirements for the successful completion of the learnership;
- b. the SETA which registered the agreement approves of such termination; or
- c. the learner is fairly dismissed for a reason related to the learner's conduct or capacity as an employee.

(5) The employer or training provider that is party to a learnership agreement may be substituted with--

the consent of the learner; and

the approval of the SETA which registered the agreement.

(6) A SETA must, in the prescribed manner, provide the Director-General with a record of learnership agreements registered by the SETA.

18. Contract of employment with learner.--(1) If a learner was in the employment of the employer party to the learnership agreement concerned when the agreement was concluded, the learner's contract of employment is not affected by the agreement.

(2) If the learner was not in the employment of the employer party to the learnership agreement concerned when the agreement was concluded, the employer and learner must enter into a contract of employment.

(3) The contract of employment with a learner contemplated in subsection (2) is subject to any terms and conditions that may be determined by the Minister on the recommendation of the Employment Conditions Commission established by section 59 (1) of the Basic Conditions of Employment Act.

(4) Chapters Eight and Nine¹ of the Basic Conditions of Employment Act apply, with the changes required by the context, to a determination made in terms of subsection (3) except that--

a. for the purposes of section 54 (3) of that Act, the Employment Conditions Commission must also consider the likely impact that any proposed condition of employment may have on the employment of learners and the achievement of the purposes of this Act; and

b. section 55 (7) of that Act does not apply.

(5) The contract of employment of a learner may not be terminated before the expiry of the period of duration specified in the learnership agreement unless the learnership agreement is terminated in terms of section 17 (4).

(6) The contract of employment of a learner terminates at the expiry of the period of duration specified in the learnership agreement unless the agreement was concluded with a person who was already in the employment of the employer party to the agreement when the agreement was concluded.

19. Disputes about learnerships.--(1) For the purposes of this section a "dispute" means a dispute about--

a. the interpretation or application of any provision of--

- i. a learnership agreement;
 - ii. (a contract of employment of a learner; or
 - iii. a determination made in terms of section 18 (3);
- b. this Chapter; or
- c. the termination of--
- i. a learnership agreement; or
 - ii. a contract of employment of a learner.

(2) Any party to a dispute may in writing refer the dispute to the Commission for Conciliation, Mediation and Arbitration established by section 112 of the Labour Relations Act, 1995 (Act No. 66 of 1995).

(3) The party who so refers the dispute must satisfy that Commission that a copy of the referral has been served on all the other parties to the dispute.

- (4) The Commission must attempt to resolve the dispute through conciliation.
- (5) If the dispute remains unresolved, any party may request that the dispute be resolved through arbitration as soon as possible.
- (6) The law that applies to the lawfulness² and fairness³ of a dismissal for a reason related to an employee's capacity or conduct applies to a dispute contemplated in subsection (1) (c) (ii).

CHAPTER 5 SKILLS PROGRAMMES

20. Skills programmes.--(1) For the purposes of this Chapter, a "skills programme" means a skills programme that--

- a. is occupationally based;
- b. when completed, will constitute a credit towards a qualification registered in terms of the National Qualifications Framework as defined in section 1 of the South African Qualifications Authority Act;
- c. uses training providers referred to in section 17 (1) (c); or
- d. complies with the prescribed requirements.

(2) Any person that has developed a skills programme may apply to--

- a. a SETA with jurisdiction for a grant; or
- b. the Director-General for a subsidy.

(3) The SETA or the Director-General may fund the skills programme if--

- a. it complies with--
 - i. subsection (1);
 - ii. any requirements imposed by the SETA or the Director-General; and
 - iii. any prescribed requirements; and
- b. it is in accordance with--
 - i. the sector skills development plan of the SETA; or
 - ii. the national skills development strategy; and
- c. there are funds available.

(4) A SETA or the Director-General may set any terms and conditions for funding in terms of subsection (3) that the SETA or the Director-General, as the case may be, considers necessary.

(5) The SETA or the Director-General must monitor the skills programmes funded by the SETA or the Director-General, as the case may be.

(6) A SETA or the Director-General that has made funds available for a skills programme may withhold funds or recover any funds paid if the SETA or the Director-General, as the case may be, is of the opinion that--

the funds are not being used for the purpose for which they were made available;
any term or condition of the funding is not complied with; or
the SETA or the Director-General, as the case may be, is not satisfied that the training is up to standard.

21. Disputes.--Any party to a dispute about the application or interpretation of--

- a. any term or condition of funding referred to in section 20 (4); or

b. any provision of this Chapter,

may refer the dispute to the Labour Court for adjudication.

CHAPTER 6 INSTITUTIONS IN DEPARTMENT OF LABOUR

22. Skills Development Planning Unit.--(1) Subject to the laws governing the public service, the Director-General must--

- a. establish a Skills Development Planning Unit in the Department; and
- b. provide the Unit with the personnel and financial resources necessary for the performance of its functions.

(2) The functions of the Skills Development Planning Unit are--

to research and analyse the labour market in order to determine skills development needs for--

- South Africa as a whole;
- each sector of the economy; and
- organs of state;
- to assist in the formulation of--
- the national skills development strategy; and
- sector skills development plans; and
- to provide information on skills to--
- the Minister;
- the National Skills Authority;
- SETAs;
- education and training providers; and
- organs of state.

23. Employment services.--(1) Subject to the laws governing the public service, the Director-General must--

- a. establish labour centres in the Department; and
- b. appoint such number of persons in the public service at each centre as is necessary to perform the functions of that centre.

(2) The functions of those labour centres are--

- a. to provide employment services for workers, employers and training providers, including improvement of such services to rural communities;
- b. to register work-seekers;
- c. to register vacancies and work opportunities;
- d. to assist prescribed categories of persons--
 - i. to enter special education and training programmes;
 - ii. to find employment;
 - iii. to start income-generating projects; and
 - iv. to participate in special employment programmes; and
- e. to perform any other prescribed function related to the functions referred to in paragraphs (a) to (d).

(3) The Minister may, after consulting the National Skills Authority, by notice in the Gazette, require each employer to notify a labour centre in the prescribed manner of--

- a. any vacancy that employer has; and
- b. the employment of any work-seeker referred by that labour centre.

24. Registration of persons that provide employment services.--(1) Any person who wishes to provide employment services for gain must apply for registration to the Director-General in the prescribed manner.

(2) The Director-General must register the applicant if satisfied that the prescribed criteria have been met.

(3) If the Director-General--

- a. registers an applicant, the prescribed certificate must be issued to that person; or
- b. refuses to register an applicant, the Director-General must give written notice of that decision to the applicant.

(4) A registered employment service must comply with the prescribed criteria.

25. Cancellation of registration of employment service.--(1) Subject to this section, the Director-General may cancel the registration of an employment service if satisfied that the employment service is not complying with the prescribed criteria.

(2) If the Director-General has reason to believe that an employment service is not complying with the prescribed criteria and accordingly that its registration should be cancelled, the Director-General must, before cancelling its registration--

- a. notify the service of the intention to cancel registration and the reasons for doing so;
- b. give the service 30 days from the date of the notice to make representations on why its registration should not be cancelled; and
- c. take those representations into account in reaching a decision.

(3) If the Director-General cancels the registration of an employment service, the Director-General must give written notice of that decision to the employment service.

26. Appeal against Director-General's decision.--(1) Any person aggrieved by a decision of the Director-General in terms of section 24 (3) (b) or 25 (3) may, within 30 days of the written notice of that decision, in writing, request the Director-General to give that person written reasons for the decision.

(2) The Director-General must give that person written reasons for the decision within 30 days of receiving that request.

(3) Any person aggrieved by a decision of the Director-General in terms of section 24 (3) (b) or 25 (3) may appeal to the Labour Court against that decision within 60 days of--

-

- a. the date of the Director-General's decision; or
- b. if written reasons for the decision are requested, the date of those reasons.

(4) The Labour Court may, on good cause shown, extend the period within which a person may note that appeal.

CHAPTER 7 FINANCING SKILLS DEVELOPMENT

27. National Skills Fund.--(1) The National Skills Fund is hereby established.

(2) The Fund must be credited with--

a. 20 per cent of the skills development levies as contemplated in the Skills Development Levies Act;

(Date of commencement of paragraph (a) to be proclaimed.)

the skills development levies collected and transferred to the Fund, in terms of the Skills Development Levies Act, in respect of those sectors in which there are no SETAs;

(Date of commencement of paragraph (b) to be proclaimed.)

