



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

IPHEPHANDABA LEZAZISO LIKAHULUMENI

IRIPHABLIKI YASENINGIZIMU AFRIKA

Registered at the Post Office as a Newspaper

Libhaliswe eHhovisi lePosi njenge Phephandaba

VOL./IVOLUME 401

CAPE TOWN, 2 NOVEMBER 1998

EKAPA, 2 ULWEZI 1998

No./Ino. 19420

OFFICE OF THE PRESIDENT

No. 1400.

2 November 1998

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

No. 97 of 1998: Skills Development Act, 1998.

IHHOVISI LIKAPRESIDANTI

Ino. 1400.

2 uLwezi 1998

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

Ino. 97 eka 1998: ngoMthetho wokuThuthukiswa kwaMa-khono, 1998.

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.

*(English text signed by the President.)
(Assented to 20 October 1998.)*

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

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UMTHETHO

Ukuhlinzeka uhlaka lwezikhungo lokuhlahla nokugcwalisa umkhakha kazwelonke kanye namasu endaweni yokusebenza ukuthuthukisa nokwenza ngcono amakhono oquqaba lwabasebenzi base Ningizimu-Afrika; ukuhlanganisa lawo masu ngaphakathi koHlaka lweZimfanelo zika Zwelonke; ezicatshangwe kuMthetho weGunya lweZimfanelo wase Ningizimu Afrika, 1995; ukuhlinzekela ulwazi oluholela kwezivunyiwe izimfanelo zomsebenzi; ukuhlinzekela ukuxhaswa ngezimali ukuthuthukiswa kwamakhono ngesikimu sesabelo-zibizontela kanye neSikhwama sika Zwelonke saMakhono, ukuhlinzekela nokulungisa ngomthetho amahovisi okuqasha, kanye nokuhlinzekela izindaba/izinto ezihlangene kanye nakho.

*(English text signed by the President.)
(Assented to 20 October 1998.)*

A KUMISWE yiPhalamende ye Riphabliki yase Ningizimu Afrika, njengokulandelayo:—

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CHAPTER 1

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ISAHLUKO 1

- 40 **IZINCAZELO, INHLOSO NOKUSEBENZA KOMTHETHO**

Izincazelo

- 1. Kulo Mthetho, ngaphandle kokuba ingqikithi isho okunye—

“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— 5

(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, 10

and **“employed”** and **“employment”** have corresponding meanings;

“employment services” means the provision of the service of—

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

(b) assessment of work-seekers for— 15

(i) entry or re-entry into the labour market; or

(ii) education and training;

(c) the reference of work-seekers—

(i) to employers to apply for vacancies; or

(ii) to training providers for education and training; 20

(d) assistance of employers by—

(i) providing recruitment and placement services;

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

(iii) advising them on the retrenchment of employees and the development of social plans; or 25

(e) 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); 30

“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; 35

“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; 40

“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; 45

“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 50 the Skills Development Levies Act;

“uMthetho weMibandela eyisiSekelo soMsebenzi” kusho uMthetho weMibandela eyisiSekelo soMsebenzi, 1997 (uMthetho No. 75 ka 1997);

“uMnyango” kusho uMnyango wezeMisebenzi;

“umQondisi-Jikelele” kusho umQondisi-Jikelele wezeMisebenzi;

5 **“isisebenzi”** kusho—

(a) noma imuphi umuntu, ngaphandle komuntu ozimele owenza into ngenkontileka osebenzela omunye umuntu noma uHulumeni omukela, noma onikwe ilungelo lokwamukela, noma imuphi umvuzo/iholo; noma

10 (b) imuphi omunye umuntu noma ngayiphi indlela osiza ekuqhubeni noma ukuphatha ibhizinisi lomqashi, futhi

“ukusebenza” no **“msebenzi”** kunezichazelo ezivumelanayo/ezihambisanayo;

“izinkonzo zomsebenzi” kusho ukuhlinzeka ngenkonzo—

(a) ukuqondisa noma ukweluleka abasebenzi ngamathuba okukhetha umsebenzi noma ngokunika ulwazi noma ezinye izindlela zokufinyelela;

15 (b) ukulinganisela abafuna umsebenzi—

(i) wokungena noma wokuphinda ukungena emakethe yomsebenzi; noma

(ii) imfundo nokuqeqeshwa njengokulaya kwalo Mthetho;

(c) ukudlulisela abafuna umsebenzi—

20 (i) kubaqashi ukufaka izicelo zezikhala; noma

(ii) kubahlinzeki boqeqesho ukuyofunda nokuqeqeshwa;

(d) ukusiza abaqashi—

(i) ngokubatholela izinkonzo zokujoyinisa/zokubutha nokufaka;

(ii) ngokwaluleka bona ngokutholakala kwabafuna umsebenzi abanama-khono ahambisana nezidingo zabo; kanye

25 (iii) nokubaluleka ngokudilizwa kwezisebenzi nokuthuthukiswa kwamasu okuhlalisana; noma

(e) nanoma iyiphi enye enqunyiwe inkonzo yomsebenzi;

“umnyango kahulumeni” kusho noma imuphi umnyango noma ingxenye ehlangene yenhlangano okubhekiswe kuyo kuSheduli 1 noma 2 yoMthetho weNkonzo yo-
30 Mphakathi; 1994 (Isimemezelo No. 103 sika 1994);

“iNkantolo yezeMisebenzi” kusho iNkantolo yezeMisebenzi emiswe yisigaba 151 yoMthetho yezoBudlelwane kwezeMisebenzi, 1995 (uMthetho No. 66 ka 1995);

“uNgqongqoshe” kusho uNgqongqoshe wezeMisebenzi;

“iGunya likaZwelonke laMakhono” kusho iGunya lika Zwelonke laMakhono eli-
35 miswe isigaba 4;

“umgomo wokuthuthukisa amakhono kaZwelonke” kusho umgomo wokuthuthukisa amakhono kazwelonke okubhekiswe kuwo kusigaba 5(1)(a) (ii);

“isu lokuthuthukisa amakhono kaZwelonke” kusho umgomo wokuthuthukisa amakhono kazwelonke okubhekiswe kuwo kusigaba 5(1)(a)(ii);

40 **“iSikhwama sikaZwelonke saMakhono”** kusho iSikhwama sikaZwelonke saMakhono esimiswe isigaba 27;

“NEDLAC” kusho uMkhandlu wezeMisebenzi nokuThuthukisa uMnotho kaZwelonke omiswe isigaba 2 soMthetho woMkhandlu wezeMisebenzi nokuThuthukisa uMnotho kaZwelonke, 1994 (uMthetho No. 35 ka 1994);

45 **“okunqunyiwe”** kusho okunqunyiwe isimiselo;

“isimiselo” kusho esenziwe futhi esisebenzayo njengokulaya kwesigaba 36;

“iSETA” kusho igunya lomkhakha wemfundo nokuqeqesha elimiswe njengokulaya kwesigaba 9(1);

“uMthetho weZibizontela wokuThuthukisa aMakhono” kusho umthetho ka-
50 zwelonke ogidlela izibizontela wokuthuthukisa amakhono;

“isibizontela sokuthuthukisa amakhono” kusho isibizontela zokuthuthukisa amakhono esikhokhwayo njengokuyala koMthetho weZibizontela wokuThuthukisa aMakhono;

“South African Qualifications Authority” means the South African Qualifications Authority established by section 3 of the South African Qualifications Authority Act;

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

“this Act” includes any regulations but does not include the footnotes; and 5

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

Purposes of Act

2. (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; 10
 - (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; 15
 - (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; 20
 - (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; 25
 - (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— 30
 - (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. 35
- (2) Those purposes are to be achieved by— 35
 - (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; 40
 - (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 45
 - (c) co-operating with the South African Qualifications Authority.

Interpretation

3. 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. 50

“iGunya leZimfanelo lase Ningizimu Afrika” kusho iGunya leZimfanelo lase Ningizimu Afrika elimiswe isigaba 3 soMthetho weGunya leZimfanelo laseNingizimu Afrika;

“uMthetho weGunya leZimfanelo laseNingizimu Afrika” kusho uMthetho weGunya leZimfanelo lase Ningizimu Afrika, 1995 (uMthetho No 58 ka 1995);

“lo Mthetho” uhlangananisa noma iziphi izimiselo kodwa kawuhlanganisi izinezezelo ezibekwa ngaphansi; futhi

“umsebenzi” uhlanganisa isisebenzi, umuntu ongaqashiwe nofuna umsebenzi.

