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THE PRESIDENCY

No. 1673 14 November 2003

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

No. 31 of 2003: Skills Development Amendment Act, 2003.

IHHOVISI LIKAMONGAMELI

Ino. 1673 14 November 2003

Ngalokhu kwaziswa ukuthi uMongameli usewuvimile lo mthetho nokumele ukuba ushicilelwe ukuze wasiswe:—

Ino. 31 ka 2003: UmThetho oyisiChibi-yelo sokuThuthukisa aMakhono, 2003.



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UMTHETHO OYISICHIBIYELO
SOKUTHUTHUKISA AMAKHONO, 2003

Act No. 31, 2003

(English text signed by the President.)
(Assented to 11 November 2003.)

UMTHETHO

Ukuchibiyela uMthetho wokuThuthukiswa kwaMakhono, ka1998, ukuze kuchazwe izisho ezithize futhi kuchibiyelwe izincazelo ezithize; ukwelula imisebenzi yeGunya likaZwelonke lokuThuthukisa aMakhono; ukushintsha ukwakheka kweGunya likaZwelonke lokuThuthukisa aMakhono; ukwelula amandla kaNgqongqoshe maqondana nama-SETA; ukuhlinzeka ngokusha ngezibopho zamaSETA mayelana nokwengamela izimali; ukudinga amaSETA ukuba afeze izivumelwano zezinga lokuletha izinkonzo noMqondisi-Jikelele; ukuqinisekisa ukuthi ubulungu bama-SETA bumelela amaqembu abaluliwe; ukunikeza amandla uNgqongqoshe okwenza imigomo mayelana nezivumelwano zokufunda; ukulawula izinhlangano ezinikezela ngezinkonzo zemisebenzi; ukuvumela ukusetshenziswa kwemali esiKhwameni sikaZwelonke saMakhono ngokuphathwa kwesikhwama; ukuhlinzeka ngokusha ibhajethi mayelana nokuqeqeshwa yizinhlanga zomphakathi zikazwelonke nezezifundazwe; ukunikeza amandla uNgqongqoshe ukusungula futhi aqhubekise izinga likazwelonke lokuqhubekisa indlela enhle yokuthuthukisa amakhono; ukwelula amandla kaNgqongqoshe okwenza imigomo; futhi achibiyele iSheduli 2; ukuqalisa ushintsho emiphumeleni yezichibiyelo zoMthetho kwiMayini kweZempilo nokuPhepha, 1996; futhi unikezela ngezindaba eziphathelele nawo lapho.

A KUMISWE iPhalamende leRiphabliki yaseNingizimu Afrika, njengokulandelayo:—

Isichibiyelo sesigaba 1 soMthetho 97 ka-1998, njengoba sichetshiyelwe yisigaba 23 soMthetho 9 ka-1999

1. Isigaba 1 soMthetho wokuThuthukiswa kwaMakhono, 1998 (ozokwaziwa 5 ngokuthi nguMthetho oyinhloko), uchibitshiyelwa ngalokhu-

(a) ngokufaka emuva kwencazelo yo "Mnyango" yale ncazelo elandelayo:
"amaqembu abaluliwe" achaza abantu abamnyama, abesifazane nabantu abakhubazekile;"

(b) ngokususwa encazelweni "yezinkonzo zemisebenzi" kwegama u"noma" 10 ekupheleni kwendima (d) kanye nokufakwa emuva kwaleyo ndima yale ndima elandelayo;

"(dA) ukutholela noma ukuhlinzekela lowo odinga usizo abanye abantu abanganikeza usizo kuye noma abazomenzela umsebenzi odinga usizo, ngale kokuthi ngobani labo bantu bakhokhelwe; noma"; 15

(c) ngokufakwa emuva kwencazelo "yalela" kwizincazelo ezilandelayo:
"inhlangano ezimele enikezela ngezinkonzo zomsebenzi" ichaza noma imuphi umuntu ohlinzeka ngezinkonzo zomsebenzi ukuze athole inzuzo; 'uMthetho wokuPhathwa kweZimali Zomphakathi' kuchaza uMthetho wokuPhathwa kweZimali Zomphakathi, 1999 (uMthetho 1 ka-1999);" 20

(d) by the substitution for the definition of “regulation” of the following definition:

“ ‘regulation’ means a regulation made and in force in terms of [section 36] this Act;”;

(e) by the insertion after the definition of “regulation” of the following definition: 5

“ ‘service level agreement’ means a service level agreement concluded in terms of section 10A;”.

Amendment of section 5 of Act 97 of 1998

2. Section 5 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: 10

“(b) to liaise with SETAs on—

(i) the national skills development policy; [and]

(ii) the national skills development strategy; and

(iii) sector skills plans;”.

Amendment of section 6 of Act 97 of 1998

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3. Section 6 of the principal Act is hereby amended—

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

“(b) 24 voting and [three] five non-voting members appointed by the Minister; and”;

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(b) by the insertion in subsection (2) after paragraph (e) of the following paragraph:

“(eA) two non-voting members, who have expertise in skills development, appointed by the Minister after consultation with the National Skills Authority;”.

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Amendment of section 9 of Act 97 of 1998

4. Section 9 of the principal Act is hereby amended by the addition of the following subsection:

“(4) The Minister may, after consulting the National Skills Authority and the SETAs in question and subject to subsection (2), change the sector of a SETA and must publish a notice in the *Gazette* reflecting such change.”.

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Insertion of section 9A in Act 97 of 1998

5. The following section is hereby inserted in the principal Act after section 9:

“Amalgamation and dissolution of SETAs

9A. (1) The Minister may, after consulting the National Skills Authority and the SETAs in question and subject to section 9(2), amalgamate two or more SETAs. 35

(2) The Minister must approve a constitution for the amalgamated SETA.

(3) The Minister must publish a notice in the *Gazette* containing—

(a) the date of the amalgamation; 40

(b) the sector for which the amalgamated SETA is established; and

(c) any other matter necessary to prescribe in order to establish the amalgamation.

(4) On the establishment of the amalgamated SETA, all assets, rights, liabilities and obligations of the amalgamating SETAs devolve upon and vest in the amalgamated SETA. 45

(5) The Minister may, after consulting the National Skills Authority and the SETA in question, dissolve a SETA if the SETA is unable to continue to perform its functions.

(6) The Minister must publish a notice in the *Gazette*—

(a) containing the date of the dissolution of the SETA; 50

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- (d) ngokufakelwa eikhundleni sencazelo “yomugomo” wencazelo elandelayo: “umugomo” uchaza umugomo owenziwe nobophezelayo ngokwaloMthetho;”; futhi
- (e) ngokufakwa emuva kwencazelo ‘yomugomo’ wale-ncazelo elandelayo: “‘izinga lesivumelwano sezinkonzo’ lisho isivumelwano sezinkonzo esiphothulwe ngokwesigaba 10A;”.

Isichibiyelo sesigaba 5 soMthetho 97 ka-1998

2. Isigaba 5 soMthetho oyinhloko siyachitshiyelwa ngokuthi kufakelwe esikhundleni kwesigatshana (1) kwindima (b) kulendima elandelayo:

- “(b) ukuxoxisana ne-SETA ngo— 10
- (i) mgomo wokuthuthukisa amakhono kazwelonke;
- (ii) nangesu lokuthuthukisa amakhono kazwelonke; kanye
- (iii) nezinhlelo zemikhakha yamakhono;”.

Isichibiyelo sesigaba 6 soMthetho 97 ka-1998

3. Isigaba 6 soMthetho oyinhloko siyachitshiyelwa— 15

- (a) ngokufakelwa esikhundleni kwesigatshana (1) kwindima (b) kwindima elandelayo:
- “(b) amalungu angu24 avotayo namahlanu angavoti aqokwe nguNgqongqoshe; futhi”;
- (a) ngokufakelwa kwesigatshana (2) emuva kwendima (e) kwindima 20 elandelayo:
- “(eA) amalunga amabili angavoti, anobuchwepheshe ekuthuthukisweni kwamakhono, aqokwe nguNgqongqoshe emva kokubonisana neGunya likaZwelonke lamakhono;”.