- a. money appropriated by Parliament for the Fund;
- b. interest earned on investments contemplated in section 29 (3);
- c. donations to the Fund; and
- d. money received from any other source.

(Date of commencement of s. 27: 2 February, 1999.)

28. Use of money in Fund.--The money in the Fund may be used only for the projects identified in the national skills development strategy as national priorities or for such other projects related to the achievement of the purposes of this Act as the Director-General determines.

(Date of commencement: 2 February, 1999.)

29. Control and administration of Fund.--(1) The Director-General is the accounting officer of the Fund in terms of the Exchequer Act, 1975 (Act No. 66 of 1975) and must--

- a. control the Fund;
- b. keep a proper record of all financial transactions, assets and liabilities of the Fund; and
- c. as soon as possible after the end of each financial year, ending on the prescribed date, prepare accounts of the income and expenditure of the Fund for the year and a balance sheet of its assets and liabilities as at the end of that year.

(2) Any money in the Fund not required for immediate use may be invested with the Public Investment Commissioner or with a financial institution approved by the Minister and may be withdrawn when required.

(3) Any unexpended balance in the Fund at the end of the financial year must be carried forward to the next financial year as a credit to the Fund.

(Date of commencement of s. 29: 2 February, 1999.)

30. Budget for training by public service employers.--Each public service employer in the national and provincial spheres of government--

- a. must budget for at least one per cent of its payroll for the training and education of their employees with effect from 1 April 2000; and
- b. may contribute funds to a SETA.

CHAPTER 8 GENERAL

31. Jurisdiction of Labour Court.--(1) Subject to the jurisdiction of the Labour Appeal Court and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters arising from this Act.

(2) The Labour Court may review any act or omission of any person in connection with this Act on any grounds permissible in law.

(3) If proceedings concerning any matter contemplated in subsection (1) are instituted in a court that does not have jurisdiction in respect of that matter, that court may at any stage during proceedings refer the matter to the Labour Court.

32. Monitoring, enforcement and legal proceedings.--Chapter Ten and Schedule Two of the Basic Conditions of Employment Act apply, with changes required by the context, to-

- a. the monitoring and enforcement of this Act; and
- b. any legal proceedings concerning a contravention of this Act.

33. Offences.--It is an offence to--

- a. obstruct or attempt to influence improperly a person who is performing a function in terms of this Act;
- b. obtain or attempt to obtain any prescribed document by means of fraud, false pretences or by submitting a false or forged prescribed document;
- c. furnish false information in any prescribed document knowing that information to be false; or
- d. provide employment services for gain without being registered in terms of section 24.

34. Penalties.--Any person convicted of an offence referred to in section 33 may be sentenced to a fine or imprisonment for a period not exceeding one year.

35. Delegation.--(1) The Minister may in writing delegate to the Director-General or any other officer of the Department any power or duty conferred or imposed on the Minister by this Act.

(2) The Director-General may, in writing, delegate to any officer of the Department any power or duty conferred or imposed on the Director-General by this Act.

(3) Any person to whom any power or duty has been delegated in terms of subsection (1) or (2) must exercise that power or perform that duty subject to the conditions that the person who made the delegation considers necessary.

(4) Any delegation in terms of subsection (1) or (2)--

- a. must be in writing;
- b. does not prevent the person who made the delegation from exercising the power or performing the duty so delegated; and
- c. may at any time be withdrawn in writing by that person.

36. Regulations.--The Minister may, after consultation with the National Skills Authority, by notice in the Gazette, make regulations relating to any matter which--

- a. may or must be prescribed under this Act; and
- b. is necessary to prescribe in order to achieve the purposes of this Act.

37. Repeal of laws and transitional provisions.--(1) The laws referred to Schedule 1 are hereby repealed to the extent specified.

(2) The repeal of those laws is subject to any transitional provision in Schedule 2.

38. Act binds State.--This Act binds the State.

39. Short title and commencement.--(1) This Act is called the Skills Development Act, 1998.

(2) This Act takes effect on a date to be determined by the President by proclamation in the Gazette.

Schedule 1

REPEAL OF LAWS

(Section 37 (1))

No. and year of law	Short title	Extent of repeal
Act No. 56 of 1981	Manpower Training Act, 1981	The whole.
Act No. 62 of 1981	Guidance and Placement Act, 1981	The whole.
Act No. 41 of 1985	Local Government Training Act, 1985	The whole
Act No. 106 of 1996	Telecommunications Act, 1996	Sections 78 to 87.

Schedule 2

TRANSITIONAL PROVISIONS

(Section 37 (2))

1. Definitions.--In this Part--

"Guidance and Placement Act" means the Guidance and Placement Act, 1981 (Act No. 62 of 1981);

"Local Government Training Act" means the Local Government Training Act, 1985 (Act No. 41 of 1985);

"Manpower Training Act" means the Manpower Training Act, 1981 (Act No. 56 of 1981); and

"Telecommunications Act" means the Telecommunications Act, 1996 (Act No. 103 of 1996).

2. National Training Board.--Until the chairperson and other members of the National Skills Authority are appointed, the National Training Board, established in terms of section 3 of the Manpower Training Act, continues to exist and to perform the functions of the National Skills Authority.

3. Manpower Development Fund.--All assets, rights, liabilities and obligations of the Manpower Development Fund, established by section 38 of the Manpower Training Act, are hereby transferred to the National Skills Fund.

4. Training boards and apprenticeships.--(1) Subject to subitem (4), a training board, established and accredited in terms of sections 12A and 12B of the Manpower Training Act, continues to exist and perform its functions as if that Act had not been repealed, until 31 March 2000.

(2) When a training board ceases to exist on 31 March 2000--

that training board must be wound up in terms of its constitution; and
any apprentice under a contract of apprenticeship, registered by that training board and in existence immediately before the training board ceases to exist, must be dealt with as if the Manpower Training Act had not been repealed except that the Director-General must perform the functions of the training board until that contract of apprenticeship expires.

(3) The Minister must, by notice in the Gazette, abolish a training board before 31 March 2000 if--

a SETA is established; and
that SETA has jurisdiction over any part of an industry or area in respect of which the training board has been accredited in terms of section 12B of the Manpower Training Act.

(4) When a training board is abolished in terms of a notice referred to in subitem (3)--

a. all the assets, rights, liabilities and obligations of the training board are transferred to the SETA designated in that notice; and

b. any apprentice under a contract of apprenticeship, registered by the training board and in existence immediately before the training board is abolished, must, subject to subitem (6), be dealt with as if the Manpower Training Act had not been repealed except that that SETA must perform the functions of the training board until the contract of apprenticeship expires.

(5) Subject to sub-item (4) (b), sections 13 to 29 of the Manpower Training Act remains in force as if that Act had not been repealed until a date determined by the Minister by notice in the Gazette.

(6) From the date immediately after the date referred to in sub-item (5)--

a. any trade designated under section 13 (1) of the Manpower Training Act is regarded to be a qualification contemplated in section 16 (c) of this Act;

b. the applicable provisions of any contract of apprenticeship registered in terms of section 18 of that Act are deemed to be a learnership agreement registered in terms of section 17 (3) of this Act and a contract of employment referred to in section 18 (3) of this Act; and

c. any apprentice referred to in section 17 of that Act is regarded to be a learner in relation to such a learnership agreement.

5. Training centres.--(1) In this item "training centre" means any--

a. centre registered as a regional training centre registered in terms of section 31 of the Manpower Training Act;

b. training centre registered as an industry training centre in terms of section 34 of the Manpower Training Act; or

c. training trust established in terms of any law mentioned in Schedule 1 of the Integration of Labour Laws Act, 1994 (Act No. 49 of 1994),

and in existence immediately before the commencement of this Act.

(2) Subject to subitem (3), a training centre continues to exist and perform its functions as if the Manpower Training Act or any law mentioned in Schedule 1 of the Act referred to in subitem (1) (b) had not been repealed.