Izinhloso zoMthetho

- 10 2. (1) Izinhloso zaloMthetho ilezi—
- (a) ukuthuthukisa amakhono oquqaba lwezisebenzi lwase Ningizimu Afrika—
- (i) ukuze kwenziwe ngcono izinga lempilo yabasebenzi, amathemba kanye nenkululeko yomsebenzi;
- (ii) ukwenza ngcono umkhqizo endaweni yomsebenzi nokuncintisana kwa-
- 15 baqashi;
- (iii) ukuqhubekisa ukuzisebenza; kanye
- (iv) nokwenza ngcono ukunikezwa kwezinkonzo zokuhlalisana kahle
- (b) ukwandisa amazinga okutshalwa kwemali kwimfundo nokuqeqeshwa emakethe yezemisebenzi kanye nokwenza ngcono inzuzo kulokho kutshalwa;
- 20 (c) ukukhuthaza abaqashi—
- (i) ukusebenzisa indawo yomsebenzi njengendawo ekhuthazela ukufunda;
- (ii) ukunika izisebenzi amathuba okuthola amakhono amasha;
- (iii) ukunikeza amathuba kwabasha abangenayo emakethe yomsebenzi uku-
- zuza ukwazi ngomsebenzi; kanye
- 25 (iv) nokuqasha abantu abakuthola kunzima ukuqashwa;
- (d) ukukhuthaza abasebenzi ukuhlanganyela ekufundeni kanye nezinye izinhlelo zokuqeqeshwa;
- (e) ukwenza ngcono amathemba omsebenzi kubantu ababejiyezekile ngaphambili ngenxa yobandlululo olungalingile futhi nokuzilungisa lezozici ezi-
- 30 jiyezayo ngokuqeqesha nemfundo;
- (f) ukuqikelela ubunjalo/izinga lemfundo nokuqeqeshwa endaweni yomsebenzi nokuqeqeshelwa umsebenzi;
- (g) ukusiza—
- (i) abafuna umsebenzi ukuthola umsebenzi;
- 35 (ii) abasebenzi abadiliziwe baphinda bangene emakethe yomsebenzi;
- (iii) abaqashi ukuthola izisebenzi ezinezitifiketi; kanye
- (h) nokuhlinzeka kanye nokulungisa ngomthetho amahovisi okuqasha
- (2) Lezo zinhloso zizofezwa—
- (a) ngokumisa uhlaka lwezikhungo nolwezimali oluhlanganise—
- 40 (i) iGunya likaZwelonke laMakhono;
- (ii) iSikhwama sikaZwelonke saMakhono;
- (iii) isikimu sesabelo-zibizontela sokuthuthukisa amakhono njengoba sicutshangwe kuMthetho weZibizontela wokuThuthukiswa kwaMakhono;
- (iv) aMagunya oMkhakha weMfundo nokuQeqesha
- 45 (v) izizinda zomsebenzi; kanye
- (vi) neQembu lokuSongoza/loKwenza ukuThuthukiswa kwaMakhono
- (b) ukukhuthaza ukubambisana phakathi komkhakha womnotho womphakathi nowangasese ukuhlinzeka imfundo nokuqeqesha endaweni yomsebenzi nokwendawo yomsebenzi; kanye
- 50 (c) nokusebenzisana neGunya leZimfanelo laseNingizimu Afrika.

Ukuhumusha

3. Noma imuphi umuntu osebenzisa loMthetho makahumushe izihlinzeko zawo ukugcina—

- 55 (a) izinhloso zawo; kanye
- (b) nezinjongo zoMthetho weGunya leZimfanelo zeNingizimu Afrika.

CHAPTER 2

NATIONAL SKILLS AUTHORITY

Establishment of National Skills Authority

4. The National Skills Authority is hereby established.

Functions of National Skills Authority

5

5. (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; 10
 - (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 15
 - (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 20
- (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. 25

Composition of National Skills Authority and term and vacation of office

6. (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 30
- (c) its non-voting executive officer appointed in terms of section 8(2)(a).

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

- (a) five voting members nominated by NEDLAC and appointed by the Minister to represent organised labour;
- (b) five voting members nominated by NEDLAC and appointed by the Minister to represent organised business; 35
- (c) five voting members nominated by NEDLAC and appointed by the Minister to represent organisations of community and development interests, which must include—
 - (i) a woman who represents the interests of women; 40
 - (ii) a person who represents the interests of the youth; and
 - (iii) a disabled person who represents the interests of people with disabilities;
- (d) five voting members appointed by the Minister to represent the interests of the State; 45
- (e) four voting members appointed by the Minister to represent the interests of education and training providers;
- (f) two non-voting members, who have expertise in the provision of employment services, appointed by the Minister; and
- (g) a non-voting member nominated by the South African Qualifications Authority and appointed by the Minister to represent that Authority. 50

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

- (a) organised labour;
- (b) organised business; 55
- (c) organisations of community and development interests; and

ISAHLUKO 2

IGUNYA LAMAKHONA LIKAZWELONKE

Ukumisa iGunya laMakhono likaZwelonke

4. IGunya laMakhono likaZwelonke ngalokhu liyamiswa.

5 Imisebenzi yeGunya laMakhono likaZwelonke

5. (1) Imisebenzi yeGunya laMakhono likaZwelonke yile—

- (a) ukweluleka uNgqongqoshe—
 - (i) ngomgomo wokuthuthukisa amakhono kazwelonke;
 - (ii) ngesu lokuthuthukisa amakhono kazwelonke;
 - 10 (iii) ngezinkombanqubo ekugcwalisweni kwesu lokuthuthukisa amakhono kaZwelonke;
 - (iv) ngokwabiwa kwemali yokwelekela yeSikhwama saMakhono sikaZwelonke; kanye
 - (v) nanoma yiziphi izimiselo ezizonqunywa;
- 15 (b) ukuhlukanisa/ukuhlanganisa amaGunya oMkhakha weMfundo nokuQeqesha—
 - (i) emgomeni wokuthuthukisa amakhono kazwelonke; kanye
 - (ii) nangesu lokuthuthukisa amakhono kazwelonke
- 20 (c) ukubika kuNgqongqoshe ngendlela enqunyiwe ngenqubekela—phambili eyenziwe ekugcwaliseni isu lokuthuthukisa amakhono kazwelonke
- (d) ukuhola uphenyo lwanoma iluphi udaba oluvuka ekusetshenzisweni kwalo Mthetho; kanye
- (e) nokusebenzisa noma imaphi amandla nokugcina noma iziphi ezinye izibopho ezinikwe noma ezigidlelwe iGunya yilo Mthetho.
- 25 (2) ngezinhloso zezimpenyo okubhekiswe kuzo kusigatshana (1)(d), iGunya lina-
mandla anqunyiwe okungena nokubuza nokuhlola.
- (3) IGunya malenze imisebenzi yalo njengokuvumelana naloMthetho nomthetho-
sisekelo walo.

30 Ukubunjwa kweGunya laMakhono likaZwelonke nesikhathi sokuphatha nesoku-
phuma

6. (1) IGunya laMakhono/likazwelonke lenziwe/libunjwe—
 - (a) usihlalo ovotayo obekwe uNgqongqoshe
 - (b) amalungu angu 24 ovotayo namathathu angavoti abekwe nguNgqongqoshe; kanye
 - 35 (c) nesiphathimandla esingavoti esiphethe.
- (2) Amalungu okubhekiswe kuwo kusigatshana (1)(b) yilawa—
 - (a) amalungu amahlanu avotayo aphakanyiswe ngu NEDLAC futhi abekwa uNgqongqoshe ukumela izinyonyana zabasebenzi.
 - (b) amalungu amahlanu avotayo aphakanyiswe ngu NEDLAC futhi abekwa 40 nguNgqongqoshe ukumela abaqashi.
 - (c) amalungu amahlanu avotayo aphakanyiswe uNEDLAC futhi abekwa nguNgqongqoshe ukumela izinhlangano zomphakathi nosizo lwentuthuko okufanele kuhlangukise—
 - 45 (i) owesifazane omele okungokwabesifazane;
 - (ii) umuntu omele okungokwentsha; kanye
 - (iii) nomuntu okhubazekile omele okungokwabantu abenemiqhina;
 - (d) amalungu amahlanu avotayo abekwe nguNgqongqoshe ukumela okungokwa Hulumeni;
 - (e) amalungu amane avotayo abekwe nguNgqongqoshe ukumela okungokwa- 50 bahlinzeka ngemfundo nokuQeqesha;
 - (f) amalungu amabili angavoti, anobungcweti kumqandiselo/ekuhlinzekeni amahovisi okuqasha, amiswe nguNgqongqoshe; kanye
 - (g) nelungu nelilodwa elingavoti eliphakanyiswe iGunya leZimfanelo leNingi-
zimu Afrika elibekwe nguNgqongqoshe ukumela leloGunya.
- 55 (3) UNgqongqoshe makakhombe amalungu amane njengamaphini kasihlalo; elilo-
dwa iphini likasihlalo abe munye kumalungu abekwe ukumela—
 - (a) izinyonyana zabasebenzi;
 - (b) izinhlangano zabaqashi;
 - (c) izinhlangano zomphakathi nosizo lwentuthuko; kanye

- (d) 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 5
 - (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; 10
 - (c) for permanent incapacity;
 - (d) for absence from three consecutive meetings of the Authority—
 - (i) without the prior permission of the Authority; or
 - (ii) unless the member shows good cause; or
 - (e) for engaging in any activity that may undermine the functions of the 15 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.

Constitution of National Skills Authority

20

7. (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 25 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 30 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 35 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, 40 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 45 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. 50
- (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). 55

- (d) iziFiso zikaHulumeni.
- (4) Ilungu leGunya liba sehhovisi/liphatha isikhundla inkathi eyiminyaka emithathu futhi lisenokukhethwa ukuphinda libekwe.
- (5) Ilungu leGunya lishiya ihovisi uma lelolungu—
- 5 (a) lisuswa ehovisi nguNgqongqoshe njengokucatshangwe kusigatshana 6; noma
- (b) lishiya ngenothi ebhaliwe ikhelwe yaqondiswa kuNgqongqoshe
- (6) uNgqongqoshe angalisusa ilungu leGunya—
- 10 (a) ngesicelo esibhalwe umgwamanda owaphakamisa lelolungu njengokulaya kwesigatshana (2);
- (b) ngokuziphatha kabi kakhulu
- (c) ngokungabi namandla okungenakuguqulwa
- (d) ukuphutha/ukungabikho emihlanganweni, emithathu elandelele yeGunya—
- 15 (i) ngaphandle kwemvume ngaphambili yeGunya; noma
- (ii) ngaphandle kokuba ilungu liveza isizathu esihle; noma
- (e) ngokuhlanganyela kunoma imuphi umsebenzi ongalmaza iMisebenzi yeGunya
- (7) Noma isiphi isikhala ehovisi lelungu singagcwaliswa nguNgqongqoshe ngokubeka elinye ilungu njengokulaya kwesigaba (2).