Isichibiyelo sesigaba 9 soMthetho 97 ka-1998

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4. Isigaba 9 soMthetho oyinhloko lapha siyachibiyelwa ngokufakelwa emuva kwesigatshana (3) salesisigatshana esilandelayo:

- “(4) uNgqongqoshe anga, ngemuva kokubonisana neGunya likaZwelonke laMakhono kanye namaSETA athintekayo futhi encike kwisigatshana (2), ashintshe umkhakha weSETA futhi kufanele ashicilele isaziso kwiGazethi esikhombisa olunjalo ushintsho.”.

Ukufakwa kwesigaba 9A soMthetho 97 ka-1998

5. Isigaba 9 semthetho oyinhloko sichitshiyelwa lapha ngokuthi kwengezwe lesi sigatshana esilandelayo:

“Ukuhlanganiswa nokuhlakazwa kwama-SETA 35

9A. (1) UNgqongqoshe, ngemuva kokubonisana neGunya likaZwelonke laMakhono kanye nama-SETA athintekayo futhi ngokuncika kwisigaba 9(2), nga ahlanganise ama-SETA amabili noma ngaphezulu.

(2) UNgqongqoshe kufanele agunyaze umthethosisekelo we-SETA ehlanganisiwe. 40

(3) UNgqongqoshe kufanele ashicilele isaziso kwiGazethi equkethe—

(a) usuku lokuhlanganiswa;

(b) umkhakha okuyiwona ama-SETA ahlanganisiwe asungulelwe wona; futhi (c) nanoma yikuphi okunye okubalulekile ekuyaleleni ukuze kusungulwe ukuhlanganiswa. 45

(4) Ekusungulweni kwe-SETA ehlangene, zonke izimpahla, amalungelo, izikweletu kanye nezibopho zama-SETA ahlanganiswayo kwedluliselwa futhi kuhlala kwi-SETA ehlangene.

(5) UNgqongqoshe emuva kokubonisana neGunya likaZwelonke laMakhono kanye ne-SETA ethintekayo, angayihlakaza i-SETA uma i-SETA ingasakwazi ukuqhubeka ukwenza imisebenzi yayo. 50

(6) UNgqongqoshe kufanele ashicilele isaziso kwiGazethi—

(a) esiqukethe usuku lokuhlakazwa kwe-SETA;

- (b) setting out the manner in which, and by whom, the SETA is to be wound-up;
- (c) setting out how any assets remaining after the winding-up of the SETA must be distributed; and
- (d) providing for any other matter necessary for the dissolution and winding-up of the SETA in question.

(7) No transfer duty, stamp duty, fee or costs are payable in respect of the transfer of any assets, rights, liabilities or obligations between SETAs as contemplated in this section.

(8) The Registrar of Deeds on presentation of proof of any transfer of immovable property contemplated in this section must endorse the title deeds accordingly and make the entries in the relevant register that are necessary to register the transfer.”.

Amendment of section 10 of Act 97 of 1998, as amended by section 23 of Act 9 of 1999

6. Section 10 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“A SETA must, in accordance with any requirements that may be prescribed—”;

- (b) by the substitution in subsection (1)(b) for subparagraph (iii) of the following subparagraph:

“(iii) allocating grants in the prescribed manner and in accordance with any prescribed standards and criteria to employers, education and training providers and workers; and”;

- (c) by the substitution in subsection (1) for paragraph (h) of the following paragraph:

“(h) [report] submit to the Director-General [on]—

(i) any budgets, reports and financial statements on its income and expenditure that it is required to prepare in terms of the Public Finance Management Act; and

(ii) plans and reports on the implementation of its sector skills plan and service level agreement;”;

- (d) by the substitution in subsection (1) for paragraph (j) of the following paragraphs:

“(j) subject to section 14, appoint staff necessary for the performance of its functions; [and]

(jA) promote the national standard established in terms of section 30B; and”.

Insertion of section 10A in Act 97 of 1998

7. The following section is hereby inserted in the principal Act after section 10:

“SETAs to conclude service level agreements

10A. (1) For each financial year, every SETA must conclude with the Director-General a service level agreement concerning—

- (a) the SETA’s performance of its functions in terms of this Act and the national skills development strategy;
- (b) the SETA’s annual business plan; and
- (c) any assistance that the Director-General is to provide to the SETA in order to enable it to perform its functions.

(2) If the Director-General and a SETA cannot agree on the contents of a service level agreement within the prescribed period, the Minister must determine the contents of the service level agreement after consulting the National Skills Authority.

(3) The determination by the Minister in respect of a service level agreement is final and binding.

(4) The Minister must, after consultation with the National Skills Authority, make regulations concerning—

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- (b) amisele indlela okumele, nokuthi ngobani, i-SETA okumele isongwe ngabo;
- (c) amisele indlela yokuthi nanoma yiziphi izimpahla ezisalayo emuva kokusongwa kwe-SETA kufanele zicazwe kanjani; futhi
- (d) ahlinzeke nanoma ikuphi okunye okubalulekile mayelana nokuhlakazwa nokusongwa kwe-SETA ethintekayo. 5
- (7) Azikho izindleko zokudlulisela, ezezitembu, izimali noma izindleko ezikhokhwayo mayelana nokudlulisela nanoma yiziphi izimpahla, amalungelo, izikweletu noma izibopho phakathi kwama-SETA njengokucatshangwe kulesi sigaba. 10
- (8) UNobhala weZemihlaba ngokwethulwa kobufakazi kwanoma ikuphi ukwedluliselwa kwezimpahla ezingathutheki njengokucatshangwe kulesi sigaba kufanele agcwalise kwitayitela lomhlaba ngokufanelekile futhi afake ebhukwini elifanele lokurejista lokho okufanele kurejistwe okudluliswayo.”. 15

Isichibiyelo sesigaba 10 soMthetho 97 ka-1998, ngokuchibiyelwa kwesigaba 23 soMthetho 9 ka-1999

6. Isigaba 10 soMthetho oyinhloko lapha siyachibiyelwa-
- (a) ngokufakelwa kwisigatshana (1) amagama angaphambi kwendima (a) kumagama alandelayo: 20
“I-SETA kufanele ngokuhambisana nanoma yiziphi izimfanelo ezinokuyalelwa —”;
- (b) ngokufakelwa kwisigatshana (1) (b) sendimana (iii) kwelandelayo indinyana: 25
“(iii) ngokwabela imali yokusiza ngendlela enqunyiwe nehambisana nanoma yimaphi amazinga kanye nezindlela eziyaleliwe kubaqashi, abahlinzeki bemfundo nokuqeqesha nabasebenzi; kanye”;
- (c) ngokufakela kwisigatshana (1) sendima (h) kwelandelayo indima:—
“(h) nikezela kuMqondisi-Jikelele—
 (i) noma iyiphi ibhajethi, imibiko kanye nezitatimende zezimali ezingenayo nencithakalo lezo okumele zilungiselelwe ngokoMthetho wokuPhatha iZimali zoMphakathi; futhi 30
 (ii) izinhlelo nemibiko nokugcwalisa ipulani yaMakhono oMkhakha wayo kanye nesivumelwano sezinga lezinkonzo zemisebenzi;”;
 futhi
- (d) ngokufakwa kwisigatshana (1) kwendima: (j) yalezi zindima ezilandelayo: 35
“(j) ngokwesigaba 14, ibeka abasebenzi abadingekile ukwenza imisebenzi ecatshangwe kulesi sigaba;
(jA) phakamisa izinga likazwelonke elisungulwe ngokwesigaba 30B; futhi”.