(3) A training centre must be liquidated⁴ in terms of its constitution not later than 31 March 2000 unless it has been registered as an association not for gain in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973) before that date.

(4) The Director-General may take steps to liquidate a training centre after 31 July 1999 if that centre has not--

applied for registration as such an association not for gain; or
taken steps to liquidate itself in terms of its constitution.

(5) If a training centre is liquidated, any assets and rights not required to discharge the obligations and liabilities of that centre must be disposed of in accordance with the directions of the Director-General.

(6) Section 32 of the Manpower Training Act remains in force as if the Manpower Training Act had not been repealed, until a date determined by the Minister by notice in the Gazette.

6. Arrangements for training of trainees.--Any arrangement contemplated in section 30 of the Manpower Training Act and in force immediately before the commencement of this Act remains in force as if the Manpower Training Act had not been repealed, until a date determined by the Minister by notice in the Gazette.

7. Grants-in-aid.--Section 35 of the Manpower Training Act remains in force as if the Manpower Training Act had not been repealed, until a date determined by the Minister by notice in the Gazette.

8. Fund for Training of Unemployed Persons.--(1) Any balance of the Fund for the Training of Unemployed Persons established by section 36A of the Manpower Training Act is hereby transferred to the National Skills Fund.

(2) The balance so transferred may be used only for the training of unemployed persons.

9. Training schemes.--(1) Subject to subitem (2), any scheme declared binding in terms of section 39 (5) of the Manpower Training Act continues as if that Act had not been repealed.

(2) Any such scheme must be discontinued not later than 31 March 2000 unless the scheme has been--

registered as an association not for gain in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973), before that date, provided that from that registration any notice issued in terms of section 39 (5) in respect of that scheme ceases to be in force;

sold with the agreement of the members of the training board with jurisdiction over employers subject to the scheme before that date; or

transferred to a SETA with the agreement of those members of the training board before that date.

(3) If that scheme is discontinued, any assets and rights not required to discharge the obligations and liabilities of that scheme must be disposed of in accordance with the directions of the Director-General.

10. Training levies.--(1) Subject to subitem (2), section 39 of the Manpower Training Act remains in force as if the Manpower Training Act had not been repealed, until 31 March 2000.

(2) A notice imposing a levy in terms of section 39 of the Manpower Training Act and issued, before or after the commencement of this Act--

- a. may be amended by the Minister, by notice in the Gazette, to provide that the levy be paid to a SETA designated in that notice; and
- b. ceases to be in force when withdrawn in terms of the Skills Development Levies Act.

11. Training advisers.--Sections 45 and 46 of the Manpower Training Act remain in force as if the Manpower Training Act had not been repealed, until a date determined by the Minister by notice in the Gazette.

12. Registered work-seekers.--Any work-seeker registered in terms of section 4 of the Guidance and Placement Act immediately before the commencement of this Act is regarded to be a registered work-seeker in terms of section 23 (2) (b).

13. Private employment offices.--Any private employment office registered in terms of section 15 of the Guidance and Placement Act immediately before the commencement of this Act is regarded to be an employment service registered for gain in terms of section 24 of this Act.

14. Local government sector.--(1) The Local Government Training Fund (in this item referred to as "the Fund"), established by section 7 of the Local Government Training Act continues to exist, subject to subitems (5) to (7), as if that Act had not been repealed.

(2) Any body or institution, including a local government body, recognised as a training centre under section 9A of the Local Government Training Act immediately before the commencement of this Act, continues to be so recognised for a period of four months from that commencement as if the Local Government Training Act had not been repealed.

(3) Subject to subitem (7) (c), any levy imposed in terms of section 10 of the Local Government Training Act and in force immediately before the commencement of this Act, remains in force until 31 March 2000 unless withdrawn before that date by the Minister in terms of section 2 (3) of the Skills Development Levies Act as if the Local Government Training Act had not been repealed.

(4) Subject to subitem (7)--

- a. the powers conferred and duties imposed on the Training Board for Local Government Bodies established by section 2 of the Local Government Training Act may be exercised and must be performed by the Local Government Education and Training Board established in terms of section 12A of the Manpower Training Act; and
- b. all the assets, rights, liabilities and obligations of the Training Board for Local Government Bodies are hereby transferred to the Local Government Education and Training Board.

(5) The Director-General: Constitutional Development must administer the Fund and is the accounting officer for the Fund.

(6) The Minister for Provincial Affairs and Constitutional Development may, after consultation with the Local Government Education and Training Board, utilise the moneys in the Fund to fund any person or institution that in the opinion of the Minister can take

action to develop the skills, knowledge, expertise or attitudes of a person elected to a municipal council or employed by a municipality.

(7) When a SETA is established for the local government sector--

- a. the Local Government Education and Training Board ceases to exist;
- b. the assets, rights, liabilities and obligations of that Training Board must be transferred to that SETA;
- c. the levy referred to in subitem (3) is regarded to be a levy imposed in terms of section 39 (1) of the Manpower Training Act as mentioned in item 10;
- d. the Fund ceases to exist; and
- e. the Director-General: Constitutional Development must transfer any balance of moneys in the Fund into the banking account of that SETA.

15. Telecommunications sector.--(1) Subject to subitem (2), the Human Resources Fund referred to in section 78 (1) of the Telecommunications Act continues to exist as if sections 78 to 87 of that Act had not been repealed.

(2) The Fund referred to in subitem (1) ceases to exist--

- a. on 31 March 2000; or
- b. on the establishment of a SETA with jurisdiction in the telecommunications sector.

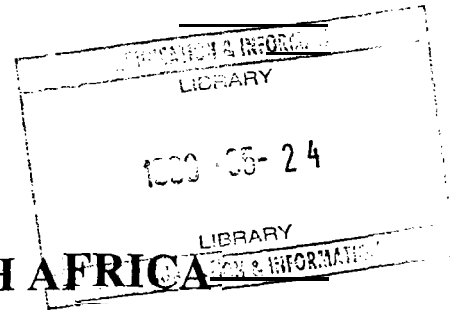
(3) If that Fund ceases to exist in terms of--

- a. subitem (2) (a), the balance of the money in the Fund must be transferred to the National Skills Fund; or
- b. subitem (2) (b), the balance of the money in the Fund must be transferred to the SETA referred to in that subitem.

(4) Subject to subitem (5), the contributions contemplated in section 86 (1) of the Telecommunications Act which are in force immediately before the commencement of this Act, remain in force until 31 March 2000 as if that Act had not been repealed.

(5) If a SETA with jurisdiction in the telecommunications sector is established, the contributions contemplated in subitem (4) must be credited to that SETA.

16. Exemptions from transfer duty, donations tax or any other tax.--Any transfer of assets or rights contemplated in this Schedule is exempt from transfer duty, donations tax or any other duty or tax.



REPUBLIC OF SOUTH AFRICA

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OFFICE OF THE PRESIDENT

IHOVISI LIKAPRESIDANTI

No. 516.

30 April 1999

Ino. 516.

30 Aphreli 1999

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 9 of 1999: Skills Development Levies Act, 1999.

Ngalokhu kwaziswa ukuthi uMongameli uvumelana nalomthetho olandelayo nokumele ukuthi ushicilelwe ukuze ube ulwazi jikelele:—

Ino. 9 ka 1999: uMthetho weZaMakhono, 1999.



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

CHAPTER 3**GENERAL PROVISIONS**

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SCHEDULE**AMENDMENT OF SKILLS DEVELOPMENT ACT**

10

CHAPTER 1**ADMINISTRATION, IMPOSITION AND RECOVERY OF LEVY****Definitions**

1. In this Act, unless the context otherwise indicates—
- “**approved body**” means the body approved by the Minister in terms of section 7(1)(b) to collect the levy on behalf of a SETA; 15
- “**Commissioner**” means the Commissioner for the South African Revenue Service, established by section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);
- “**Director-General**” means the Director-General of Labour; 20
- “**employee**” includes an employee as defined in the Fourth Schedule to the Income Tax Act;
- “**employer**” includes an employer as defined in the Fourth Schedule to the Income Tax Act;
- “**Income Tax Act**” means the Income Tax Act, 1962 (Act No. 58 of 1962); 25
- “**interest**” means any interest payable in terms of section 11;
- “levy” means the skills development levy referred to in section 3;
- “**Minister**” means the Minister of Labour;
- “**National Skills Authority**” means the National Skills Authority, established by section 4 of the Skills Development Act; 30
- “**National Skills Fund**” means the National Skills Fund, established by section 27(1) of the Skills Development Act;
- “**penalty**” means any penalty payable in terms of section 12;
- “prescribed” means prescribed by regulation in terms of section 22;
- “sector” means a sector as determined by the Minister in terms of section 9(2) of 35 the Skills Development Act;
- “**SETA**” means a sector education and training authority, established by section 9(1) of the Skills Development Act;
- “**Skills Development Act**” means the Skills Development Act, 1998 (Act No. 97 of 1998); 40
- “**this Act**” includes any regulation made in terms of section 22, but does not include the footnotes.