20 uMthethosisekelo weGunya laMakhono likaZwelonke

7. (1) IGunya laMakhono likaZwelonke malamukele uMthethosisekelo walo, ngesikhathi esifanele ngemuva kokubeka amalungu alo.
- (2) kuye ngelungelo laloMthetho, uMthethosisekelo weGunya—
- (a) mawuhlinzekela—
- 25 (i) inqubo yokuqokwa kwamalungu eGunya njengokubekiwe kusigaba 6(2)(a), (b), (c) no (g);
- (ii) ukumiswa nokusebenza kwamakomiti; kuhlangele nesigungu;
- (iii) izimiselo zokubiza nokuhola imihlangano yeGunya namakomiti alo, kuhlangele nekhramu edingekayo kanye namamithi agcinwayo
- 30 aleyomihlangano kuqikelelwe ukuthi okungenani inothi yezinsuku ezi-30 yomhlangano okuyokhankanywa kuwo ukuchibiyela umthethosisekelo noma isimiselo esidingekile.
- (iv) amalungelo okuvota amalungu ahlukene kanye nendlela izinqumo eziyothathwa ngayo iGunya namakomiti alo;
- 35 (v) uMthetho wokuziphatha kwamalungu eGunya;
- (vi) ukunquma ngokulamula kwanoma imuphi umbango ophathelene nokuhumusha noma ukusebenza koMthethosisekelo; kanye
- (vii) nenqubo yokuchibiyela uMthethosisekelo; kuqikelelwe ukuthi iningi lokuthathu eshumini lalokho kuchibiyela lidingekile futhi imvume
- 40 kaNgqongqoshe yaleso sichibiyelo esidingekile; futhi ukuthi imvume yanoma ikuphi ukuchibiyela iyadingeka; futhi
- (b) ingahlinzekela—
- (i) ukunikeza amandla nezibopho zeGunya kumalungu alo; amakomiti nezisebenzi; kuqikelelwe ukuthi iGunya lingagidlela imibandela
- 45 yokunikeza amandla, nanoma imaphi amandla noma isibopho ngesizathu sokunikeza amandla futhi lingawuguqula noma lesule noma isiphi isinqumo esenziwe ngaphansi kwanoma ikuphi ukunikeza amandla; kanye
- (ii) nanoma iluphi olunye udaba/indaba edingekile ukwenza iMisebenzi yeGunya.
- 50 (3) Okungenani inothi yezinsuku ezingu 30 zomhlangano weGunya mayinikwe lapho kuzokhankanywa khona isichibiyelo somthethosisekelo noma isimiselo
- (4) Amavoti asekelayo okungenani abe okuthathu eshumini okungawamalungu eGunya kanye nemvume kaNgqongqoshe kudingekile ukuchibiyela umthethosisekelo
- 55 walo.
- (5) Amavoti amalunga eGunya asekelayo okungenani okokuthathu eshumini adingekile ukweluleka uNgqongqoshe ngezimiselo ezizokwaziwa
- (6) Phezu kwesigatshana (2)(a)(i), uNgqongqoshe makanqume inqubo yeziphakamiso zokubekwa kokuqala kwamalungu okubhekiswe kuwo kusigaba 6(2)(a), (b), (c)
- 60 no (g).

Remuneration and administration of National Skills Authority

8. (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— 5

- (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.

CHAPTER 3

10

SECTOR EDUCATION AND TRAINING AUTHORITIES**Establishment of SETA**

9. (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) 15 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 20
 - (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; 25
- (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 30 SETA.

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

Functions of SETA

10. (1) A SETA must— 35

- (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; 40
 - (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; 45
 - (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 50 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;

Inkokhelo/umvuzo/iholo nokuphathwa kweGunya laMakhono likaZwelonke

8. (1) Ilungu leGunya laMakhono likaZwelonke elingaqashiwe isikhathi esigcwele nguHulumeni lingakhokhelwa umvuzo nezinkokhelo ezinqunyiwe uNgqongqoshe ngokuvumelana noNgqongqoshe wezeZimali.
- 5 (2) Kuye ngelungelo lemithetho ephethe inkonzo yomphakathi, umQondisi-Jikelele—
- (a) makabeke umuntu ozokuba isiphathimandla esiphethe seGunya laMakhono lika Zwelonke okuyothi ekubekweni asebenzele inkonzo yomphakathi; futhi.
- (b) makahlinzeke iGunya ngabasebenzi nemali uNgqongqoshe akubona kudingekile ukwenza iMisebenzi yalo.
- 10

ISIAHLUKO 3**AMAGUNYA OMKHAKHA WEMFUNDO NOKUQEYESHA****Ukumisa iSETA**

9. (1) UNgqongqoshe, ngendlela enqunyiwe, angamisela noma imuphi umkhakha wezomnotho kazwelonke, iGunya loMkhakha wemfundo nokuQeqesha ngesaziso kuGazethi.
- (2) UNgqongqoshe makanqume umkhakha owehlukene/ongafani ngezinhloso zesi-gatshana (1) maqondana nezinhlobo zabaqashi futhi ngezinhloso zalokho kunquma ananzele/abheke—
- 20 (a) imfundo nezidingo zokuqeqeshwa kwabaqashi nezisebenzi—
- (i) abasebenzisa izinto ezifanayo, uchunge leMisebenzi nemisebenzi ethile;
- (ii) abenza imikhiqizo efanayo; noma
- (iii) abanika izinkonzo ezifanayo;
- (b) ukungabi namandla komkhakha ohlongoziwe wezinhlobo zomsebenzi ezihlangene nomhlahla-ndlela womsebenzi okhethiweyo wokuziphilisa;
- 25 (c) indawo yanoma imaphi amasu kaZwelonke okukhula komnotho nentuthuko;
- (d) ukuhlalelwa kwezinhlangano zezinyonyana izinhlangano zabaqashi zoHulumeni kwimikhakha ehlangene/esondelene kakhulu;
- (e) nanoma ikuphi ukuvumelana okungabakhona phakathi kwezinyonyana zabasebenzi izinhlangano zabaqashi neminyango eqondene kaHulumeni ngencazelo yanoma umuphi umkhakha; kanye
- 30 (f) amandla oMkhakha ohlongoziwe okuhlela nokuphathwa kwezimali ukuxhasa iSETA.
- (3) Ekumisweni kweSETA, uNgqongqoshe angahlinzeka ngosizo lweSETA ukwenza imisebenzi yayo.
- 35

Imisebenzi yeSETA**10. (1) ISETA—**

- (a) mayithuthukise ipulani yomkhakha wamakhono ngaphakathi kohlaka lwesu lokuthuthukisa amakhono kaZwelonke;
- 40 (b) mayigcwalise ipulani yomkhakha waMakhono—
- (i) ngokumisa izindawo zolwazi;
- (ii) ngokuvumela amapulani amakhono endaweni yomsebenzi;
- (iii) ngokwabela imali yokusiza ngendlela enqunyiwe kubaqashi, abahlinzeki bemfundo nokuqeqesha nabasebenzi, kanye
- 45 (iv) nangokuqapha imfundo nokuqeqesha kumkhakha,
- (c) mayiqhubekise izindawo zolwazi
- (i) ngokukhomba izindawo zomsebenzi zokuthola ulwazi lomsebenzi ngokuwenza,
- (ii) ngokusekela ukuthuthukiswa kwezinto zokufunda;
- 50 (iii) ngokwenza ngcono ukulungiselela ukufunda; kanye
- (iv) nangokusiza ukwenza isivumelwano sokufunda;
- (d) mayibhalise izivumelwano zokufunda,
- (e) mayifake isicelo kwiGunya leZimfanelo laseNingizimu Afrika ngaphakathi kwesonto kusukela ekumisweni kwalo ukwamukelwa/ ukuvunywa njengomgwamanda ocatshangwe kusigaba 5(1)(a)(ii)(bb) ngaphakathi kwezinyanga ezingu 18 kusukela osukwini leso sicelo esirejitwe ngalo.
- 55 (f) mayiqoqe ibizontela lokuthuthukisa aMakhono kumkhakha walo,

- (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.

Composition of SETA

11. 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.

Chambers of SETA

12. (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.

Constitution of SETA

13. (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;

- (g) mayihlukanise/mayihlanganise iGunya laMakhono likaZwelonke—
 (i) kumgomo wokuthuthukiswa kwamakhono;
 (ii) kulisu lokuthuthukisa aMakhono likaZwelonke; kanye
 (iii) nakupulani yaMakhono kumkhakha wayo
- 5 (h) mayibike kumQondisi-Jikelele—
 (i) ngemali engenayo nencithakalo; kanye
 (ii) nokugcwalisa ipulani yaMakhono oMkhakha wayo;
- (i) mayihlukanise/mayihlanganise amahovisi okuqasha oMnyango kanye na-
 noma imuphi umgwamanda weMfundo omiswe ngaphansi kwanoma imuphi
 10 umthetho ophethe/obusa imfundo yeRiphabliki ukwenza ngcono ukwazi—
 (i) ngamathuba omsebenzi, kanye
 (ii) naphakathi kwabahlizeki bemfundo nokuQeqesha kanye nemakethe
 yomsebenzi futhi
- (j) ibeka abasebenzi abadingekile ukwenza imisebenzi ecatshangwe kulesisi-
 15 gaba;
- (k) mayigcine noma iziphi ezinye izibopho ezigidlwe yiloMthetho noma
 ezihlangene nezinhloso zaloMthetho.
- (2) ISETA—
 (a) inawo wonke amandla anjalo njengoba edingekile ukuyinika amandla
 20 okugcina izibopho okubhekiswe kuzo kusigatshana (1); kanye
 (b) namanye amandla anikwe iSETA yiloMthetho.
- (3) ISETA mayenze imisebenzi yayo njengokuvumelana naloMthetho kanye nom-
 thethosisekelo wayo.

Ukubunjwa kweSETA

- 25 11. ISETA ingabunjwa kuphela ngamalungu amele—
 (a) izinyonyana zabasebenzi;
 (b) izinhlangano zabaqashi, kuhlenganisa osomabhezini abancane;
 (c) iminyango kahulumeni eqondene; futhi
 (d) uma uNgqongqoshe, emuva kokubonisana namalungu okubhekiswe kuwo
 30 kundima (a) (b) no (c), ebona ukuthi kuwufanele umkhakha—
 (i) noma imuphi umgwamanda wobungcweti oshisekele/okhathalele; noma
 (ii) noma imuphi umkhandlu wokwenza izivumelwano onamandla kulowo
 mkhakha.