Ukufakwa kwesigaba 10A soMthetho 97 ka 1998

7. Isigaba esilandelayo lapha sifakwa kuMthetho oyinhloko emuva kwesigaba 10: 40

“Ama-SETA apothule isivumelwano sezinga lezinkonzo zemisebenzi

10A. (1) Ngalowo nalowo nyaka wezimali, wonke ama-SETA kufanele apothule noMqondisi-Jikelele isivumelwano sezinga lezinkonzo zemisebenzi mayelana-

- (a) nokwenza kwe-SETA imisebenzi yayo ngokwal oMthetho kanye namasu kazwelonke okuthuthukiswa kwamakhono; 45
- (b) nohlelo lomsebenzi lonyaka lwe-SETA; futhi
- (c) nanoma uluphi usizo uMqondisi-Jikelele azoluhlinzeka kwi-SETA ukuze ikwazi ukwenza imisebenzi yayo.
- (2) Uma uMqondisi-Jikelele kanye neSETA bengakwazi ukuvumelana ngokuqukethwe isivumelwano sezinga lezinkonzo zemisebenzi kulesosikhathi esiyaleliwe, uNgqongqoshe kufanele anqume ngokuqukethwe isivumelwano sezinga lezinkonzo lwezemisebenzi emuva kokubonisana neGunya likaZwelonke lezaMakhono. 50
- (3) Isinqumo sikaNgqongqoshe mayelana nesivumelwano sezinga lezinkonzo zemisebenzi singesokucina futhi siyabophezela. 55
- (4) UNgqongqoshe kufanele, emuva kokubonisana neGunya likaZwelonke lezaMakhono, enze imigomo mayelana—

- (a) the procedure for negotiating a service level agreement, including the periods within which negotiations must be conducted;
- (b) the matters which may be dealt with in a service level agreement and which may include—
 - (i) standards, criteria and targets for measuring and evaluating the SETA's performance of its functions in terms of the Act and its obligations in terms of the national skills development strategy; and
 - (ii) the timetable, number, format, contents and information requirements of plans and reports to be submitted to the Director-General.”.

Amendment of section 13 of Act 97 of 1998

8. Section 13 is hereby amended by the addition of the following subsection:

- “(4) In order to ensure that its membership is representative of designated groups, every SETA must—
- (a) provide in its constitution that each constituency contemplated in section 11 represented on the SETA in question is represented by members who are sufficiently representative of such designated groups; and
 - (b) take the necessary steps to ensure that the constituencies in question comply with the provision in the SETA's constitution contemplated in paragraph (a).”.

Amendment of section 14 of Act 97 of 1998, as amended by section 23 of Act 9 of 1999

9. Section 14 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The moneys received by a SETA may be used only in the prescribed manner and in accordance with any prescribed standards or criteria to—”;
- (b) by the insertion after subsection (3) of the following subsections:

“(3A) For the purposes of subsection (3)(b), the Minister—

 - (a) must prescribe the total expenditure that a SETA may make on its administration; and
 - (b) may prescribe—
 - (i) the amount that a SETA may spend on any aspect of its administration;
 - (ii) salary bands within which categories of employees must be remunerated;
 - (iii) the conditions under which employees may receive performance-related payments and the maximum payment that may be made to an employee in this regard;
 - (iv) the allowances that may be paid to members and office-bearers of SETAs or any other persons who serve on a committee or other structure of a SETA.

(3B) For the purposes of subsections (3) and (3A), the administration of a SETA includes any aspect of the administration or management of a SETA, irrespective of who performs it.”; and
- (c) by the substitution for subsections (4) and (5) of the following subsections, respectively:

“(4) A SETA must be managed in accordance with the Public Finance Management Act.

(5) Every SETA must—

 - (a) prepare annual budgets, annual reports and financial statements in accordance with Chapter 6 of the Public Finance Management Act; and
 - (b) furnish the Director-General with copies of all budgets, reports and statements contemplated in paragraph (a) and any other information that it is required to submit in terms of the Public Finance Management Act.”.

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- (a) nenqubo yokuxoxisana ngesivumelwano sezinga lezinkonzo zemisebenzi, kubandakanya nezikhathi okufanele izingxoxo ziqhutshwe kuso;
- (b) nezindaba ezinokudingidwa kwisivumelwano sezinga lezinkonzo zemisebenzi futhi ezinokufaka—
- (i) amazinga, isimo sokunquma kanye nokukama indima yokulinganisa kanye nokubuyekeza ukwenziwa kwemisebenzi yeSETA ngokoMthetho kanye nezibopho ngokwamasu kazwelonke okuthuthukisa amakhono; futhi
- (ii) uhlelo lwezikhathi, inani, isimo, okuqukethwe kanye nolwazi ngezidingo zezinhlelo kanye nemibiko ezonikezwa uMqondisi-Jikelele.”.

Isichibiyelo sesigaba 13 kuMthetho 97 ka-1998

8. Isigaba 13 lapha siyachibiyelwa ngokufakela isigatshana esilandelayo:

- “(4) Ukuze kuqiniseke ukuthi ubulunga bayo bumelela wonke amaqembu abaluliwe, wonke amaSETA kufanele—
- (a) ahlinzeke kumthethosisekelo wawo ukuthi labo ababamele njengokucatshangwe kwisigaba 11 abamelwe kwiSETA athintekayo bamelwe ngamalunga anele amela lawomaqembu abaluliwe; futhi
- (b) ukuthatha izinyathelo ezifanelekile ukuqiniseka ukuthi abamelwe abathintekayo bayahambisana nezihlinzeko eziku Mthethosisekelo weSETA njengokucatshangwe kusigatshana (a).“.

Isichibiyelo sesigaba 14 kuMthetho 97 ka-1998, njengoba kuchibiyelwe ngesigaba 23 soMthetho 9 ka-1999

9. Isigaba 14 soMthetho oyinhloko lapha siyachibiyelwa—

- (a) ngokufakelwa kwisigatshana (3) kwamagama ngaphambi kwendima (a) kwalamagama alandelayo: “Izimali ezamukelwe iSETA zingasetshenziswa kuphela ngendlela enqunyiwe futhi nangokuhambisana nanoma iliphi izinga noma indlela eyaleliwe uku—”;
- (b) ngokufaka emuva kwesigatshana (3) sezigatshana ezilandelayo:
- “(3A) Njengezinhloso zesigatshana (3)(b), uNgqongoshe—
- (a) kufanele achaze isamba sezimali iSETA engazisebenzisa ekuziphatheni kwayo; futhi
- (b) anganquma—
- (i) inani lelo iSETA engalisebenzisa kunoma ikuphi ukuziphatha kwayo;
- (ii) isilinganiso senkokhelo ephakathi kwezigaba zabasebenzi okufanele bakhokhelwe ngayo;
- (iii) imibandela engaphansi kokuthi abasebenzi bangathola ngayo inkokhelo ngokusebenza kwabo futhi nenkokhelo okunge-dlulwe kuyo leyo engenziwa kumsebenzi kulesisimo;
- (iv) izinkokhelo lezo ezangakhokhelwa kumalunga kanye naba-sezikhundleni zamaSETA nanoma imuphi umuntu osebenzela ikomiti noma olunye uhloko lweSETA.
- (3B) Ngokwezinhloso zezigatshana (3) no (3A), ukulawulwa kweSETA kufaka noma ikuphi ukuphathwa kwangaphakathi noma ukuphatha kweSETA, ngokungabheki ukuthi ubani okwenzayo lokho.”;
- futhi
- (c) ngokufakwa kwezigatshana (4) no (5) kwizigatshana ezilandelayo, ngokulandelana:
- “(4) ISETA kufanele iphathe ngokuhambisana noMthetho woku-Phathwa kweZimali zoMphakathi.
- (5) Wonke amaSETA kufanele—
- (a) alungise ibhajethi yonyaka, imibiko yonyaka nezitatimende zezimali ngokuhambisana neSahluko 6 soMthetho wokuPhathwa kweZimali zoMphakathi; futhi
- (b) anikeze uMqondisi — Jikelele amakhophi ayo yonke ibhajethi, imibiko nezitatimende njengokucatshangwe kwisigaba (a) kanye nanoma iluphi olunye ulwazi lolo okudingeka lukunikezelwe ngokoMthetho wokuPhathwa kweZimali zoMphakathi.”.