Administration of Act

2. (1) Subject to subsection (2), the Director-General must administer this Act.
- (2) The Commissioner must administer the provisions of the Act in so far as it relates 45 to the collection of the levy payable to the Commissioner in terms of this Act.
- (3) The Director-General may delegate any part of the administration of this Act, contemplated in subsection (1), to the executive officer of a SETA.
- (4) A delegation in terms of subsection (3)—

- (a) is subject to the conditions the Director-General determines;
- (b) must be in writing;
- (c) does not prevent the Director-General from performing the part of the administration so delegated: and
- (d) may at any time be withdrawn in writing. 5

Imposition of levy

3. (1) Every employer must pay a skills development levy from—
- (a) 1 April 2000, at a rate of 0,5 per cent of the leviable amount; and
 - (b) 1 April 2001, at a rate of one per cent of the leviable amount.
- (2) Despite subsection (1), the Minister may, in consultation with the Minister of Finance and the Minister for Provincial Affairs and Constitutional Development and by notice in the *Gazette*, impose a skills development levy on every municipality, as defined in section 10B of the Local Government Transitional Act, 1993 (Act No. 209 of 1993), or any group category or type of municipality, which must be determined on the leviable amount at a rate specified in that notice determined in accordance with subsection (3). 15
- (3) The aggregate of the levies collected from a municipality by virtue of a notice in terms of subsection (2) and budgetary allocations for training purposes to that municipality, must from—
- (a) 1 April 2000, be less than 0,5 per cent of the leviable amount;
 - (b) 1 April 2001, be less than one per cent of the leviable amount; and 20
 - (c) 1 April 2002, not be less than one per cent of the leviable amount.
- (4) For the purposes of subsections (1), (2) and (3), but subject to subsection (5), the leviable amount means the total amount of remuneration, paid or payable, or deemed to be paid or payable, by an employer to its employees during any month, as determined in accordance with the provisions of the Fourth Schedule to the Income Tax Act for the purposes of determining the employer's liability for any employees' tax in terms of that Schedule, whether or not such employer is liable to deduct or withhold such employees' tax.¹ 25
- (5) The amount of remuneration referred to in subsection (4) does not include any amount— 30
- (a) paid or payable to any person contemplated in paragraphs (c) and (d) of the definition of "employee" in paragraph 1 of the Fourth Schedule to the Income Tax Act, to whom a certificate of exemption has been issued in terms of paragraph 2(5)(a) of that Schedule;
 - (b) paid or payable to any person by way of any pension, superannuation 35 allowance or retiring allowance;
 - (c) contemplated in paragraphs (a), (d), (e) or (eA) of the definition of "gross income" in section 1 of the Income Tax Act;
 - (d) payable to a learner in terms of a contract of employment contemplated in section 18(3) of the Skills Development Act. 40
- (6) Despite subsection (1), on the request of a SETA, the Minister may, in consultation with the Minister of Finance and by notice in the *Gazette*, determine from time to time a rate and basis for the calculation of a levy payable by employers within the jurisdiction or a part of the jurisdiction of a SETA, different from the rate and basis contemplated in subsection (1)(a) or (b), as the case may be, but subject to subsection (7). 45
- (7) The rate and basis determined in a notice in terms of subsection (6) may not have the result that the amount of the levies collected by virtue of such notice is less than the amount of the levies which would have been collected, based on the rate and basis contemplated in subsection (1)(a) or (b), as the case may be.

1. This means that the remuneration paid to employees below the Income Tax threshold must be incorporated into the remuneration for determining the leviable amount in this Act.

(8) The Minister may, in consultation with the Minister of Finance, determine criteria for purposes of any determination contemplated in subsection (6).

(9) The notice referred to in subsection (6) must contain—

- (a) the rate and basis for the calculation of the levy;
- (b) the date on which the levy becomes payable; 5
- (c) a description of the employers falling within the jurisdiction of the SETA or part of the jurisdiction of the SETA in respect of which the levy is payable;
- (d) any other matter necessary to ensure the effective collection of the levy.

Exemptions

4. The levy is not payable by— 10

- (a) any public service employer in the national or provincial sphere of government;
- (b) any employer where section 3(1)(u) or (b) applies and—
 - (i) during any month, there are reasonable grounds for believing that the total amount of remuneration, as determined in accordance with section 3(4), paid or payable by that employer to all its employees during the following 12 month period will not exceed R250 000, or such other amount as the Minister may determine by notice in the *Gazette*; and 15
 - (ii) that employer is not required to apply for registration as an employer in terms of paragraph 15(1) of the Fourth Schedule to the Income Tax Act; 20
- (c) any religious or charitable institution contemplated in section 10(1)(f) of the Income Tax Act or any fund contemplated in section 10(1)&A) of the Income Tax Act, established solely to provide funds to any such institution; or
- (d) any national or provincial public entity, if 80 per cent or more of its expenditure is defrayed directly or indirectly from funds voted by Parliament. 25

Registration for payment of levy

5. (1) When an employer is liable to pay the levy, that employer must—

- (a) apply to the Commissioner in such manner as the Commissioner may determine, to be registered as an employer for the purposes of the levy and indicate in such application the jurisdiction of the SETA within which that employer must be classified (if any); and 30
- (b) if the employer is affected by the establishment or amendment of a SETA as contemplated in subsection (4), indicate to the Commissioner the jurisdiction of the SETA within which that employer must be classified.

(2) For the purposes of subsection (1), where an employer falls within the jurisdiction of more than one SETA, that employer must, having regard to— 35

- (a) the composition of its workforce;
- (b) the amount of remuneration paid or payable to the different categories of employees; and
- (c) the training needs of the different categories of employees, 40

select one SETA within which it must be so classified for the purposes of this Act.

(3) A selection by an employer in terms of subsection (2) is binding on the employer, unless the Commissioner having regard to the factors contemplated in subsection (2)(a), (b) and (c) otherwise directs.

(4) If a SETA is established or its jurisdiction is amended after 1 April 2000, the Minister must, by notice in the *Gazette*— 45

- (a) inform employers of any change in respect of which SETA the levy is or becomes payable; and
- (b) determine a date, more than 60 days after the date of the notice, from which employers will be affected by that establishment or amendment of jurisdiction. 50

(5) An employer that falls within the jurisdiction of a SETA specified in a notice referred to in section 7(1), must—

- (a) apply to the SETA in such manner as the SETA determines, to be registered as an employer for the purposes of the payment of the levy;
- (b) within 21 days from the date of such notice, submit a statement to the Commissioner confirming that such employer falls within the jurisdiction of that SETA and that payment of the levy will be made to that SETA.

(6) Any employer that is exempt from the payment of the levy as contemplated in section 4(a), (c) and (d), must register in terms of subsection (1).

Payment of levy to Commissioner and refund

6. (1) Subject to section 7, every employer must pay the levy to the Commissioner in the manner and within the period determined in this Act.

(2) An employer must, not later than seven days, or such longer period as the Commissioner determines, after the end of each month in respect of which the levy is payable, pay the levy to the Commissioner and together with such payment submit a statement—

- (a) in such form as the Commissioner may require; and
- (b) reflecting the amount of the levy due by that employer and containing such other information as the Commissioner may require.

(3) If the amount of any levy, interest or penalty paid by an employer to the Commissioner was not leviable or payable, or was in excess of the amount leviable or payable in terms of this Act, that amount must be refunded to that employer by the Commissioner, which refund is a drawback against the National Revenue Fund.