Imigwamanda ye SETA

- 35 12. (1) ISETA ingamisa imigwamanda kumkhakha wayo ngemvume
 kaNgqongqoshe. -
 (2) umgwamanda omiswe kanjalo mawubunjwe isibalo esilingene samalungu amele
 izisebenzi nabaqashi futhi umgahlanganisa nalowo malungu angeziwe njengoba iseta
 inquma
- 40 (3) Lowo mgwamanda mawenze leymisebenzi yeSETA njengoba unikwe amandla
 okuyenza njengokulaya komthethosisekelo weSETA yawo.
 (4) Umgwamanda weSETA uvumelekile kulokho kwekhulu kwezibizontela
 zokuthuthukisa amakhono eziqoqwe endaweni yamandla awo njengoba uNgqongqoshe
 ngemuva kokubonisana neSETA enquma.

45 UMthethosisekelo we SETA

13. (1) Ngenhloso yokumisa i SETA, UNgqongqoshe makavumele umthethosisekelo
 weSETA.
 (2) uNgqongqoshe angachibiyela umthethosisekelo ngendlela enqunyiwe emuva
 kokubonisana neSETA.
- 50 (3) kuye ngelungelo lalo Mthetho, umthethosisekelo weSETA—
 (a) mawusho—
 (i) izinyonyana/izinhlangano zabaqashi neminyango kahulumeni eqondene
 kumkhakha;

- (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; 5
- (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; 10
- (vii) the establishment and functioning of committees, including an executive committee; 15
- (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; 20
- (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 25
- (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 30
 - (ii) any other matter necessary for the performance of the functions of the SETA. 35

Finances of SETA

14. (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; 40
 - (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— 45
- (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); 50
 - (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— 55
- (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

- (ii) izimo nendlela ilungu leSETA elingasuswa ngazo;
- (iii) inani lamalungu azobekwa kuSETA, kuqikelelwe ukuthi iSETA, ibunjwe inani elilingene lamalungu amele abasebenzi nabaqashi;
- 5 (iv) inqubo yokuthatha indawo yelungu leSETA okwenziwa inhlangano ephakamise lelolungu;
- (v) izimiselo nendlela ilungu elingashintshwa ngayo iSETA;
- (vi) ukukhethwa kwabaphethe izikhundla ngamalungu eSETA kanye nabantu abangababambela ngesikhathi bengekho noma bengenamandla, isikhathi sabo sokuphatha nemisebenzi kanye nezimo nendlela abangashintshwa ngayo;
- 10 (vii) ukumiswa nokusebenza kwamakomiti kuhlangene nesigungu,
- (viii) izimiselo zokubiza nokuhola imihlangano yeSETA kanye nemigwamanda yayo namakomiti, kuhlangene nekhoramun edingekile kanye namaminithi agcinwayo aleyomihlangano;
- 15 (ix) amalungelo okuvota kwamalungu angefani nendlela izinqumo ezi-zothathwa ngayo iSETA kanye nemigwamanda yayo namakomiti;
- (x) umthetho/indlela yokuziphatha kwamalungu eSETA nemigwamanda yayo;
- (xi) ukubekwa kwesiphathimandla esikhulu, kanye nalezo ezinye izisebenzi ezidingekile ukwenza imisebenzi ephumelelayo yeSETA, ngamalunga ayo kuhlangene nokunqunywa kwemiyalelo nemibandela yomsebenzi; kanye.
- 20 (xii) nokunquma ngokunqumela omunye kunoma imuphi umbango ophathelene nokuhumusha noma ukusebenza komthethosisekelo; futhi
- 25 (b) ingahlinzekela—
- (i) ukunikeza amandla nezibopho zeSETA kumalungu ayo imigwamanda, amakomiti nezisebenzi, kuqikelelwe ukuthi iSETA ingagidlela imibandela yokunikeza amandla, ingephucwe noma imaphi amandla noma isibopho ngenxa yokunikeza amandla futhi ingaguqula noma isule noma isiphi isinqumo esenziwe ngaphansi kwanoma ikuphi ukunikezwa amandla; kanye
- 30 (ii) nanoma iyiphi enye indaba/udaba olundengekile ukwenza imisebenzi yeSETA.

Izimali ze SETA

- 35 14. (1) I SETA ixhaswa ngezimali—
- (a) ezivela kuzibizontela zokuthuthukiswa kwamakhono eziqoqwe kumkhakha wayo;
- (b) ngezimali ezikhokhwe kuyo zivela kuSikhwama saMakhono kaZwelonke;
- (c) ngemali yokusiza/isabelo, iminikelo namafa enikwe wona;
- 40 (d) ngemali engenayo ezuzwe kunsalela yemali ebekiwe noma efakiwe;
- (e) ngemali engenayo ezuzwe emsebenzini owenziwe ngendlela enqunyiwe, kanye
- (f) nangemali emukelwe kunoma imuphi omunye umthombo.
- (2) Imali emukelwe iSETA mayikhokhwe ku- akhawundi yasebhange kunoma iliphi
- 45 ibhange elirejistiwe futhi ingafakwa kuphela—
- (a) kumakhawundi okonga, kumasheya ayisimaphakade noma abekelwe isikhathi esinqunyiwe kunoma iliphi ibhange elibhaliswe noma esinye isikhungo semali;
- (b) kumasheya angaphakathi arejistiwe acatshangwe kusigaba 21(1) soMthetho weSikhwama seSizwe, 1975 (uMthetho No. 66 ka 1975);
- 50 (c) wesikimu samayunithi trast esiphethwe inkampani esirejistiwe njengenkampani ephethe njengokulaya kwesigaba 4 noma 30 soMthetho wokuPhatha amaYunithi Trast, 1981 (uMthetho No. 54 ka 1981); kanye
- (d) nanoma ngayiphi enye indlela evumelwe nguNgqongqoshe.
- 55 (3) Izimali ezamukelwe iSETA zingasetshenziswa kuphela ngendlela enqunyiwe futhi—
- (a) ukuxhasa ukwenza imisebenzi yayo; kanye
- (b) nokukhokhela ukuphatha ngaphakathi komkhawulo onqunyiwe.
- (4) Kunyaka ngamunye wezimali, ophela ngosuku olunqunyiwe, wonke uSETA

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—

- (a) keep proper record of all its financial transactions, assets and liabilities; and 5
 - (b) 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— 10
- (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.

Taking over administration of SETA

15

15. (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 20
- (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); 25
- (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. 30

(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) 35 on such conditions as the Minister considers appropriate.

CHAPTER 4

LEARNERSHIPS

Learnerships

16. A SETA may establish a learnership if— 40

- (a) the learnership consists of a structured learning component;
- (b) the learnership includes practical work experience of a specified nature and duration;
- (c) the learnership would lead to a qualification registered by the South African Qualifications Authority and related to an occupation; and 45
- (d) the intended learnership is registered with the Director-General in the prescribed manner.

makayise kuNgqongqoshe isitatimente sikaSETA semali eyisilinganiso engenayo nencithakalo yonyaka olandelayo wezimali.

(5) Wonke uSETA, njengokuhambisana nemigomo eyamukelekile ngokuvamile yomkhuba wokucina nokuqinisa ngezimali—

- 5 (a) mayigcine amabhuku—marekhodi ezimali ezingenayo, incithakalo, impahla nezikweleti; futhi
- (b) ngaphakathi kwezinyanga eziyisithupha emuva kokuphela konyaka ngamunye wezimali, ilungise amakhawundi akhombisa imali engenile nencithakalo kanye nebhalsishidi ekhombisa impahla yayo, izikweledi nesimo sezimali ekupheleni kwalowo nyaka wezimali.
- 10 (6) UmCwaningi-Jikelele—
- (a) makacwaninge amakhawundi, izitatimente zemali nokuphathwa kwezimali zeSETA; futhi
- (b) makabike ngalolo cwaningo ku SETA nakuNgqongqoshe futhi kulowo mbiko akhiphe umbono noma iSETA izithobele yini izihlinzeko zaloMthetho,
- 15 nomthethosisekelo, eziphathelele nezindaba zezimali;

Ukuthatha ukuphathwa kwe SETA

15. (1) UNgqongqoshe angayala umQondisi-Jikelele ngesaziso ku*Gazethi* ukubeka umphathi ukuthatha ukuphathwa kweSETA, emuva kokubonisana neGunya laMa-

- 20 khono likaZwelonke, uma uNgqongqoshe ebona ukuthi—
- (a) iSETA iyehluleka ukwenza imisebenzi yayo;
- (b) kukhona ukuphathwa kabi kwezimali; noma
- (c) ubulungu bayo abusamele kakhulu ukubunjwa okucatshangwe kusigaba 11
- (2) Kuleso saziso uNgqongqoshe—
- 25 (a) makanqume amandla nezibopho zomphathi obekwe njengokulaya kwesigatshana (1);
- (b) angamisa noma ashintshe elilodwa noma angaphezulu amalungu eSETA ngesizathu esicatshangwe kusigatshana 1(a), (b) noma (c);
- (c) angamisa ukusebenza komthethosisekelo weSETA; futhi
- 30 (d) angadlulisela imali ekukhawundi lebhange leSETA kuSikhwama saMakhono kaZwelonke ngendlela enqunyiwe.
- (3) Uma uNgqongqoshe esesisakazile/esesimemezele isaziso njengokulaya kwesigatshana (1), uNgqongqoshe ukuze alungisele ukuthi iSETA iyawuqhuba futhi iyayenza imisebenzi yayo—
- 35 (a) angachibiyela umthethosisekelo wayo;
- (b) angabuyisela esikhundleni noma iliphi lamalungu ayo; futhi
- (c) angahoxisa noma achibiyele noma isiphi isihlinzeko sesaziso esicatshangwe kusigatshana (2) ngemibandela njengoba uNgqongqoshe ebona kufanele.