Insertion of section 14A in Act 97 of 1998

10. The following section is hereby inserted in the principal Act after section 14:

“Minister may issue written instructions to SETAs

14A. (1) The Minister may issue a written instruction to a SETA if—

- (a) the SETA is not performing any of its functions or not complying with its service level agreement; 5
 - (b) the SETA is not managing its finances in accordance with this Act;
 - (c) the SETA's membership is not representative of the constituencies contemplated in section 11; or
 - (d) the SETA has not prepared and implemented an employment equity plan as contemplated in section 20 of the Employment Equity Act, 1998 (Act No. 55 of 1998). 10
- (2) An instruction issued under subsection (1) must set out—
- (a) the reason for issuing the instruction;
 - (b) any provision of the Act that the SETA has not complied with; and 15
 - (c) the steps that the SETA is required to take and the period within which such steps must be taken.
- (3) At the request of a SETA, the Minister may—
- (a) extend the period for complying with an instruction; or
 - (b) revise the terms of the instruction. 20
- (4) If a SETA has not complied with an instruction issued in terms of this section within the specified period, the Minister may—
- (a) direct the Director-General to withhold all or part of the allocation to the SETA in terms of section 8(3)(b) of the Skills Development Levies Act for such period and on such conditions as the Director-General may determine; 25
 - (b) invoke section 15 without further notice to the SETA;
 - (c) order an investigation into the management and administration of the SETA; or
 - (d) take any other steps necessary to ensure that the SETA performs its functions or manages its finances in accordance with this Act. 30
- (5) If a SETA has unreasonably failed to institute disciplinary proceedings for misconduct against any employee of the SETA, the Minister may direct the SETA to institute disciplinary proceedings against that employee.” 35

Amendment of section 15 of Act 97 of 1998

11. Section 15 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) The Minister may, after consultation with the National Skills Authority[, **by notice in the Gazette,**] and the SETA in question, direct the Director-General to appoint an administrator to take over the administration of a SETA or to perform the functions of a SETA if [the Minister is of the opinion that]— 40

- (a) the SETA fails to perform its functions; 45
- (b) there is mismanagement of its finances; [or]
- (c) its membership no longer substantially represents the composition contemplated in section 11;
- (d) the SETA has failed to comply with its service level agreement; or
- (e) the SETA has failed to comply with an instruction issued by the 50

Minister in terms of section 14A.

Ukufakelwa kwesigaba 14A kuMthetho 97 ka-1998

10. Lesigaba esilandelayo lapha sifakwe kuMthetho oyinhloko ngemuva kwesigaba 14:

“UNgqongqoshe angakhipha ngokubhala phansi imiyalelo kuma-SETA

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14A. (1) UNgqongqoshe angakhipha ngokubhala phansi imiyalelo kwi-SETA uma—

- (a) I-SETA ingayenzi nanoma imiphi imisebenzi yayo noma ingahambisani nesivumelwano sezinga lezinkonzo zemisebenzi; 10
- (b) I-SETA ayiziphethe izimali zayo ngokuvumelana nalo Mthetho; 10
- (c) Ubulungu be-SETA abumelele abamelwe njengokucatshangwe kufanele kwisigaba 11; noma
- (d) I-SETA ayilungisanga futhi ayenzanga uhlelo lokulinganisa ngokomisebenzi ngokuhambisana njengokucatshangwe kwisigaba 20 soMthetho wokuQasha ngokuLinganisa, 1998 (Umthetho 55 ka 1998). 15
- (2) Umyalelo okhishwe ngaphansi kwesigatshana (1) kufanele ukhombise—
- (a) Isizathu sokukhishwa komyalelo; 20
- (b) yinoma yiziphi izinhlinzeko zoMthetho i-SETA engahambisananga nazo; futhi 20
- (c) izinyathelo i-SETA okufanele izithathe kanye nesikhathi okufanele lezo zinyathelo izithathe ngaso.
- (3) Ngokucelwa i-SETA, uNgqongqoshe anga—
- (a) lula isikhathi sokuhambisana nomyalelo; futhi 25
- (b) bukeza izimo zomyalelo.
- (4) Uma i-SETA ingahambisananga nomyalelo okhishiwe ngokwalesi sigaba ngesikhathi esibekiwe, uNgqongqoshe anga—
- (a) yalela uMqondisi — Jikelele ukuthi agodle konke noma ingxenye yesabelo se-SETA ngokwesigaba 8(3)(b) soMthetho weZibizontela wokuThuthukisa aMakhono kuleso sikhathi kanye naleyo mibandela uMqondisi- Jikelele angayibeka; 30
- (b) sebenzisa isigaba 15 ngaphandle kokuqhubeka nokuxwayisa i-SETA;
- (c) yalela uphenyo lokuphathwa nokuphathwa kwe-SETA; noma
- (d) thatha noma iziphi ezinye izinyathelo ezifanelekile ukuqinisekisa ukuthi i-SETA iyayenza imisebenzi yayo noma iphatha izimali zayo ngokuhambisana nalo Mthetho. 35
- (5) Uma i-SETA ngokungenasizathu ehlulekile ukulandela uhlelo lokuqondisa izigwegwe zokungaziphathi ngendlela kunoma imuphi umsebenzi we-SETA, uNgqongqoshe angayalela i-SETA ukuba ilandele uhlelo lokuqondiswa kwezigwegwe kulowo msebenzi.”. 40

Isichibiyelo sesigaba 15 soMthetho 97 ka-1998

11. Isigaba 15 soMthetho oyinhloko lapha siyachitshiyelwa—

- (a) ngokufakwa esikhundleni sezigatshana (1) kanye no (2) zalezizigatshana ezilandelayo, ngokulandelana: 45
- “(1) UNgqongqoshe angayala uMqondisi-Jikelele, emuva kokubonisana neGunya likaZwelonke [, ngesaziso kwiGazethi] kanye neSETA ethintekayo, ukuqoka umphathi ukuthatha ukuphathwa kwe-SETA noma ukwenza imisebenzi ye-SETA uma [UNgqongqoshe ebona ukuthi]— 50
- (a) I-SETA yehluleka ukwenza imisebenzi yayo;
- (b) Kukhona ukuphathwa kabi kwezimali;
- (c) Ubulungu bayo abusamele kakhulu ukubunjwa okucatshangwe kusigaba 11;
- (d) I-SETA yehlulekile ukuhambisana nesivumelwano sezinga lezinkonzo zemisebenzi wayo; noma 55
- (e) I-SETA yehlulekile ukuhambisana nomyalelo okhishwe uNgqongqoshe ngokwesigaba 14A

(2) **[In that notice the Minister]** The Director-General must publish a notice in the *Gazette* appointing an administrator and in that notice the Director-General—

- (a) must determine the powers and duties of the administrator **[appointed in terms of subsection (1)]**, which may include the performance by the administrator of the SETA's functions in terms of the Public Finance Management Act; 5
 - (b) may suspend or replace one or more members of the SETA for a reason contemplated in subsection (1)(a) **[(b) or (c)] to (e)**; 10
 - (c) may suspend the operation of the constitution of the SETA; and 10
 - (d) may **[in the prescribed manner]** direct the transfer of all or some of the funds in the SETA's bank account to the National Skills Fund."; and
- (b) by the addition of the following subsection: 15
- "(4) The Minister may act in terms of subsection (1) without consulting the National Skills Authority and the SETA in question if there is financial mismanagement of the SETA and the delay caused by the consultation would be detrimental to the SETA's capacity to perform its functions." 15

Amendment of section 17 of Act 97 of 1998

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12. Section 17 is hereby amended by the addition of the following subsection:

- "(7) The Minister may make regulations—
- (a) permitting an employer to enter into an agreement with an agency to perform the employer's obligations and exercise the employer's rights in respect of a learnership agreement or, in respect of a learner contemplated in section 18(2), a contract of employment; and 25
 - (b) prescribing the relationship between the employer and the agency contemplated in paragraph (a)."