(4) If the Director-General has allocated in accordance with section 8 the full amount or any portion of the amount referred to in subsection (3), the Director-General must, when necessary, withhold the amount so allocated from future payments due to the SETA or National Skills Fund, as the case may be, in terms of this Act.

(5) The Commissioner must, before the seventh day of each month, notify the Director-General of—

- (a) the names of employers in each SETA and the amount of levies, interest and penalties collected from and refunds made to those employers; and
- (b) the names of employers which do not fall within the jurisdiction of any SETA and the amount of levies, interest and penalties collected from and refunds made to those employers,

during the previous month.

Payment of levy to SETA and refund

7. (1) Subject to subsection (2), the Minister may, in consultation with the Minister of Finance and by notice in the *Gazette*, determine that all employers that fall within the jurisdiction of any SETA specified in that notice, must pay the levy to—

- (a) that SETA; or
- (b) a body nominated by the SETA and approved by the Minister to collect the levy on behalf of that SETA.

(2) Before making a determination contemplated in subsection (1), the Minister and the Minister of Finance must be satisfied that—

- (a) sufficient grounds exist for the SETA to collect the levy from the employers in its jurisdiction;
- (b) the SETA, or the body nominated by the SETA to collect the levy on its behalf, has demonstrated the required competence to collect the levy; and
- (c) the costs pertaining to such collection will not exceed two per cent of the total amount of the levies collected.

(3) The Minister may withdraw the notice contemplated in subsection (1) if he or she is satisfied that the SETA has not complied in the prescribed manner with section 10(1)(a), (b), (g)(iii) and (h)(ii) of the Skills Development Act.

(4) An employer must, not later than seven days after the end of each month in respect of which the levy is payable—

- (a) pay the levy; and
- (b) submit to the SETA or approved body and to the Commissioner a statement—
 - (i) in such form as the SETA or approved body, as the case may be, and the Commissioner, respectively, may require; and
 - (ii) reflecting the amount of the levy paid to the SETA or approved body and 5 containing such other information as the SETA or approved body, as the case may be, and the Commissioner may require.

(5) If the amount of a levy, interest or penalty paid by an employer to the SETA or approved body was not leviable or payable, or was in excess of the amount leviable or payable, in terms of this Act, that amount must be refunded to the employer by the SETA 10 or approved body from the funds of the SETA.

(6) If any portion of the amount refunded in terms of subsection (5), has been paid over to the National Skills Fund in terms of section 9(a), the SETA must withhold that portion from future payments to the Fund in terms of this Act.

Distribution of levies paid to Commissioner

15

8. (1) The levies, interest and penalties collected by the Commissioner, after deduction of refunds, must be paid into the National Revenue Fund.

(2) Subject to section 6(4), the total amount of levies, interest and penalties paid into the National Revenue Fund in terms of subsection (1), is a direct charge against the National Revenue Fund for the credit of— 20

- (a) the SETA to the amount contemplated in subsection (3)(b);
- (b) the National Skills Fund to the amount contemplated in subsection (3)(a) and (c).

(3) The Director-General must, within 14 days after receipt of a notice from the Commissioner in terms of section 6(5), allocate— 25

- (a) 20 per cent of the levies, interest and penalties collected in respect of a SETA to the National Skills Fund;
- (b) 80 per cent of the levies, interest and penalties collected in respect of a SETA to that SETA after he or she is satisfied that the SETA has complied in the prescribed manner with section 10(1)(a), (b), (g)(iii) and (h)(ii) of the Skills 30 Development Act;
- (c) the levies, interest and penalties collected by the Commissioner from employers which do not fall within the jurisdiction of a SETA to the National Skills Fund.

(4) The levies, interest and penalties allocated to a SETA in terms of subsection (3)(b) 35 must be dealt with in accordance with section 14 of the Skills Development Act.

Distribution of levies paid to SETA

9. Subject to section 10(3), the executive officer of a SETA or its approved body, as the case may be, must—

- (a) not later than the 15th day of each month, pay 20 per cent of the levies 40 collected by that SETA in terms of section 7(1), and of any interest and penalties collected in respect thereof, to the National Skills Fund;
- (b) deal with the balance of the levies, interest and penalties so collected in accordance with section 14 of the Skills Development Act.

Collection costs

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10. (1) Subject to subsection (2), the Director-General must, on a monthly basis as may be agreed between by the Commissioner and the Director-General, defray the costs of collection by the Commissioner from the levies paid into the National Skills Fund.

(2) The total amount of collection costs referred to in subsection (1), excluding the 4 start-up capital costs, may not exceed two per cent of the total amount of the levies 50 calculated at the rate referred to in section 3(1)(b).

(3) Subject to subsection (4), a SETA or its approved body may withhold from its payment to the National Skills Fund in accordance of section 9(a), the cost of collection of the SETA or approved body.

(4) The total amount of collection costs referred to in subsection (3) may not exceed two per cent of the total amount of the levies collected. 5

Interest on late payment

11. If an employer fails to pay a levy or any portion thereof on the last day for payment thereof, as contemplated in section 6(2) or 7(4), interest is payable on the outstanding amount at the rate contemplated in paragraph (b) of the definition of "prescribed rate" in section 1 of the Income Tax Act, calculated from that last day for payment to the day 10 that payment is received by the Commissioner, SETA or approved body, as the case may be.

Penalties on default

12. (1) Subject to subsection (2), if any levy remains unpaid after the last day for payment thereof as contemplated in section 6(2) or 7(3), a penalty of 10 per cent of that 15 unpaid amount is payable in addition to the interest contemplated in section 11.

(2) The Commissioner or the executive officer of the SETA or approved body, as the case may be, may, having due regard to the circumstances of the case, remit the penalty or any portion thereof imposed by subsection (1).

Applicability of Income Tax Act 20

13. The provisions of the Income Tax Act relating to—
- (a) the administration thereof as contained in Chapter I of the Income Tax Act;
 - (b) returns, the production of information, documents or things, enquiries, searches and seizures and evidence on oath;
 - (c) assessments; 25
 - (d) objections and appeals;
 - (e) the payment and recovery of tax, interest and penalties;
 - (f) refunds;
 - (g) representative taxpayers as contained in the Fourth Schedule to the Income Tax Act; 30
 - (h) transactions, operations or schemes for purposes of avoiding or postponing liability for taxes on income or reducing the amount of taxes on income; and
 - (i) reporting of unprofessional conduct,
- apply, with the changes required by the context, to the levy paid or payable to the Commissioner in terms of this Act in respect of— 35
- (i) the administration of this Act;
 - (ii) statements, the production of information, documents or things, enquiries, searches and seizures and evidence on oath for the purpose of obtaining full information in respect of the calculation of the levy due and payable in terms of this Act; 40
 - (iii) any assessment, objection and appeal and the payment recovery or refund of the levy, interest or penalty;
 - (iv) representative taxpayers;
 - (v) any transaction, operation or scheme entered into or carried out for the purposes of avoiding or postponing liability for the levy or reducing the amount of the levy and in the application of the provisions contemplated in paragraph (h), such provisions are regarded to include a reference to the levy; 45
 - (vi) reporting of unprofessional conduct.

CHAPTER 2

RECOVERY OF LEVY BY SETA

Recovery of levy

14. (1) A levy payable by an employer in terms of section 7(1) to a SETA or its approved body is regarded to be a debt due to the SETA. 5

(2) If an employer—

(a) fails to submit a statement in respect of the amount of levies due as contemplated in section 7(4)(b); or

(b) submits a statement reflecting an amount which, in the opinion of the executive officer of the SETA or approved body, as the case may be, is less than the amount which is due in terms of this Act, 10

the executive officer of the SETA or approved body, as the case may be, may estimate the amount of the levy due and issue an assessment for the outstanding amount.

(3) If any amount of the levy payable by an employer to a SETA in accordance with section 7(1), or any interest or penalty in respect thereof, remains unpaid on the last day for payment thereof as contemplated in sections 7(4)(a), 11 and 12, respectively, the SETA or approved body, as the case may be, may, despite any law to the contrary, recover the outstanding amount by action in a magistrate's court having jurisdiction in the area in which the person liable for the levy, interest or penalty carries on business. 15

Appointment of inspectors 20

15. (1) A labour inspector appointed in terms of section 63 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), is regarded to be an inspector for the purposes of this Act in so far as it relates to the collection of levies by a SETA or its approved body.