ISAHLUKO 4

40 IZINDAWO/IZIZINDA ZOKUFUNDA

Izindawo/izizinda zokufunda

16. ISETA ingamisa izizinda sokufunda uma—

- (a) isizinda sokufunda senziwe inxenye yokufunda ehlanganisiwe/ehleliwe;
- 45 (b) isizinda sokufunda sihlanganisa ukwazi ngokuwenza umsebenzi wohlobo olushiwo oludingekayo kanye nesikhathi;
- (c) ukufunda kwakungaholela kwimfanelo eqondene nomsebenzi okubhaliswe iGunya leZimfanelo zeNingizimu Afrika; futhi
- (d) isizinda sokufunda sibhaliswe nomQondisi-Jikelele ngendlela enqunyiwe.

Learnership agreements

17. (1) For the purposes of this Chapter, a "learnership agreement" means an agreement entered into for a specified period between—
- (a) a learner;
 - (b) an employer or a group of employers (in this section referred to as "the employer"); and
 - (c) 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—
- (a) the consent of the learner; and
 - (b) 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.

Contract of employment with learner

18. (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

1. Chapters Eight and Nine of the Basic Conditions of Employment Act ("BCEA"), provide for the publication of sector determinations by the Minister on basic conditions of employment on the advice of the Employment Conditions Commission. Before the Commission advises the Minister on the publication of a determination: (a) the Department of Labour conducts an investigation and prepares a report; (b) the Commission then considers the report in the light of a number of factors set out in section 54(3) of the BCEA and in this process may hold public hearings; and then (c) gives its advice in a report to the Minister. The effect of this section is to allow for the setting of terms and conditions of employment for learners in a similar way to the setting of conditions of apprenticeship under the Manpower Training Act, 1981 (Act No. 56 of 1981), in so far as conditions of employment are concerned—see section 13(2)(c) and (k) to (p). The provisions of the BCEA are sufficiently flexible to allow for sector and cross-sector determinations for learnerships

Izivumelwano zokufunda

17. (1) Ngezinhlalo zalesiSahluko, "isivumelwano sokufunda" kusho isivumelwano okungenwe kuso isikhathi esishiwo phakathi—
- 5 (a) komfundi;
- (b) umqashi noma iqoqo labaqashi kulesisigaba okubhekiswe kubo njengo "mqashi"; futhi
- (c) abahlinzeki boqeqesho ovunyelomukelwe ngumgwamanda ocatshangwe kusigaba 5 (1)(a)(ii)(bb) seGunya leZimfanelo zeNingizimu Afrika, noma iqoqo lalabo bahlinzeki boqeqesho.
- 10 (2) Imiyalelo okuvunyelwane ngayo yesivumelwano sokufunda masiphoke—
- (a) umqashi—
- (i) ukuqasha umfundi inkathi eshiwo esivumelwaneni;
- (ii) ukuhlinzeka umfundi ngokwazi kokuwenza umsebenzi okushiwo;
- (iii) ukumkhulula umfundi ukuzofunda futhi aqeqeshwe njengoba kushiwo kusivumelwano;
- 15 (b) umfundi—
- (i) ukusebenzela umqashi;
- (ii) ukuhamba eshiwo imfundo nokuqeqesha; futhi
- (c) umhlinzeki woqeqesho ahlinzekele—
- 20 (i) imfundo nokuqeqesha okushiwo kusivumelwano; futhi
- (ii) nokuxhaswa komfundi okushiwo kusivumelwano.
- (3) Isivumelwano sokufunda masibe kufomu enqunyiwe futhi irejistwe neSETA ngendlela enqunyiwe.
- (4) Isivumelwano sokufunda singepheliswe ngaphambi kokuphela kwenkathi
- 25 yesikhathi esishiwo kusivumelwano ngaphandle—
- (a) kokuba umfundi enelisa izidingo zokuqeda ukufunda okuyimpumelelo
- (b) kokuba ISETA eyarejista isivumelwano ikuvume lokho kupheliswe; noma
- (c) umfundi exoshwe kahle ngesizathu esiphathelene nokuziphatha komfundi noma isikhundla njengesisebenzi.
- 30 (5) umqashi noma ohlinzekela uqeqesho ongumhlanganyeli kusivumelwano sokufunda angashintshwa—
- (a) ngemvume yomfundi; futhi
- (b) ngemvume yeSETA eyebhalisa isivumelwano.
- (6) ISETA mayinike umQondisi-Jikelele, ngendlela enqunyiwe, irekhodi yezivumel-
- 35 wano zokufunda ezibhaliswe ISETA.

Inkontileka yomsebenzi nomfundi

18. (1) uma umfundi esemsebenzini womqashi ongumhlanganyeli kusivumelwano sokufunda esithintekile nxashana isivumelwano senziwa, inkontileka yomsebenzi yomfundi ayithintiwe isivumelwano.
- 40 (2) Uma umfundi wayengekho emsebenzini womqashi ongumhlanganyeli kusivumelwano esithintekile nxashana isivumelwano senziwa, umqashi nomfundi mabangene kunkontileka yomsebenzi.
- (3) inkontileka yomsebenzi nomfundi ecatshangwe kusigatshana (2) ingaphansi kwelungelo lanoma iyiphi imiyalelo nemibandela enganqunywa nguNgqongqoshe
- 45 ngokuncoma kweKhomishani yeMibandela yoMsebenzi eyamiswa isigaba 59 (1) soMthetho weMibandela eyisiSekelo yoMsebenzi.
- (4) Isahluko sesishiyagalombili nesishiyagalolunye soMthetho weMibandela eyisiSekelo soMsebenzi ziyasebenza ngezinguquko eziyalwa ingqikithi, ngokunquma okwenziwe njengokulaya kwesigatshana (3) ngaphandle kokuthi—
- 50 (a) ngezinhlalo zesigaba 54(3) salowo Mthetho, iKhomishani yeMibandela yoMsebenzi mayicabange nangomphumela ongenziwa yinoma imiphi yale-

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). 5

(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 10

Disputes about learnerships

19. (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 15
- (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. 20

(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. 25

(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). 30

CHAPTER 5

SKILLS PROGRAMMES

Skills programmes

20. (1) For the purposes of this Chapter, a "skills programme" means a skills programme that— 35

(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; 40

(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. 45

(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 50

(b) it is in accordance with—

2. The lawfulness of a dismissal is governed by the provisions of this Act, the Basic Conditions of Employment Act and the common law.

3. The fairness of a dismissal is governed by the Labour Relations Act, 1995 (Act No. 66 of 1995), the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the common law (administrative law in respect of public sector employees).

mibandela yomsebenzi esongozwayo ekuqashweni kwabafundi kanye nem-pumelelo yezinhloso zaloMthetho; futhi

(b) isigaba 55(7) saloya Mthetho asisebenzi.

(5) Inkontileka yomsebenzi yomfundi ingepheliswe ngaphambi kokuphela kwen-
5 kathi eshiwo kusivumelwano sokufunda ngaphandle kokuba isivumelwano sokufunda
sipheliswa njengokulaya kwesigaba 17(4).

(6) Inkontileka yomsebenzi yomfundi iphela ekupheleni kwenkathi yesikhathi
esishiwo kusivumelwano sokufunda ngaphandle kokuba isivumelwano senziwa no-
muntu owayesevele esesemsebenzini womqashi ongumhlanyeli kusivumelwano
10 lapho isivumelwano senziwa.

Imibango ngezokufunda

19. (1) Ngezinhlalo zalesi sigaba “umbango” kusho umbango—

(a) ngokuhumusha noma ukusebenza kwanoma isiphi isihlinzeko—

- 15 (i) sesivumelwano sokufunda;
(ii) inkontileka yomsebenzi yomfundi;
(iii) ukunquma okwenziwe njengokulaya kwesigaba 17(3);

(b) lesi Sahluko;

(c) ukupheliswa—

- 20 (i) kwesivumelwano sokufunda; kanye
(ii) nenkontileka yomsebenzi yomfundi.

(2) Noma imuphi umhlanyeli kumbango angawudlulisela kwiKhomishane yoku-
Lamula ukuLamulela nokuNqumela ngomunye emiswe isigaba 112 soMthetho we-
zoBudlelwane kwezeMisebenzi, 1995 (uMthetho No. 66 ka 1995).

(3) Umhlanyeli odlulisela umbango makanelise, leyo Khomishane ukuthi
25 iKhophi lokudluliswa kombango linikwe bonke abanye abahlanyeli kumbango.

(4) IKhomishane mayizame ukuqaqa umbango ngokulamula.

(5) Uma umbango ugcina ungaxazululekile noma imuphi umhlanyeli angacela
ukuba umbango uxazululwe ngokunquma ngesikhathi esifanele.

(6) Umthetho osebenza ekubeni-noMthetho nokulunga wokuxosha ngesizathu es-
30 iphathelele nesikhundla sesisebenzi noma ukuziphatha uyasebenza kumbango ocats-
hangwe kusigatshana (1)(c)(ii).

ISAPHLUKO 5

IZINHLELO ZAMAKHONO

Izinhlalo zaMakhono

35 20. (1) Ngezinhlalo zaleSahluko, “uhlelo lwamakhono” kusho uhlelo
lwamakhono—

(a) olusekelwe/olumiswe emsebenzini;

40 (b) oluyothi nxashana seluqedliwe lwenze isifundo maqondana nemfanelo njen-
gokulaya koHlaka lweZimfanelo zikaZwelonke njengoba luchaziwe kusi-
gaba 1 soMthetho weGunya leZimfanelo zeNingizimu Afrika; futhi

(c) lusebenzisa aba hlinzekela uqeqesho abavunyiwe; noma

(d) oluthobela imiyalo enqunyiwe.