Amendment of section 19 of Act 97 of 1998

13. Section 19 of the principal Act is hereby amended— 30

- (a) by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph: 30
 - "(ii) a contract of employment of a learner contemplated in section 18(2); or"
- (b) by the substitution in subsection (1)(c) for subparagraph (ii) of the following subparagraph: 35
 - "(ii) a contract of employment of a learner contemplated in section 18(2)."; and
- (c) by the addition of the following subsection: 40
 - "(7) Notwithstanding section 210 of the Labour Relations Act, 1995 (Act No. 66 of 1995), this section must be regarded as expressly amending any contrary provision in that Act."

Amendment of section 20 of Act 97 of 1998

14. Section 20 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs, respectively: 45

- "(c) uses training providers referred to in section 17(1)(c); [or] and
- (d) complies with [the prescribed] any requirements that may be prescribed."

Substitution of heading to Chapter 6 of Act 97 of 1998

15. The following heading is hereby substituted for the heading to Chapter 6 of the principal Act: 50

"INSTITUTIONS IN DEPARTMENT OF LABOUR AND REGULATION OF PRIVATE EMPLOYMENT SERVICES AGENCIES"

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- (2) Umqondisi —Jikelele kufanele ashicilele inothisi kwiGazethi eqoka umphathi futhi kuleyo nothisi uMqondisi-Jikelele—
- (a) Manganqume amandla nezibopho zomphathi, **[oqokwe ngokwamaphuzu esiqatshana (1)]** ezingafaka ukwenziwa kwemisebenzi ye-SETA ngumphathi ngokoMthetho wokuPhathwa kweZimali zoMphakathi; 5
- (b) angamisa noma ashintshe elilodwa noma angaphezulu amalunga e-SETA ngesizathu esicatshangwe kusiqatshana (1)(a) [, (b) noma (c)] kuya ku (e);
- (c) angamisa ukusebenza komthethosisekelo we-SETA; futhi 10
- (d) **[, ngendlela evinyiwe]** angayalela ukudlulisela yonke noma ingxenye yezimali kwi-akhawunti yebhange ye-SETA kwiSikhwama saMakhono kaZwelonke.”; futhi
- (b) ngokufakelwa kwesiqatshana esilandelayo:
“(4) UNgqongqoshe angenza ngokwesiqatshana (1) ngaphandle kokubonisana neGunya likaZwelonke laMakhono kanye ne-SETA ethintekayo uma kunokuphathwa kabi kwezimali ze-SETA futhi ukubambezeleka okubangelwa ukubonisana kungakhubaza amandla e-SETA okwenza imisebenzi yayo.”. 15

Isichibiyelo sesigaba 17 soMthetho 97 ka-1998

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12. Isigaba 17 lapha siyachitshiyelwa ngokufakelwa kwesiqatshana esilandelayo:

- “(7) UNgqongqoshe angenza izimiselo—
- (a) egunyaza umqashi ukungena esivumelwaneni ne-ejensi ukwenza izibophezelo zomqashi futhi asebenzise amalungelo omqashi mayelana nesivumelwano sokufundisana noma, mayelana nomfundi njengokucatshangwe kusigaba 18(2), inkontileka yokuqasha; futhi 25
- (b) ukucacisa ubudlelwano phakathi komqashi kanye ne-ejensi njengokucatshangwe kwisigaba (a).”.

Isichibiyelo sesigaba 19 soMthetho 97 ka-1998

13. Isigaba 19 soMthetho oyinhloko lapha siyachibiyelwa— 30

- (a) ngokufakelwa kwisiqatshana (1) (a) sendimana (ii) yendimana elandelayo:
“(ii) nenkontileka yomsebenzi yomfundi ecatsangwe kwisigaba 18(2); noma”;
- (b) ngokufakwa esikhundleni sesiqatshana (1) (c) yendimana (ii) kwindimana elandelayo: 35
“(ii) inkontileka yomsebenzi yomfundi ecatsangwe kwisigaba 18(2).”;
kanye (c) ngokufakwa kwesiqatshana esilandelayo:
“(7) ngokungamelani nesigaba 210 soMthetho woBudlelwana kweZemisebenzi, 1995 (Umthetho 66 ka-1995), lesi sigaba kufanele sithathwe njengesisho ukuchibiyela noma yiziphi izinhlizelo eziphikisayo kulowo Mthetho.” 40

Isichibiyelo sesigaba 20 soMthetho 97 ka-1998

14. Isigaba 20 soMthetho oyinhloko siyachibiyelwa lapha ngokufakwa kwisiqatshana (1) sezindima (c) no (d) sezindima ezilandelayo, ngokulandelana kwazo:

- “(c) lusebenzisa abahlinzeka uqeqesho abavunyiwe kwisigaba 17 (1) (c) ; kanye 45
(d) nokuthobela nanoma yimiphi imiyalelo enganqunywa.”.

Ukufakelwa kwesihloko kwiSahluko 6 soMthetho 97 ka-1998

15. Isihloko esilandelayo lapha sifakelwe isihloko kwiSahluko 6 soMthetho oyinhloko:

**“IZIKHUNGO KUMNYANGO WEZEMISEBENZI KANYE 50
 NESIMISELO SEZINHLANGANO EZIZIMELE EZINIKEZELA
 NGEZINKONZO ZEMISEBENZI”**

Amendment of section 24 of Act 97 of 1998

16. Section 24 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 5
 “(1) Any person who wishes to provide employment services for gain must apply for registration as a private employment services agency to the Director-General in the prescribed manner.”;
- (b) by the substitution for subsection (4) of the following subsection:
 “(4) A registered private employment [service] services agency must comply with the prescribed criteria.”; and
- (c) by the addition of the following subsection: 10
 “(5) The Director-General may withdraw the registration of any private employment services agency that fails to comply with this Act or any prescribed requirements or criteria.”.

Substitution of section 25 of Act 97 of 1998

17. The following section is hereby substituted for section 25 of the principal Act: 15

“Cancellation of registration of private employment services agency

25. (1) Subject to this section, the Director-General may cancel the registration of [an] a private employment [service] services agency if [satisfied that] the private employment [service] services agency is not complying with the prescribed criteria. 20

(2) If the Director-General has reason to believe that [an] a private employment [service] services agency 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] agency of the intention to cancel registration and the reasons for doing so; 25
- (b) give the [service] agency 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] a private employment [service] services agency, the Director-General must give written notice of that decision to the private employment [service] services agency.”. 30

Amendment of section 28 of Act 97 of 1998

18. Section 28 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1): 35

“(2) A maximum of two per cent of the money allocated to the Fund in terms of section 8(3)(a) of the Skills Development Levies Act may be used to administer the Fund.”.

Amendment of section 29 of Act 97 of 1998 40

19. Section 29 of the principal Act is hereby amended by the addition of the following subsection:

“(4) The accounts and balance sheet contemplated in subsection (1)(c) must be submitted by the Director-General to the National Skills Authority for information as soon as possible after they have been prepared.”. 45

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Isichibiyelo sesigaba 24 soMthetho 97 ka-1998

16. Isigaba 24 soMthetho oyinhloko lapha siyachibiyelwa—

(a) ngokufakelela isigatshana (1) sesigatshana esilandelayo:

(1) “Noma imuphi umuntu ofisa ukuhlinzeka ngezinkonzo zomsebenzi ngenzuzo makacele ukubhaliswa njengenhlangano ezimele enikezela ngezinkonzo zemisebenzi kuMqondisi—Jikelele ngendlela enqunyiwe.”; 5

(b) ngokufakelela isigatshana (4) sesigatshana esilandelayo:

“(4) Ihovisi eliyi-Ejensi elizimele lokuqasha lezinkonzo zemisebenzi malithobele izilinganiso ezinqunyiwe.”; futhi 10

(c) ngokufakelwa kwesigatshana esilandelayo:

(5) UmQondisi — Jikelele angahoxisa ukubhaliswa kwanoma iyiphi inhlangano ezimele enikezela ngezinkonzo zemisebenzi eyehluleka ukuhambisana nalo Mthetho noma iziphi izidingo noma izindlela eziyaleliwe.”. 15

Ukufakelwa kwesigaba 25 kuMthetho 97 ka 1991

17. Isigaba esilandelayo lapha sifakelwe isigaba 25 kuMthetho oyinhloko:

“Ukwesulwa kokubhaliswa kwehovisi eliyi-Ejensi ezimele yezinkonzo zemisebenzi

25. (1) Kuye ngelungelo lalesi sigaba, uMqondisi-Jikelele angesula ukubhaliswa kwehovisi eliyi-Ejensi ezimele yezinkonzo zomsebenzi uma eneliswa ukuthi ihovisi eliyi-Ejensi ezimele yezinkonzo zemisebenzi alizithobeli izilinganiso ezinqunyiwe. (2) Uma uMqondisi-Jikelele enesizathu sokukholwa ukuthi ihovisi eliyi-Ejensi ezimele yezinkonzo zomsebenzi alizithobele izilinganiso ezinqunyiwe ngakho-ke ukubhaliswa kwalo kufanele ukwesulwa, umQondisi-Jikelele, ngaphambi kokwesula ukurejistwa kwalo— 20 25

(a) makazise i-ejensi ngenhloso yokwesula ukubhaliswa kanye nezizathu zokwenza njalo;

(b) makanike i-ejensi izinsuku ezingu 30 kusukela osukwini lwenothi ukwenza izikhalo ukuthi kungani ukubhaliswa kwalo kungesulwe; futhi 30

(c) makathathe lezo zikhalo ekufinyeleleni kwisinqumo

(3) Uma uMqondisi-Jikelele esula ukurejistwa kwehovisi eliyi-Ejensi ezimele yezinkonzo zemisebenzi, uMqondisi-Jikelele makanikeze inothi ebhaliwe yaleso sinqumo kwihhovisi eliyi-Ejensi ezimele yezinkonzo zemisebenzi.”. 35

Isichibiyelo sesigaba 28 kumthetho 97 ka-1998

18. Isigaba 28 soMthetho oyinhloko siyachibiyelwa ngokufakwa kwesigatshana esilandelayo, isigaba esikhona siphenduka isigatshana (1): 40

“(2) Isilinganiso esiphezulu esingokubili ekhulwini sezimali ezibekelwe isikhwama ngokwesigaba 8(3)(a) soMthetho weZibizontela zokuthuthukisa amakhono ingasetshenziswa ukuphatha isikhwama.”.

Isichibiyelo sesigaba 29 kumthetho 97 ka-1998

19. Isigaba 29 soMthetho oyinhloko siyachitshiyelwa ngokufakwa kwesigatshana esilandelayo: 45

“(4) Ama-akhawuti kanye nokubhalansiswa kwezimali kucatshangwe kwisigatshana (1) (c) kufanele adluliselwe ngu-Mqondisi Jikele kwiGunya likaZwelonke laMakhono ukunikeza ulwazi ngokushesha emuva kokuba seyihleliwe.”.

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Substitution of section 30A of Act 97 of 1998, as inserted by section 23 of Act 9 of 1999

20. The following section is hereby substituted for section 30A of the principal 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]**— 5

- (a) [0,5 percent of its payroll with effect from 1 April 2000] must annually budget at least one per cent of its payroll for the training and education of its employees; and 10
- (b) [one percent of its payroll with effect from 1 April 2001, for the training and education of its employees] may contribute funds to a SETA.”.

Insertion of section 30B in Act 97 of 1998

21. The following section is hereby inserted in the principal Act in Chapter 8 after section 30A: 15

“National standard of good practice in skills development

30B. (1) In order to achieve the purposes of this Act, the Minister may, by notice in the *Gazette*, establish a national standard of good practice in skills development. 20

(2) The Minister may take any steps necessary to achieve the national standard contemplated in subsection (1) and may establish an agency or contract with an existing agency.

(3) The Director-General may allocate funds from the National Skills Fund to fund any activity undertaken in terms of this section.”. 25

Substitution of section 32 of Act 97 of 1998

22. The following section is hereby substituted for section 32 of the principal Act:

“Monitoring, enforcement and legal proceedings

32. (1) Chapter Ten, and sections 90 to 93 of and Schedule Two [of] to the Basic Conditions of Employment Act apply, with changes required by the context, to— 30

(a) the monitoring and enforcement of this Act; and

(b) any legal proceedings concerning a contravention of this Act.

(2) A labour inspector appointed in terms of section 63 of the Basic Conditions of Employment Act may issue an order in the prescribed form requiring any person to cease conducting the business of a private employment services agency in contravention of this Act.” 35

Amendment of section 33 of Act 97 of 1998

23. Section 33 of the principal Act is hereby amended by the deletion of the word “or” at the end of paragraph (c), the insertion of the word “or” at the end of paragraph (d) and the addition of the following paragraph: 40

“(e) conduct the business of a private employment services agency in contravention of this Act or any prescribed requirement.”.

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Act No. 31, 2003

Ukufakelwa kwesigaba 30A soMthetho 97 ka 1998, njengokufakelwa kwesigaba 23 soMthetho 9 ka 1999

20. Isigaba esilandelayo siyafakwa kwisigaba 30A soMthetho oyinhloko:

“IBhajethi yokuqeqeshwa izinhlaka zomphakathi zikazwelonke kanye namaprovinci 5

30A. Uma okungu-80 ekhulwini noma ngaphezulu izimali ezisetshenziwe kuhlaka lomphakathi likazwelonke noma lezifundazwe zikhokhwe ngokuqondile noma ngokungaqondile ezimalini ezivotelwe yiphalamende, lezo zinhlaka-

- (a) mababhajethi ngonyaka okungenani iphesenti elilodwa lepeyrol yayo ukuqeqesha nemfundo yezisebenzi zayo; futhi 10
- (b) inganikela ngemali kwi-SETA

Ukufakwa kwesigaba 30B kuMthetho 97 ka 1998

21. Isigaba esilandelayo siyafakwa kuMthetho oyinhloko kwiSahluko 8 ngemuva kwesigaba 30A: 15

“Izinga likazwelonke lokusebenza okuhle ukuthuthukisa amakhono

30B. (1) Ukuze kufezeke inhloso yalo Mthetho, uNgqongqoshe anga, ngokukhipha inothi kwiGazethi, amise izinga likazwelonke lokusebenza okuhle ukuthuthukisa amakhono.

- (2) UNgqongqoshe angathatha nanoma iziphi izinyathelo ezifanelekile ukuphumelelisa izinga likazwelonke ngokucatshangwe kwisigatshana (1) futhi angasungula i-ejensi noma abenenkontileka ne-ejensi ekhona. (3) UMqondisi-Jikelele anganikezela ngezimali ezisuka kwisiKhwama sikaZwelonke saMakhono ukukhokhela noma yiziphi izinhlelo ezenziwe ngaphansi kwalesi sigaba.” 20 25

Ukufakelwa kwesigaba 32 soMthetho 97 ka 1998

22. Isigaba esilandelayo siyafakelwa kusigaba 32 soMthetho oyinhloko;

“Ukuqapha, ukuphoqelelwa kanye nokumangala

32. (1) ISahluko seShumi, nezigaba 90 kuya ku 93 kanye neSheduli yeSibili kuMthetho wemiMibandela eyisiSekelo soMsebenzi ziyasebenza, ngokuguquka okudingwa ingqikithi, uku— 30

- (a) ekuqapheni nokuphoqelelwa kwalo Mthetho; futhi
- (b) nanoma ikuphi ukumangala okuphathelene nokwaphula loMthetho.
- (2) Umhloli wezabasebenzi oqokwe ngokwesigaba 63 soMthetho weMibandela eyisiSekelo soMsebenzi ongakhipha imiyalelo ngendlela enqunyiwe edinga noma yimuphi umuntu ukuba amise ukwenza umsebenzi wokuba yinhlangano ezimele enikezela ngezinkonzo zemisebenzi ngokuphula loMthetho.” 35

Isichibiyelo sesigaba 33 kuMthetho 97 ka 1998

23. Isigaba 33 soMthetho oyinhloko siyachitshiyelwa ngokususwa kwegama ‘noma’ ekugcineni kwendima (c), ukufakwa kwegama ‘noma’ ekugcineni kwendima (d) kanye nokufakwa kwendima elandelayo: 40

- “(e) ukwenza umsebenzi wokuba yinhlangano ezimele enikezela ngezinkonzo zemisebenzi ngokuphula uMthetho noma yisiphi isidingo esinqunyiwe.”