(2) The Director-General must, by a signed certificate, designate any person appointed in the prescribed manner and against the prescribed criteria as an agent of a SETA or its approved body as an inspector for the purposes of this Act in so far as it relates to the collection of levies by the SETA or approved body, as the case may be. 25

Powers of entry of inspectors

16. (1) In order to monitor and enforce compliance with this Act in so far as it relates to the collection of levies by a SETA or its approved body, an inspector may without warrant or notice at any reasonable time, enter any workplace or any other place where an employer carries on business or keeps any records, which is not a home. 30

(2) An inspector may enter a home or any place other than a place contemplated in subsection (1) only— 35

(a) with the consent of the owner or occupier; or

(b) if authorised by a warrant, in terms of subsection (3), to do so.

(3) A magistrate, or judge of a High Court, in chambers having jurisdiction may issue a warrant contemplated in subsection (2) only on written application by an inspector, referred to in section 15, and stating under oath or affirmation the reasons for the need to enter a place in order to monitor compliance with this Act in so far as it relates to the collection of levies by a SETA or its approved body. 40

Powers of inspector to question and inspect

17. (1) In order to monitor compliance with this Act in so far as it relates to the collection of levies by a SETA or its approved body, an inspector referred to in section 15 may— 45

(a) require a person to disclose information either orally or in writing, and either alone or in the presence of witnesses on any matter to which this Act so relates, and require that the disclosure be made under oath or affirmation;

- (b) inspect, and question a person about, any document to which this Act so relates;
 - (c) copy that document, or remove that document to make copies of, or extracts from, that document;
 - (d) require a person to produce or deliver to a place specified by the inspector that 5 document for inspection; and
 - (e) perform any other prescribed function necessary for monitoring or enforcing compliance with this Act in so far as it relates to the collection of levies by a SETA or its approved body.
- (2) The inspector may be accompanied by an interpreter and any other person 10 reasonably required to assist in conducting the inspection.
- (3) The inspector must—
- (a) produce on request the certificate of appointment as inspector;
 - (b) provide a receipt for any document removed or delivered in terms of 15 subsection (1)(c) or (d); and
 - (c) return anything so removed or delivered within a reasonable time.

Co-operation with inspectors

18. (1) Any person who is questioned by an inspector referred to in section 15 must answer all relevant questions lawfully put to that person, truthfully and to the best of his or her ability. 20

(2) An employer must provide any facility and assistance at his or her premises that is reasonably required by an inspector to perform his or her functions effectively.

Undertakings and compliance orders

19. Sections 68 to 73 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), apply, with the changes required by the context, to— 25

- (a) the monitoring and enforcement of this Act in so far as it relates to the collection of levies by a SETA or its approved body; and
- (b) any legal proceedings concerning a contravention of this Act, in so far as it relates to the collection of levies by a SETA or its approved body.

CHAPTER 3 30

GENERAL PROVISIONS

Offences

20. Any person who—
- (a) fails to apply for registration for purposes of the levy;
 - (b) fails to pay any levy on the date determined for payment thereof; 35
 - (c) furnishes any false information in a statement or other document required in terms of this Act, knowing the information to be false;
 - (d) fails to—
 - (i) submit or deliver any statement or other document or thing;
 - (ii) disclose any information; 40
 - (iii) reply to or answer truly and fully, any questions put to him or her; or
 - (iv) attend and give evidence, required in terms of this Act; or
 - (e) hinders or obstructs any person in carrying out his or her functions in terms of this Act, 45
- commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding one year.

Proof of accuracy of statement

21. In any proceedings concerning a contravention of this Act, it is for an employer to prove that the information supplied by that employer in a statement required to be submitted in terms of this Act is accurate.

Regulations

5

22. The Minister may, in consultation with the Minister of Finance and after consultation with the National Skills Authority, make regulations about any matter which—

- (a) may or must be prescribed in terms of this Act; and
- (b) is necessary for the effective administration of this Act.

10

Amendment of Skills Development Act

23. The Skills Development Act is amended as set out in the Schedule.

Short title and commencement

24. This Act is called the Skills Development Levies Act, 1999 and takes effect on a date to be determined by the President by proclamation in the *Gazette*.

15

SCHEDULE

AMENDMENT OF SKILLS DEVELOPMENT ACT

(Section 23)

Amendment of section 1 of Act 97 of 1998

1. Section 1 of the Skills Development Act is hereby amended by the substitution for the definitions of "Skills Development Levies Act" and "skills development levies" of the following definitions:

"**'Skills Development Levies Act'** means the Skills Development Levies Act, 1999;
'skills development levies' means a levy as defined in section 1 of the Skills Development Levies Act;"

Amendment of section 2 of Act 97 of 1998

2. Section 2 of the Skills Development Act is hereby amended by the substitution in subsection (2)(a) (iii) for the expression "levy-grant" of the expression "levy-financing".

Amendment of section 10 of Act 97 of 1998

3. Section 10 of the Skills Development Act is hereby amended—

(a) by the substitution for paragraph (f) of subsection (1) of the following paragraph:

"(f) when required to do so as contemplated in section 7(1) of the Skills Development Levies Act, collect the skills development levies, and must disburse the levies, allocated to it in terms of sections 8(3)(b) and 9(b), in its sector;"

(b) by the substitution for paragraph (k) of subsection (1) of the following paragraph:

"(k) perform any other duties imposed by this Act or the Skills Development Levies Act or consistent with the purposes of this Act.;"

(c) by the substitution for paragraph (b) of subsection (2) of the following paragraph:

"(b) the other powers conferred on the SETA by this Act or the Skills Development Levies Act.;" and

(d) by the substitution for subsection (3) of the following subsection:

"(3) A SETA must perform its functions in accordance with this Act, the Skills Development Levies Act and its constitution."

Amendment of section 14 of Act 97 of 1998

4. Section 14 of the Skills Development Act is hereby amended—

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) 80 per cent of the skills development levies, interest and penalties collected in respect of the SETA, as allocated in terms of sections 8(3)(b) and 9(b) of the Skills Development Levies Act.;" and

(b) by the deletion of paragraph (c) of subsection (2).

Amendment of section 27 of Act 97 of 1998

5. Section 27 of the Skills Development Act is hereby amended by the substitution for paragraphs (a) and (b) of subsection (2) of the following paragraphs:

"(a) 20 per cent of the skills development levies, interest and penalties collected in respect of every SETA, as required by sections 8(3)(a) and 9(a) of the Skills Development Levies Act; "



- (b) the skills development levies, interest and penalties collected by the Commissioner from employers which do not fall within the jurisdiction of a SETA, as required by section 8(3)(c) of the Skills Development Levies Act.’.

Amendment of section 30 of Act 97 of 1998

6. Section 30 of the Skills Development Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

- “(a) must budget for at least—
 (i) 0,5 per cent of its payroll with effect from 1 April 2000;
 (ii) one per cent of its payroll with effect from 1 April 2001,
for the training and education of its employees; and”.

Insertion of section 30A in Act 97 of 1998

7. The following section is hereby inserted after section 30 of the Skills Development Act:

“Budget for training by national and provincial public entities

30A. If 80 per cent or more of the expenditure of a national or provincial public entity is defrayed directly or indirectly from funds voted by Parliament, that entity must budget for at least—

- (a) 0,5 per cent of its payroll with effect from 1 April 2000;
 (b) one per cent of its payroll with effect from 1 April 2001,
for the training and education of its employees.”.

Amendment of item 10 of Schedule 2 to Act 97 of 1998

8. Item 10 of Schedule 2 to the Skills Development Act is hereby amended by the deletion of paragraph (b) of subitem (2).