(2) Noma imuphi umuntu osethuthukise uhlelo lwamakhono angafaka isicelo—

45 (a) ku SETA onamandla imali yokusiza/isabelo; noma

(b) kumQondisi-Jikelele imali yokwelekela/isabsidi.

(3) ISETA noma umQondisi- Jikelele angaxhasa ngemali uhlelo lwamakhono
uma—

(a) uthobela—

50 (i) isigatshana (1);

(ii) noma imiphi imiyalo egidlwe iSETA noma umQondisi-Jikelele;
futhi

(iii) nanoma imiphi imiyalo enqunyiwe; futhi

(b) luhambisana—

- (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
- (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— 10
- (a) the funds are not being used for the purpose for which they were made available;
 - (b) any term or condition of the funding is not complied with; or
 - (c) the SETA or the Director-General, as the case may be, is not satisfied that the training is up to standard. 15

Disputes

21. 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, 20
- may refer the dispute to the Labour Court for adjudication.

CHAPTER 6

INSTITUTIONS IN DEPARTMENT OF LABOUR

Skills Development Planning Unit

22. (1) Subject to the laws governing the public service, the Director-General must— 25
- (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— 30
- (a) to research and analyse the labour market in order to determine skills development needs for—
 - (i) South Africa as a whole;
 - (ii) each sector of the economy; and
 - (iii) organs of state; 35
 - (b) to assist in the formulation of—
 - (i) the national skills development strategy; and
 - (ii) sector skills development plans; and
 - (c) to provide information on skills to— 40
 - (i) the Minister;
 - (ii) the National Skills Authority;
 - (iii) SETAs;
 - (iv) education and training providers; and
 - (v) organs of state. 45

Employment services

23. (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. 50
- (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; 55

- (i) nepulani yomkhakha okuthuthukisa amakhono eSETA; noma
- (ii) isu lokuthuthukisa amakhono kazwelonke; futhi
- (c) imali ikhona.
- (4) I SETA noma umQondisi -Jikelele angabeka noma imiphi imiyalelo nemibandela
- 5. yokuxhasa njengokulaya kwesigatsana (3) iSETA noma umQondisi-Jikelele, kuye ngesimo, ayibona idingekile.
- (5) ISETA noma umQondisi-Jikelele makaqaphe izinhlelo zamakhono ezixhaswa iSETA noma umQondisi-Jikelele, kuye ngesimo.
- (6) ISETA noma umQondisi-Jikelele osenze izimali zatholakala zohlelo lwama-
- 10 khono angazigodla/azibambe izimali noma azithole futhi noma iziphi izimali ezi-khokhiwe uma iSETA noma umQondisi-Jikelele, kuye ngesimo, unombono wokuthi—
- (a) imali ayisetshenziselwa inhloso eyatholelwa yona;
- (b) noma imuphi umyalelo noma umbandela wokuxhasa awuthotshelwa; noma
- (c) ISETA noma umQondisi-Jikelele, kuye ngesimo, akanelisiwe ukuthi uku-
- 15 qeqesha kuseqophelweni elifanele.

Imibango

- 21. Noma imuphi umhlanganyeli kumbango ngokusebenza noma ukuhumushwa—
- (a) kwanoma yimuphi umyalelo noma umbandela wokuxhasa okubhekiswe kuwo kwisigaba 20(4); noma
- 20 (b) isiphi isihlinzeko salesi Sahluko, angadlulisela umbango keNkantolo yezeMisebenzi ukunquma.

ISAHLUKO 6

IZIKHUNGO KUMNYANGO WEZEMISEBENZI

Iqembu eliSongoza Ukuthuthukiswa kwaMakhono

- 25 22. (1) Kuye ngelungelo lemithetho ebusa/ephetha inkonzo yomphakathi, umQondisi-Jikelele—
- (a) makamisa iQembu lokuSongoza/lokuCeba ukuThuthukiswa kwaMakhono kuMnyango; kanye
- (b) nokuhlinzeka iQembu ngezisebenzi nemali okudingekayo ukwenza iMisebenzi yalo.
- 30 (2) Imisebenzi yeQembu lokuSongoza ukuThuthukiswa kwaMakhono yile—
- (a) ukucwaninga nokuhlaziya imakethe yomsebenzi ukuze linqume izidingo zokuthuthukisela amakhono—
- (i) iNingizimu Afrika yonkana;
- (ii) umkhakha ngamunye womnotho; kanye
- 35 (iii) nemikhakha kaHulumeni
- (b) ukusiza ukubumba—
- (i) isu lokuthuthukisa amakhono kazwelonke; kanye
- (ii) namapulani okuthuthukisa amakhono omkhakha; futhi
- 40 (c) ukuzihlinzeka ngokwazi ngamakhono ku—
- (i) Ngqongqoshe;
- (ii) Gunya laMakhono kaZwelonke;
- (iii) maSETA;
- (iv) abahlinzeki bemfundo nokuqeqesha;
- 45 (v) nemikhakha kahulumeni

Amahhovisi okuqasha/izinkonzo zomsebenzi

- 23. (1) Kuye ngelungelo lemithetho ebusa/ephetha inkonzo yomphakathi, umQondisi-Jikelele—
- (a) makamisa izizinda zomsebenzi kuMnyango; futhi
- 50 (b) makabeke inani lalabo bantu kunkonzo yomphakathi kusizinda ngasinye njengoba kudingekile ukwenza imisebenzi yaleso sizinda.
- (2) Imisebenzi yalezo zizinda zomsebenzi yilezi—
- (a) ukunikeza izinkonzo zomsebenzi kubasebenzi, abaqashi, nakubaniki boqeqesho, okumbandakanya ukwenza ngcono lezozinkonzo ezinikezwa umphakathi wasemaphandleni;
- 55 (b) ukubhalisa abafuna umsebenzi;
- (c) ukubhalisa izikhala namathuba omsebenzi;

- (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 5
- (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— 10
 - (a) any vacancy that employer has; and
 - (b) the employment of any work-seeker referred by that labour centre.

Registration of persons that provide employment services

- 24. (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 15 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 20 of that decision to the applicant.
- (4) A registered employment service must comply with the prescribed criteria.

Cancellation of registration of employment service

- 25. (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 25 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 30 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 35 Director-General must give written notice of that decision to the employment service.

Appeal against Director-General's decision

- 26. (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. 40
- (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 45 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.

- (d) ukusiza izinhlobo ezinqunyiwe zabantu —
 (i) ukungena emfundweni ethile nezinhlelo zokuqeqesha;
 (ii) ukuthola umsebenzi ;
 (iii) ukuqala ukwenza imali engenayo; futhi
 5 (iv) ukuhlanganyela kuzinhlelo zomsebenzi ezithile; kanye
 (e) nokwenza nanoma imuphi omunye umsebenzi oqondene nemisebenzi okubhekiswe kuyo kuzindima (a) kuya ku (d).
 (3) UNgqongqoshe angalaya abaqashi, emuva kokubonisana neGunya laMakhono kaZwelonke ngesaziso ku*Gazethi* ukwazisa isizinda somsebenzi ngendlela
 10 enqunyiwe—
 (a) nganoma isiphi isikhala; futhi
 (b) nangokuqashwa kwanoma ngubani ofuna umsebenzi othunyelwe yilesi sizinda somsebenzi.

Ukubhaliswa kwabantu abahlinzeka ngezinkonzo zomsebenzi

- 15 24. (1) Noma imuphi umuntu ofisa ukuhlinzeka ngezinkonzo zomsebenzi ngenzuzo makacele ukubhaliswa kumQondisi-Jikelele ngendlela enqunyiwe
 (2) UmQondisi-Jikelele makabhalise umceli uma enelisiwe ukuthi izilinganiso ezinqunyiwe zanelisiwe.
 (3) Uma umQondisi-Jikelele—
 20 (a) erejista umceli, isitifiketi esinqunyiwe masikhishelwe lowo muntu;
 (b) enqaba ukubhalisa umceli, umQondisi-Jikelele makanike umceli inothi si isaziso esibhaliwe ngaleso sinqumo
 (4) Ihovisi lokuqasha lezinkonzo zomsebenzi malithobele izilinganiso ezinqunyiwe.

Ukwesulwa kokubhaliswa kwehovisi lokuqasha/lezinkonzo zomsebenzi

- 25 25. (1) Kuye ngelungelo lalesi sigaba, umQondisi-Jikelele angesula ukubhaliswa kwehovisi lokuqasha uma eneliswa ukuthi ihhovisi lokuqasha alizithobeli izilinganiso ezinqunyiwe.
 (2) Uma umQondisi-Jikelele enesizathu sokukholwa ukuthi ihovisi lokuqasha alizithobeli izilinganiso ezinqunyiwe ngakho-ke ukubhaliswa kwalo kufanele ukwe-
 30 sulwa, umQondisi-Jikelele, ngaphambi kokwesula ukurejistwa kwalo—
 (a) makazise inkonzo ngenhloso yokwesula ukurejistwa nezizathu zokwenza njalo;
 (b) makanike inkonzo izinsuku ezingu 30 kusukela osukwini lwenothi si ukwenza izikhalo ukuthi kungani ukurejistwa kwalo kungesulwe; futhi
 35 (c) makazinake lezo zikhalo ekufinyeleleni kusingqumo.
 (3) Uma umQondisi-Jikelele esula ukurejistwa kwehovisi lokuqasha/inkonzo yomsebenzi umQondisi-Jikelele makanike inothi si ebhaliwe yaleso sinqumo kunkonzo yomsebenzi.