Substitution of section 36 of Act 97 of 1998

24. The following section is hereby substituted for section 36 of the principal Act:

“Regulations

36. The Minister may, after consultation with the National Skills Authority, by notice in the *Gazette*, make regulations **[relating to any matter which]** regarding—

- (a) any matter which may or must be prescribed under this Act; **[and]**
- (b) any procedure, period, criterion or standard for SETAs to perform any function in terms of section 10(1);
- (c) categories and amounts of grants that may be allocated in terms of section 10(1)(b)(iii);
- (d) the criteria or conditions that may be attached to grants allocated in terms of section 10(1)(b)(iii);
- (e) the evaluation of applications for grants in terms of section 10(1)(b)(iii);
- (f) the manner in which grants may be allocated in terms of section 10(1)(b)(iii);
- (g) the exercise by a SETA of any power contemplated in section 10(2);
- (h) the content, format and timeframe for submitting any report or plan that SETAs are required to submit in terms of this Act;
- (i) the services in respect of which a SETA may earn income in terms of section 14(1)(e) and the fees, including maximum fees, that may be charged in respect of such services;
- (j) the financial systems that SETAs are required to utilise;
- (k) the submission by employers to SETAs of workplace skills plans and reports and the form and contents of such reports;
- (l) the appointment by employers of workplace skills facilitators and the obligations of employers in respect of workplace skills facilitators;
- (m) the rights and functions of workplace skills facilitators;
- (n) the rights of registered trade unions, or other employee representatives, to consult with their employer over developing, implementing and reporting on workplace skills plans and on other matters dealt with in this Act;
- (o) circumstances specified in the regulations under which a private employment services agency may charge fees in respect of any services provided by private employment services agencies and the maximum fees that may be charged;
- (p) services for which private employment services agencies may not charge work-seekers fees;
- (q) a form for registering private employment services agencies;
- (r) the administration, operation, functioning and obligations of the National Skills Fund; and
- (s) any other matter which it is necessary or expedient to prescribe in order to achieve the purposes of this Act.”.

Amendment of item 4 of Schedule 2 to Act 97 of 1998

25. Schedule 2 to the principal Act is hereby amended—

- (a) the substitution in item 4 for subitem (5) of the following subitem:

“(5) (a) Subject to subitem (4)(b), all sections [13 to 29] of the Manpower Training Act [remains] that concern apprentices remain in force as if that Act had not been repealed until a date determined by the Minister by notice in the *Gazette*.”

- (b) For the purposes of this subitem—

- (i) any function of the registrar must be performed by an official of the Department of Labour designated for that purpose in writing by the Minister;

Ukufakelwa kwesigaba 36 soMthetho 97 ka 1998**24. Isigaba esilandelayo siyafakwa kwisigaba 36 soMthetho oyinhloko:****“Izimiselo**

- 36.** “UNgqongqoshe angenza, emuva kokubonisana neGunya laMakhono kaZwelonke, ngenothisi ku*Gazethi*, izimiselo eziqondene— 5
- (a) nanoma yiluphi udaba olufanele lunqunywe ngaphansi kwalo Mthetho;
- (b) yinoma iyiphi inqubo, isikhathi, uhlelo kanye nezinga lika-SETA lokwenza noma imuphi umsebenzi ngokwesigaba 10(1);
- (c) izinhlobo kanye namanani ezimali zokusiza ezinganikezwa ngokwesigaba 10 (i)(b)(iii); 10
- (d) izinhlelo noma yimibandela engahambisana nokunikezwa kwezimali zokusiza ngokwesigaba 10 (1) (b) (iii);
- (e) ukucwaninga izicelo zezimali zokusiza ngokwesigaba 10(1)(b)(iii);
- (f) indlela izimali zokusiza ezinganikezwa ngokwesigaba 10(1)(b)(iii); 15
- (g) ukusetshenziswa uSETA kwanoma imaphi amandla njengokubonakala kufanele kwisigaba 10 (2);
- (h) okuqukethwe indlela kanye nesikhathi okufanele kunikezelwe imibiko noma uhlelo lawomaSETA okudingeka banikezele ngokwaloMthetho; 20
- (i) izinkonzo iSETA engangenisa ngayo imali ngokwesigaba 14(1)(e) kanye nezinkokhelo, kubandakanya inani eliphezulu, engalibiza ngalezo zinkonzo;
- (j) uhlelo lwezimali u-SETA okudingeka alusebenzise;
- (k) ukunikezela kwabaqashi kuma-SETA izinhlelo nemibiko zamakhono asemibisenzini kanye nendlela okuqukethwe yileyo mibiko; 25
- (l) ukuqokwa ngabaqashi kwabaqeqeshi bamakhono endaweni yokusebenza kanye nezibopho zabaqashi kubaqeqeshi bamakhono;
- (m) amalungelo kanye nemisebenzi zabaqeqeshi bamakhono endaweni yokusebenza; 30
- (n) amalungelo ezinyunyana ezibhalisiwe noma abanye abamele babasebenzi, ukubonisana nabaqashi ekuthuthukiseni, ekwenzeni nasekubikeni ngezinhlelo zokuqeqeshela amakhono ezindaweni zokusebenza kanye nanoma iziphi izindaba ezithintekayo kulo mthetho; 35
- (o) ezimweni ezibaluliwe kulezi zimiso ngaphansi kwehhovisi eliyi-ejensi ezimele yezinkonzo zemisebenzi engakhokhisa kunoma iziphi izinkonzo ezihlinzekwe i-ejensi ezimele yezinkonzo zemisebenzi nenani eliphezulu abangalikhokhisa;
- (p) izinkonzo lezo zinhlango ezizimele ezinikezela ngezinkonzo zemisebenzi ezingeke zikhokhise abafuna imisebenzi; 40
- (q) indlela yokurejistwa kwama-ejensi azimele ezinkonzo zemisebenzi;
- (r) ukuphathwa, ukusebenza, ukusetshenziswa kanye nezibopho zesiKhwama sikaZwelonke sokuThuthukisa aMakhono; futhi
- (s) nanoma yiluphi olunye udaba oludingekile noma olufanelekile ukunqunywa ukuze kuphumelelise izinhloso zalo Mthetho.” 45

Isichibiyelo kwingxenywe 4 koHla 2 kuMthetho 97 ka 1998**25. ISheduli 2 kuMthetho oyinhloko uyachibiyelwa—**

- (a) ukufakelwa kwingxenywe 4 yengxenyana (5) yalengxenyana elandelayo: 50
- “(5)(a) Kuye ngelungelo lohlamvana (4) (b), zonke izigaba zoMthetho wokuQeqeshelwa Amandla okuSebenza aphaThelene nama-aprentisi ayaqhubeka nokusebenza sengathi lowoMthetho awuchithwanga kuze kufike usuku oluzonqunywa uNgqongqoshe ngenothisi kwi*Gazethi*.
- (b) Ngokwezinhloso zale ngxenyana— 55
- (i) nanoma yimuphi umsebenzi owenziwa umbhalisi kufanele wenziwe isisebenzi soMnyango weZabasebenzi esiqokelwe leyinhloso ngokubhaliwe uNgqongqoshe;

- (ii) any function of a training board must be performed by the SETA contemplated in subitem (4)(a); and
- (iii) any function of the National Training Board must be performed by the National Skills Authority.”.