Amendment of item 14 of Schedule 2 to Act 97 of 1998

9. Item 14 of Schedule 2 to the Skills Development Act is hereby amended by the substitution for subitem (3) of the following subitem:

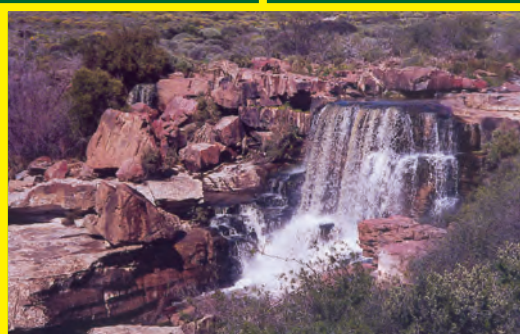
- “(3) Subject to subitem 7(c), any levy imposed in terms of section 10 of the Local Government Training Act and in force immediately before the commencement of this Act, remains in force until 31 March 2000 [**unless withdrawn before that date by the Minister in terms of section 2(3) of the Skills Development Act**] as if the Local Government Training Act had not been repealed.”.

Amendment of long title of Act 97 of 1998

10. The long title of the Skills Development Act is hereby amended by the substitution for the expression “levy-grant” of the expression “levy-financing”.



National Skills Development Strategy 1 April 2005 – 31 March 2010



labour

Department:
Labour
REPUBLIC OF SOUTH AFRICA



labour

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Foreword

I am pleased to present the National Skills Development Strategy (NSDS) 2005 – 2010 to the nation at large and people of South Africa. The adjusted strategy will replace our first National Skills Development Strategy 2001 – 2005.



Mr MMS Mdladlana
Minister of Labour

The strategy is a culmination of a process that commenced in 2003, with the National Skills Authority (NSA) constituency consultation process and presentation of their views on the NSDS 2001 - 2005 during the 2003 Skills Conference. It represents a detailed performance of Sector Education and Training Authorities and our National Skills Fund initiatives over the last four years. It represents healthy and sometimes very difficult debates on implementation matters, concerns and future aspirations of the various constituencies represented on the NSA.

The NSDS 2005 – 2010 spells out the national priority areas to which the projected over R 21,9 billion income from the skills development levy, will be allocated over the next five years. It provides the aggregate performance indicators of the skills development system that will be used as a basis to formulate performance indicators through legally binding Service Level Agreements with the SETAs and projects funded under the National Skills Fund (NSF).

It is my belief that through the NSDS 2005 – 2010, together with our social partners, we will support the broader goals of government to halve unemployment and poverty, and reduce inequality by 2014, and further to ensure that the institutions of skills development, which in the main are the SETAs and the NSF, use their resources to advance our skills revolution.

I would like to thank the National Skills Authority members, and all the many thousands of women and men who have contributed to the development of this adjusted strategy across all provinces. We have set and exceeded targets in our first strategy. The targets in the NSDS 2005 – 2010 are no less ambitious to those that were contained in our NSDS 2001 – 2005. I have no doubt in my mind, that as long as we continue to share a common vision on what our strategy intends achieving, and the principles to implement this strategy, nothing will stop us from realising our skills revolution objective.

Mr MMS Mdladlana, MP
Minister of Labour

1 March 2005

Vision

Skills for sustainable growth, development and equity

Mission

The National Skills Development Strategy (NSDS) contributes to sustainable development of skills growth, development and equity of skills development institutions by aligning their work and resources to the skills needs for effective delivery and implementation

Indicator

Government and its social partners assess the contribution of the NSDS institutions and resources to the nationally agreed strategies for growth, development and equity

Principles

1. Support economic growth for employment creation and poverty eradication.
2. Promote productive citizenship for all by aligning skills development with national strategies for growth and development.
3. Accelerate Broad Based Black Economic Empowerment and Employment Equity. (85% Black, 54% women and 4% people with disabilities, including youth in all categories). Learners with disabilities to be provided with reasonable accommodation such as assistive devices and access to learning and training material to enable them to have access to and participate in skills development.
4. Support, monitor and evaluate the delivery and quality assurance systems necessary for the implementation of the NSDS.
5. Advance the culture of excellence in skills development and lifelong learning.

Objective 1

Prioritising and communicating critical skills for sustainable growth, development and equity

Success Indicator 1.1

Skills development supports national and sectoral growth, development and equity priorities.

Lever 1.1

- Sector Education and Training Authorities (SETAs) use their discretionary funds to identify critical skills in the sector using guidelines prepared by the Department of Labour and the National Skills Authority (NSA)
- Critical skills needed, at entry, intermediate and advanced levels, are aligned and agreed with growth, development and equity strategy drivers and skills development bodies at national level within agreed timeframes.

Success Indicator 1.2

Information on critical skills is widely available to learners. Impact of information dissemination researched, measured and communicated in terms of rising entry, completion and placement of learners.

Lever 1.2

- Department of Labour consolidates SETA inputs and national/generic priorities and prepares a national guide on occupational/employment trends, periodically updated as agreed
- Relevant stakeholders ensure that information is utilised and report back to Department of Labour
- The National Skills Fund's (NSF) Critical Skills Support Funding Window will fund the guide and the training of career guidance counselors in the use of this information
- SETAs will use Discretionary Funds to fund the development of guides and the training of sector specialists or Skills Development Facilitators in the use of this information for their sectors.

Objective 2

**Promoting and accelerating quality
training for all in the
workplace**



Success Indicator 2.1

By March 2010 at least 80% of large firms' and at least 60% of medium firms' employment equity targets are supported by skills development. Impact on overall equity profile assessed.

Lever 2.1

- All Workplace Skills Plans (WSPs) to be submitted no later than 30 September for 2005 and thereafter 30 June each year. Newly registered skills levy-payers submit WSPs within 6-months from establishment
- WSP to be judged against three criteria in 2005: (1) Timeframe (submitted in time) and (2) WSP meets EE + BBBEE and charter compliance criteria. (3) Stakeholder signoff
- From 2006 onwards the WSP will be judged by an additional criterion, i.e. a report on the performance against the previous year's WSP
- If the WSP successfully meets set criteria then full 50% grant paid in quarterly tranches
- Firms failing to meet the set criteria will automatically forfeit the WSP grant for the given financial year. Forfeited grants will be transferred directly into SETA discretionary funds.

Success Indicator 2.2

By March 2010 skills development in at least 40% of small levy paying firms supported and the impact of the support measured.

Lever 2.2

- The SETA determines the best form of intervention and grant, such as WSP grants or the provision of free courses. 40% of total population of small firms in sector to be reached by such initiatives is the target. SETAs to spend at least 80% of the total levy income from small firms on the achievement of this indicator

Success Indicator 2.3

By March 2010 at least 80% of government departments spend at least 1% of personnel budget on training and impact of training on service delivery measured and reported.

Lever 2.3

- Government budgetary process used to ensure that national and provincial departments spend at least 1% of personnel budget on training

Success Indicator 2.4

By March 2010, at least 500 enterprises achieve a national standard of good practice in skills development approved by the Minister of Labour.

Lever 2.4

- Firms achieving a national standard of good practice in skills development approved by the Minister will automatically get 50% of levy paid and for period standard is maintained. SETAs will secure agreement on information required from such firms based on regulation

Success Indicaor 2.5

Annually increasing number of small BEE firms and BEE co-operatives supported by skills development. Progress measured through an annual survey of BEE firms and BEE co-operatives within the sector from the second year onwards. Impact of support measured.

Lever 2.5

- SETA discretionary BEE grants

Success Indicator 2.6

From April 2005 to March 2010 there is an annually increasing number of people who benefit from incentivised training for employment or re-employment in new investments and expansion initiatives. Training equity targets achieved. Of number trained, 100% to be South African citizens.

Lever 2.6

- NSF – Industry Support Programme grants. The Department of Labour must provide an annual report on progress made in respect of employment or re-employment generated, linked to new investment initiatives and expansions

Success Indicator 2.7

By March 2010 at least 700 000 workers have achieved at least ABET Level 4.

Lever 2.7

- SETAs use discretionary funds and may with the agreement of their Boards include the provision of ABET as a criteria for the release of WSP grants. Total sum of all SETA targets to be at least 700 000 workers

Success Indicator 2.8

By March 2010 , at least 125 000 workers assisted to enter and at least 50% successfully complete programmes, including learnerships and apprenticeships, leading to basic entry, intermediate and high level scarce skills. Impact of assistance measured.