Ukudlulisa isinqumo somQondisi-Jikelele

- 40 26. (1) Noma imuphi umuntu onesikhalo ngesinqumo somQondisi-Jikelele njen- gokulaya kwesigaba 24(3)(b) noma 25(3) angacela umQondisi-Jikelele ukunika lowo muntu izizathu esinqumo zinga pheli izinsuku ezingu 30 zenothi si ebhaliwe yaleso sinqumo.
 (2) UmQondisi-Jikelele makanike lowo muntu izizathu ezibhaliwe zaleso sinqumo
 45 phakathi kwezinsuku ezingu 30 zokwamukela lesi sicelo.
 (3) Noma imuphi umuntu owoniwe/onesikhalo ngesinqumo somQondisi-Jikelele njengokulaya kwesigaba 24(3)(b) noma 25(3) angasidlulisela isinqumo kuNkantolo yezeMisebenzi phakathi kwezinsuku ezingu 60—
 (a) zosuku lwesinqumo somQondisi-Jikelele; noma
 50 (b) uma izizathu ezibhaliwe zesinqumo ziceliwe, usuku lwalezo zizathu.
 (4) INkantolo yezeMisebenzi ngesizathu esihle esikhonjisiwe ingayelula inkathi yesikhathi umuntu angadlulisa ngayo lelocala.

CHAPTER 7**FINANCING SKILLS DEVELOPMENT****National Skills Fund**

27. (1) The National Skills Fund is hereby established.
- (2) The Fund must be credited with— 5
- (a) 20 per cent of the skills development levies as contemplated in the Skills Development Levies Act;
 - (b) 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; 10
 - (c) money appropriated by Parliament for the Fund;
 - (d) interest earned on investments contemplated in section 29(3) ;
 - (e) donations to the Fund; and
 - (f) money received from any other source.

Use of money in Fund 15

28. 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.

Control and administration of Fund

29. (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— 20
- (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. 25
- (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. 30
- (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.

Budget for training by public service employers

30. Each public service employer in the national and provincial spheres of government— 35
- (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 40**GENERAL****Jurisdiction of Labour Court**

31. (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. 45
- (2) The Labour Court may review any act or omission of any person in connection with this Act on any grounds permissible in law.

ISIAHLUKO 7**UKUXHASA NGEMALI UKUTHUTHUKISA AMAKHONO****ISikhwama saMakhono kaZwelonke**

27. (1) ISikhwama saMakhono kaZwelonke ngalokhu siyamiswa.
- 5 (2) ISikhwama masabelwe/masinikwe—
- (a) Amaphesenti angu-20 ezibizontela ezicatshangwe kuMthetho weZibizontela wokuThuthukisa aMakhono;
- (b) izibizontela zokuthuthukisa amakhono eziqoqwe futhi zedluliselwa kuSikhwama njengokuyala koMthetho weZibizontela wokuThuthukisa aMakhono
- 10 maqondana naleyomikhakha engenayo iSETA;
- (c) imali ehlukaniselwe iSikhwama iPhalamende;
- (d) inzuzo ezuzwe/etholwe ekuzaliseni imali ecatshangwe kusigaba 29(3);
- (e) izipho zeSikhwama; kanye
- (f) nemali emukelwe kunoma imuphi umthombo.

15 Ukusetshenziswa kwemali eseSikhwameni

28. Imali eseSikhwameni ingasetshenziselwa kuphela amaqhinga akhonjwe kulisu lokuthuthukisa amakhono kazwelonke njengasemqoka ezweni lonke noma amanye anjalo amaqhinga aqondene/aphathelene nempumelelo yezinhloso zaloMthetho njengoba umQondisi-Jikelele enquma.

20 Ukuqondisa nokuphathwa kweSikhwama

29. (1) UmQondisi-Jikelele uyisiphathimandla esibikayo seSikhwama njengokulaya koMthetho weSikhwama seSizwe, 1975 (uMthetho No. 66 ka 1975) futhi—
- (a) makaqondise iSikhwama;
- (b) makagcine irekhodi elifanele lakho konke ukuthengiselana kwemali, impahla
- 25 nezikweleti zeSikhwama; futhi
- (c) ngesikhathi esifanele emuva kokuphela konyaka ngamunye ophela ngosuku olunquniwe makalungise ama-akhawundi emali engenayo nencithakalo yeSikhwama yonyaka nebhalsishidi yempahla yaso nezikweleti njengoba zinjalo ekupheleni kwalowo nyaka.
- 30 (2) Noma iyiphi imali kuSikhwama engadingiwe ukusetshenziswa masinyane ingafakwa kuKhomishana wokuFakwa kweMali yoMphakathi noma ifakwe kusikhungo semali esivumelwe uNgqongqoshe futhi ingakhishwa nxashana idingeka.
- (3) Noma iyiphi imali engakhishwanga/engachithwanga kuSikhwama ekupheleni konyaka wezimali mayidluliselwe kunyaka wezimali olandelayo njengemali yeSikh-
- 35 wama.

IBhajethi yokuqeqeshwa ngabaqashi benkonzo yomphakathi

30. Inkonzo yomphakathi ngayinye kumikhakha kahulumeni kazwelonke nowamaProvinsi—
- (a) mababhajethile okungenani iphesenti elilodwa lepeyrol yayo ukuqeqesha
- 40 nemfundo yezisebenzi zayo kusukela mhlaka 1 Apreli 2000; futhi
- (b) inganikela ngemali kuSETA.

ISIAHLUKO 8**OKUJWAYELEKILE****Amandla eNkantolo yezeMisebenzi**

- 45 31. (1) Kuye ngelungelo lamandla eNkantolo yokuDlulisa yezeMisebenzi futhi ngaphandle lapho loMthetho uhlinzeka ngokunye, iNkantolo yezeMisebenzi inamandla akhethayo/ayoyodwa kuphela maqondana nazo zonke izindaba ezivela/ezisuka kuloMthetho.
- (2) INkantolo yezeMisebenzi ingahlola/ingabukeza noma isiphi isenzo noma
- 50 ukushiya/ukuyeka ukwenza kwanoma imuphi umuntu maqondana naloMthetho phezu kwanoma iziphi izizathu ezivunye umthetho

(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.

Monitoring, enforcement and legal proceedings

32. Chapter Ten and Schedule Two of the Basic Conditions of Employment Act apply, with changes required by the context, to— 5

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

Offences

33. It is an offence to— 10

- (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 15
- (d) provide employment services for gain without being registered in terms of section 24.

Penalties

34. 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. 20

Delegation

35. (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. 25

(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. 30

(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. 35

Regulations

36. 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. 40

Repeal of laws and transitional provisions

37. (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.

(3) Uma icala ukumangala okuphathelele nanoma iluphi udaba olucatshangwe kusigatshana (1) kuqaliswa eNkantolo engenawo amandla maqondana nalolo ludaba/nalelocala, leyo nkantolo noma sekukuliphi ibanga phakathi kwecala ingalululisela kuNkantolo yezeMisebenzi.

5 Ukuqapha ukuphoqelesa nokumangala

32. ISahluko seShumi neSheduli yesiBili yoMthetho weMibandela eyisiSekelo soMsebenzi ziyasebenza ngokuguquka okudingwa ingqikithi—

- (a) ekuqapheni nokuphoqelesa kwaloMthetho; futhi
- (b) nanoma ikuphi ukumangala okuphathelele nokwaphula loMthetho.

10 Amacala

33. Kulicala—

- (a) ukuvimbela noma ukuzama ukuthonya umuntu ngokungafanele owenza umsebenzi njengokulaya kwalo Mthetho;
- (b) ukuthola/ukuzuza noma ukuzama ukuthola/ukuzuza noma imuphi umbhalo onqunyiwe ngenkohliso, ngokulutha noma ukuyisa ekhohlisayo noma umbhalo ofojiwe; noma
- (c) ukunika ukwazi/ulwazi olungamanga kunoma imuphi umbhalo onqunyiwe wazi ukuthi lololwazi lungamanga.
- (d) Ukunika/ukuhlinzeka ngezinkonzo zomsebenzi ngenzuzo ngaphandle kokubhaliswa njengokulaya kwesigaba 24.

Izinhlawulo

34. Noma imuphi umuntu olahlwe ngecala okubhekiswe kulo kusigaba 33 angagwetshwa inhlawulo noma ukudonsa inkathi engedlulile kunyaka owodwa.

Ukunika amandla

35. (1) UNgqongqoshe anganikeza amandla ngokubhaliwe kumQondisi—Jikelele noma isiphi esinye isiphathimandla soMnyango noma imaphi amandla noma isibopho esinikwe noma esigidlelwe kuNgqongqoshe yiloMthetho.

(2) UmQondisi—Jikelele ngokubhala anganika amandla noma isiphi isiphathimandla soMnyango noma imaphi amandla noma isibopho esinikwe noma esigidlelwe kumQondisi—Jikelele yiloMthetho.

(3) Noma imuphi umuntu osenikwe noma imaphi amandla noma isibopho njengokulaya kwesigatshana (1) noma (2) makasebenzise lawomandla noma agcine leso sibopho kuye ngelungelo lemibandela lowomuntu owenza ukunika ayibona idingekile.

(4) Noma ikuphi ukunika amandla njengokulaya kwesigatshana (1) noma (2)—

- (a) makube okubhaliwe;
- (b) akumnqabeli umuntu owanika lawomandla ukuwasebenzisa lawomandla noma ukwenza/ ukugcina lesosibopho; futhi
- (c) angahoxiswa noma ngasiphi isikhathi ngokubhaliwe yilowo muntu

Izimiselo

36. UNgqongqoshe angenza emuva kokubonisana neGunya laMakhono kaZwelonke, ngesaziso ku*Gazethi*, izimiselo eziphathelele nanoma iluphi udaba—

- (a) olunga noma olufanele lunqunywe ngaphansi kwalo Mthetho; futhi
- (b) oludingekile ukunquma ukuze kufezwe izinhloso zaloMthetho.

Ukuchithwa kwemithetho nezihlinzeko zesikhashana

37. (1) Imithetho okubhekiswe kuyo kuSheduli 1 ngalokhu iyachithwa kangangoba kushiwo.

(2) Ukuchithwa kwaleyo mithetho kuye ngelungelo lanoma isiphi isihlinzeko sesikhashana kuSheduli.

Act binds State

38. This Act binds the State.

Short title and commencement

39. (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 5
in the *Gazette*.