Insertion of item 4A in Schedule 2 to Act 97 of 1998

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26. Schedule 2 to the principal Act is hereby amended by the insertion after item 4 of the following item:

“Mining Qualifications Authority

4A. Despite anything to the contrary in either this Act or the Mine Health and Safety Act, 1996 (Act No. 29 of 1996)—

(a) and with effect from 20 March 2000—

- (i) the Mining Qualifications Authority established in terms of section 41(3) of the Mine Health and Safety Act, 1996, must be regarded as having been established in terms of section 9(1) of this Act as SETA 16;

- (ii) Schedule 7 to the Mine Health and Safety Act, 1996, must be regarded as the constitution of SETA 16; and

- (iii) the Chief Inspector of Mines must be regarded as the chairperson of SETA 16;

(b) the Minister may, in consultation with the Minister of Minerals and Energy and after consulting the Mining Qualifications Authority—

- (i) amend Schedule 7 to the Mine Health and Safety Act, 1996, in order to bring the constitution of SETA 16 into line with the constitutions of other SETAs; and

- (ii) allow an interested professional body or a bargaining council with jurisdiction in the mining sector to be represented on the Mining Qualifications Authority; and

(c) the Minister must, in consultation with the Minister of Minerals and Energy, with regard to SETA 16, perform any function entrusted to the Minister in Chapter 3 of this Act.”.

Amendment of section 45 of Act 29 of 1996, as amended by section 21 of Act 72 of 1997

27. Section 45 of the Mine Health and Safety Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The **[Minister must appoint the]** members of the Mining Qualifications Authority must be appointed in accordance with the constitution contemplated in section 97(4).”.

Amendment of section 46 of Act 29 of 1996, as amended by section 22 of Act 72 of 1997

28. Section 46 of the Mine Health and Safety Act, 1996, is hereby amended—

- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (d), the insertion of the word “and” at the end of paragraph (e) and the addition to that subsection of the following paragraph:

“(f) perform the functions of a sector education and training authority in terms of the Skills Development Act, 1998 (Act No. 97 of 1998).”; and

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

“(2) The Mining Qualifications Authority **[may]**—

- (a) may appoint permanent and ad hoc committees, and subcommittees, for any period and on any conditions;

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- (ii) nanoma yimuphi umsebenzi webhodi lokuqeqesha kufanele wenziwe yi SETA njengokucatshangwe kwingxenya 4(a); futhi
- (iii) noma yimuphi umsebenzi webhodi lokuqeqesha kaZwelonke kufanele wenziwe yiGunya laMakhono kaZwelonke.”.

Ukufakelwa kwengxenye 4A kuSheduli 2 kuMthetho 97 ka 1998

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26. ISheduli 2 kuMthetho oyinhloko ichibiyelwa ngokufakwa ngemuva kwengxenye 4A kulengxenye elandelayo:

“IGunya leziMfanelo zokuMbiwa

4A. Ngale kwanoma ikuphi okuphikisanayo kungaba kulo Mthetho noma uMthetho weZempilo nokuVikeleka eziMayini ka 1996 (UMthetho 29 ka 1996)—

- (a) futhi kusukela zingu 20 Mashi 2000—
 - (i) IGunya leZimfanelo zokuMbiwa elisungulwe ngokwesigaba 41 (3) woMthetho weZempilo nokuVikeleka eziMayini, 1996, kufanele libonakale njengelimiswe ngokwesigaba 9 (1) saloMthetho njengeSETA 16; 15
 - (ii) ISheduli 7 kuMthetho weZempilo nokuVikeleka eziMayini, 1996, kufanele ubonakale njengomthethosisekelo weSETA 16; futhi
 - (iii) UMhloli oMkhulu weZimayini kufanele abonwe njengosihlalo weSETA 16; 20
- (b) uNgqongqoshe anga, ngokubonisana noNgqongqoshe wezokuMbiwaphansi naMandla futhi emuva kokubonisana neGunya leZimfanelo zokuMbiwa -;
 - (i) achibiyele iSheduli 7 kuMthetho weZempilo nokuVikeleka eziMayini, 1996, ukuze alethe umthethosisekelo we-SETA 16 ufane nemithethosisekelo yamanye ama-SETA; futhi 25
 - (ii) avumele umgwamanda wobungcweti onentshisekelo noma imuphi umkhandlu wokwenza izivumelwano onamandla kumkhakha wezokumbiwa ukuba umeleleke kwiGunya leZimfanelo zokuMbiwa; futhi. 30
- (c) uNgqongqoshe kufanele, ngokubonisana noNgqongqoshe wezokuMbiwaphansi naMandla, mayelana ne-SETA 16, enze nanoma yimuphi umsebenzi onikezwe uNgqongqoshe kwiSahluko 3 salo Mthetho.”. 35

Ukuchibiyelwa kwesigaba 45 soMthetho 29 ka1996, njengoba sichibiyelwe ngesigaba 21 soMthetho 72 ka 1997

27. Isigaba 45 soMthetho wezeMpilo nokuVikeleka eziMayini, 1996, uyachibiyelwa ngokufakelwa kwesigatshana (2) sesigatshana esilandelayo:

- “(2) Die [Minister moet die] lede va die Mynboukwalifikasie-owerheid word ooreenkomstig die konstitusie beoog in artikel 97 (4) [aanstel] aangestel.”. 40

Isichibiyelo sesigaba 46 soMthetho 29 ka 1996, njengoba sichibiyelwe ngesigaba 22 soMthetho 72 ka 1997

28. Isigaba 46 zoMthetho weZempilo nokuVikeleka eziMayini, siyachibiyelwa—

- (a) ngokususwa kwesigatshana (1) segama “futhi” ekugcineni kwendima (d), ukufakelwa kwegama “futhi” ekugcineni kwendima (e) nokufakelwa kuleso sigatshana sendima elandelayo:
 - “(f) die werksaamhede verrig van’n ‘sector education and training authority’ ingevolge die ‘Skills Development Act, 1998’ (Wet No. 97 van 1998).” kanye 50
- (b) ngokufakwa kwesigatshana (2) kulesisigatshana esilandelayo:
 - “(2) Die Mynboukwalifikasie-owerheid [kan] —
 - (a) kan permanente en ad hoc komitees, en subkomitees, vir enige tydperk en op enige voorwaardes aanstel;

- (b) must administer and control its financial affairs in accordance with the Skills Development Act, 1998 (Act No. 97 of 1998); and
- (c) may do anything necessary to achieve its objectives.”.

Amendment of section 97 of Act 29 of 1996, as amended by section 40 of Act 72 of 1997

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29. Section 97 of the Mine Health and Safety Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The *Minister*, after consulting the *Council*, by notice in the *Gazette* may add to, change or replace any Schedule to *this Act* other than Schedules 2, 3 and 7 and, subject to subsection (5), Schedule 4.”.

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Short title

30. This Act is called the Skills Development Amendment Act, 2003.

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- (b) moet sy finansiële sake administreer en beheer ooreenkomstig die 'Skills Development Act, 1998' (Wet No. 97 van 1998); en
- (c) kan enigiets doen wat nodig is vir die bereiking van sy oogmerke.”

Isichibiyelo kusigaba 97 kuMthetho 29 ka 1996, njengesichibiyelo sesigaba 40 soMthetho 72 ka 1997

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29. Isigaba 97 soMthetho weZempilo nokuVikeleka eziMayini, 1996, uchibiyelwa ngokufakelwa kwesigatshana (1) kwisigatshana esilandelayo:

“(1) Die *Minister* kan, na oorlegpleging met die Raad, by kennisgewing in die Staatskoerant 'n Bylae, behalwe Bylae 2, 3 en 7 en, [onderworpe aan] behoudens subartikel (5), Bylae 4, by *hierdie Wet* byvoeg, wysig of vervang.”

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Isihloko esifingqiwe

30. Lo Mthetho ubizwa ngokuthi uMthetho oyisiChibiyelo sokuThuthukisa aMakhono, 2003.