Lever 2.8

- SETA discretionary grants to include 18(1) grants for learnerships, bursary grants, internship grants and study support to learners acquiring basic entry, intermediate and high level scarce skills identified as scarce in their sectors

Objective 3

Promoting employability and sustainable livelihoods through skills development



Success Indicator 3.1

By March 2010, at least 450 000 unemployed people are trained. This training should incrementally be quality assured and by March 2010 no less than 25% of the people trained undergo accredited training. Of those trained at least 70% should be placed in employment, self-employment or social development programmes including (EPWP), or should be engaged in further studies. Placement categories each to be defined, measured, reported and sustainability assessed.

Lever 3.1

- NSF Social Development Initiatives Funding Window including EPWP grants

Success Indicator 3.2

By March 2010, at least 2 000 non-levy paying enterprises, Non-governmental Organisations, Community Based Organisations, and community-based co-operatives supported by skills development. Impact of support on sustainability measured with a targeted 75% success rate.

Lever 3.2

- 20% SETA discretionary funds and 80% NSF Informal Sector Support Funding Window

Success Indicator 3.3

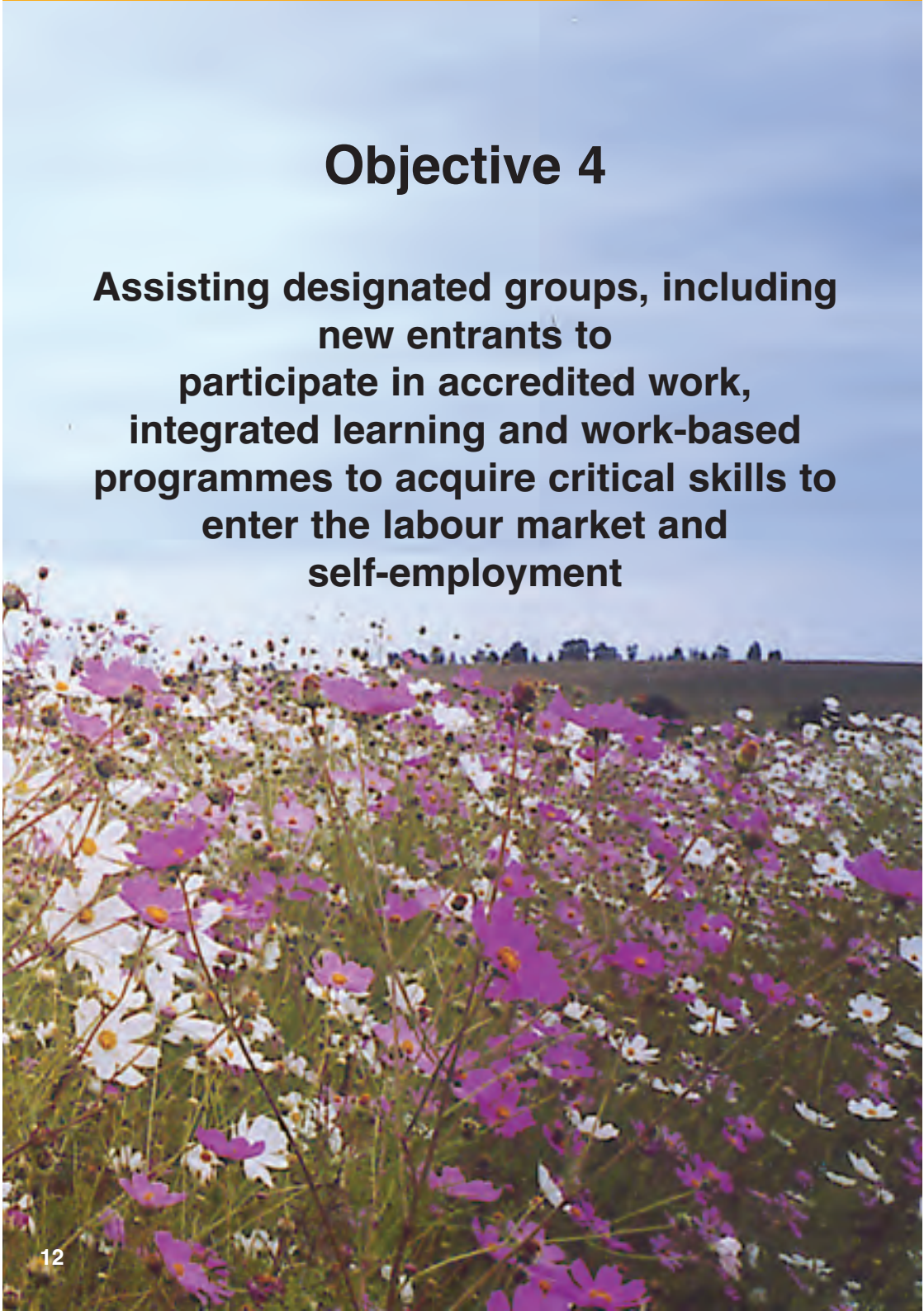
By March 2010, at least 100 000 unemployed people have participated in ABET level programmes of which at least 70% have achieved ABET Level 4.

Lever 3.3

- NSF ABET funding window to top up Department of Education funding of Adult Learning Centres and funding to other public providers, as well as private and donor funding to other ABET initiatives

Objective 4

Assisting designated groups, including new entrants to participate in accredited work, integrated learning and work-based programmes to acquire critical skills to enter the labour market and self-employment



Success Indicator 4.1

By March 2010 at least 125 000 unemployed people assisted to enter and at least 50% successfully complete programmes, including learnerships and apprenticeships, leading to basic entry, intermediate and high level scarce skills. Impact of assistance measured.

Lever 4.1

- SETA discretionary grants to include 18(2) grants for learnerships, bursary grants, internship grants and study support to learners acquiring basic entry, intermediate and high level scarce skills identified as scarce in their sectors. The NSF Critical Skills Support Funding Window provides top-up funding

Success Indicator 4.2

100% of learners in critical skills programmes covered by sector agreements from Further Education and Training (FET) and Higher Education and Training (HET) institutions assisted to gain work experience locally or abroad, of whom at least 70% find placement in employment or self-employment.

Lever 4.2

- SETA provides Work Experience Grants, as per agreement, to levy paying and non-levy paying employers in their sector that will provide work experience opportunities to students/graduates in sector-relevant programmes

Success Indicator 4.3

By March 2010, at least 10 000 young people trained and mentored to form sustainable new ventures and at least 70% of new ventures in operation 12 months after completion of programme.

Lever 4.3

- SETA Discretionary New Venture Creation grants plus NSF Informal Sector Support Funding Window top-up

Objective 5

**Improving the quality
and relevance of
provision**

Success Indicator 5.1

By March 2010 each SETA recognises and supports at least five Institutes of Sectoral or Occupational Excellence within public or private institutions and through Public Private Partnerships where appropriate, spread as widely as possible geographically for the development of people to attain identified critical occupational skills, whose excellence is measured in the number of learners successfully placed in the sector and employer satisfaction ratings of their training.

Lever 5.1

- SETA Institute of Sectoral or Occupational Excellence Grant. This Grant to cover any or all of the following – and may be used to upgrade a facility in order that it can achieve the status of excellent:
 - Infrastructural Development
 - Educator/Trainer up-skilling
 - Curriculum and materials development
 - Learner support initiatives
 - Upgrading of satellite institutions (e.g. emerging providers in partnership with excellence institution)
 - Other – by mutual agreement

Success Indicator 5.2

By March 2010, each province has at least two provider institutions accredited to manage the delivery of the new venture creation qualification. 70% of new ventures still operating after 12 months will be used as a measure of the institutions' success.

Lever 5.2

- SETA discretionary grants plus National Skills Fund New Venture Creation Delivery Grant from the Informal Sector Support Funding Window

Success Indicator 5.3

By March 2010 there are measurable improvements in the quality of the services delivered by skills development institutions and those institutions responsible for the implementation of the National Qualifications Framework (NQF) in support of the NSDS.

Lever 5.3

- SETA discretionary grants and specific NSF grants from the Provisioning Support Funding Window approved after advice by the NSA

Success Indicator 5.4

By March 2010, there is an NSA constituency based assessment of an improvement in stakeholder capacity and commitment to the National Skills Development Strategy.

Lever 5.4

- SETA discretionary funds and NSF Constituency Capacity Building and Advocacy Funding Window