NGOMTHETHO WOKUTHUTHUKISWA
KWAMAKHONO, 1998

Umthetho Ino. 97, 1998

UMthetho uyambophezela uHulumeni.

38. LoMthetho uyambophezela uHulumeni.

Isihloko esifingqiwe nokuqala

39. (1) LoMthetho ubizwa ngoMthetho wokuThuthukiswa kwaMakhono, 1998
5 (2) LoMthetho uqala ukuba namandla ngosuku oluyonqunywa nguMongameli
ngesimemezelo kuGazethi.

Arrangements for training of trainees

6. 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*.

Grants-in-aid

7. 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*.

Fund for Training of Unemployed Persons

8. (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.

Training schemes

9. (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—

- (a) 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;
- (b) sold with the agreement of the members of the training board with jurisdiction over employers subject to the scheme before that date; or
- (c) 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.

Training levies

10. (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.

Training advisers

11. 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*.

Amalungiselelo okuqeqesha izimfunda

6. Noma imaphi amalungiselelo acatshangwe kusigaba 30 soMthetho wokuQeqeshelwa Amandla okuSebenza futhi esetshenziswa masinyane ngaphambi kokuqala kwaloMthetho ayohlala esetshenziswa sengathi uMthetho wokuQeqeshelwa Amandla okuSebenza awuchithwanga kube usuku olunqunywe nguNgqongqoshe ngesaziso ku*Gazethi*.

Izabelo/imali yokusiza

7. Isigaba 35 soMthetho wokuQeqeshelwa Amandla okuSebenza siyohlala sisetshenziswa sengathi uMthetho wokuQeqeshelwa Amandla okuSebenza awuchithwanga kuze kube usuku olunqunywe nguNgqongqoshe ngesaziso ku*Gazethi*.

ISikhwama sokuQeqesha Abantu abaNgaqashiwe

8. (1) Noma ikuphi okuseleyo kweSikhwama sokuQeqesha Abantu abaNgaqashiwe esimiswe isigaba 36A soMthetho wokuQeqeshelwa Amandla okuSebenza ngalokhu kudluliselwa kuSikhwama saMakhono kaZwelonke.

(2) Okuseleyo okudluliselwe kanjalo kungasetshenziselwa kuphela ukuqeqesha abantu abangaqashiwe.

Izikimu zokuqeqesha

9. (1) Kuye ngelungelo lohlamvana (2), noma isiphi isikimu okuqiniswe ukuthi siyabophezela njengokulaya kwesigaba 39 soMthetho wokuQeqeshelwa Amandla okuSebenza siyaqhubeka sengathi lowoMthetho awuchithwanga.

(2) Noma isiphi isikimu esinjalo masiyekwe / masinqanyulwe kungabi ngasemuva komhlaka 31 Mashi 2000 ngaphandle kokuba isikimu—

- (a) sesirejistiwe njengenhlangano engeyona yenzuzo njengokulaya kwesigaba 21 soMthetho weZinkampani, 1973 (uMthetho No. 61 ka 1973), ngaphambi kwalolo suku, kuqikelelwe ukuthi kulokho kubhaliswa noma isiphi isaziso njengokulaya kwesigaba 39(5) maqondana naleso sikimu siyaphela ukusetshenziswa;
- (b) sesidayisiwe ngesivumelwano samalungu ebhodi yokuqeqesha enamandla phezu kwabaqashi kuye ngelungelo lesikimu ngaphambi kwalolo suku; noma
- (c) sesidluliselwe kuSETA ngesivumelwano salawo malungu ebhodi yokuqeqesha ngaphambi kwalolo suku.

(3) Uma lesi sikimu siyekwa, noma iyiphi impahla namalungelo angadingekile ukugcina izibopho nezikweleti zaleso sikimu mayilahlwe ngokweziyalelo zomQondisi-Jikelele.

Izibizontela zokuqeqesha

10. (1) Kuye ngelungelo lohlamvana (2), isigaba 39 soMthetho wokuQeqeshelwa Amandla okuSebenza sizohlala sisetshenziswa sengathi uMthetho wokuQeqeshelwa Amandla okuSebenza awuchithwanga kuze kube umhlaka 31 Mashi 2000.

(2) Isaziso esigidlela izibizontela njengokulaya kwesigaba 39 soMthetho wokuQeqeshelwa Amandla okuSebenza futhi esikhishwe, ngaphambi noma ngemuva kokuqala kwaloMthetho —

- (a) singachibiyelwa nguNgqongqoshe, ngesaziso ku*Gazethi*, ukuhlinzeka ukuthi izibizontela asikhokhwe kuSETA ekhonjwe kuleso saziso; futhi
- (b) siyaphela ukusetshenziswa lapho sihoxiswa njengokuyala koMthetho weZibizontela wokuThuthukisa aMakhono.

Abaluleki ngoqeqesho

11. Izigaba 45 no 46 zoMthetho wokuQeqeshelwa Amandla okuSebenza zizohlala zisetshenziswa sengathi uMthetho wokuQeqeshelwa Amandla okuSebenza awuchithwanga kuze kube usuku olunqunywe uNgqongqoshe ngesaziso ku*Gazethi*.

Registered work-seekers

12. 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).

Private employment offices

13. 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.

Local government sector

14. (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.

Telecommunications sector

15. (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.

Abarejistiwe abafuna umsebenzi

12. Noma imuphi ofuna umsebenzi obhaliswe njengokulaya kwesigaba 4 soMthetho wokweLuleka nokuBeka, masinyane ngaphambi kokuqala kwalo Mthetho, ucatshangwa ukuthi ungorejistiwe ofuna umsebenzi njengokulaya kwesigaba 23(2)(b).

Amahovisi okuqasha angasese

13. Noma iliphi ihovisi lokuqasha langasese ebhaliswe njengokulaya kwesigaba 15 soMthetho wokweLuleka nokuBeka masinyane ngaphambi kokuqala kwaloMthetho licatshangwa ukuthi liyinkonzo yomsebenzi ebhaliswe yenzuzo njengokulaya kwesigaba 24 saloMthetho.

Umkhakha wombuso wesifunda

14. (1) ISikhwama soMbuso weSifunda wokuqeqesha (kuloluhlamvu oluphawulwe njenge "Sikhwama"), esimiswe isigaba 7 soMthetho woMbuso weSifunda wokuQeqesha siyaqhubeka, kuye ngelungelo lohlamvana (5) kuya ku (7), ukubakhona sengathi lowoMthetho awuchithwanga.

(2) Noma imuphi umgwamanda noma isikhungo, kuhlangene nomgwamanda kahulumeni wesifunda ocatshangwa njengesizinda sokuqeqesha ngaphansi kwesigaba 9A soMthetho woMbuso weSifunda masinyane ngaphambi kokuqala kwaloMthetho uyaqhubeka ukucatshangwa kanjalo inkathi eyizinyanga ezine kusukela kulokho kuqala sengathi uMthetho woMbuso weSifunda wokuQeqesha awuchithwanga.

(3) Kuye ngelungelo lohlamvana (7)(c), noma isiphi isibizontela esigidlelwe njengokulaya kwesigaba 10 soMthetho woMbuso weSifunda wokuQeqesha futhi sisetshenziswa masinyane ngaphambi kokuqala kwaloMthetho sizohlala sisetshenziswa kuze kube umhlaka 31 Mashi 2000 ngaphandle kokuba sihoxiswa ngaphambi kwalolosuku nguNgqongqoshe njengokulaya kwesigaba 2 (3) soMthetho wezibizontela wokuThuthukisa aMakhono sengathi umThetho woMbuso weSifunda wokuQeqesha awuchithwanga.

(4) Kuye ngelungelo lohlamvana (7)—

- (a) amandla anikiwe futhi nezibopho ezigidlelwe kuBhodi yokuQeqesha iMigwamanda yeMibuso yeZifunda emiswe isigaba 2 soMthetho woMbuso weSifunda wokuQeqesha angasetshenziswa futhi mawasetshenziswe yiBhodi yeMfundo nokuQeqesha yoMbuso weSifunda emiswe njengokulaya kwesigaba 12(A) soMthetho wokuQeqeshelwa Amandla okuSebenza; futhi
- (b) yonke impahla, amalungelo, izikweleti nezibopho zeBhodi yokuQeqesha iMigwamanda yeMibuso yeZifunda ngalokhu kudluliselwa kuBhodi yeMfundo nokuQeqesha yoMbuso weSifunda.

(5) UmQondisi-Jikelele: Ukuthuthukiswa kwezoMthethosisekelo uyisiphathimandla esibikayo ngeSikhwama.

(6) UNGqongqoshe weZindaba zeZifundazwe nokuThuthukiswa kwezoMthethosisekelo, angazisebenzisa izimali zeSikhwama ukuxhasa ngemali noma imuphi umuntu noma isikhungo leso ngokubona kukaNGqongqoshe esingathuthukisa amakhono, ulwazi, ubungcweti noma izimfudu zomuntu okhethelwe umkhandlu wamasipala noma eqashwe umasipala, emuva kokubonisana neBhodi yoMbuso weSifunda nokuQeqesha.

(7) Lapho iSETA imiselwa umkhakha wombuso wesifunda—

- (a) iBhodi yeMfundo nokuQeqesha yoMbuso weSifunda iyaphela ukubakhona;
- (b) impahla, amalungelo, izikweleti nezibopho zaleyoBhodi yokuQeqesha makudluliselwe kuSETA;
- (c) isibizontela okubhekiswe kuso kuhlamvana (3) sicatshangwa ukuthi siyisibizontela esigidlelwe njengokulaya kwesigaba 39(1) soMthetho wokuQeqeshelwa Amandla okuSebenza; njengoba kushiwo kuloluhlamvu 10;
- (d) iSikhwama siyaphela ukubakhona; futhi
- (e) umQondisi-Jikelele: Ukuthuthukiswa kwezoMthethosisekelo makadlulisele noma iyiphi imali eseleyo eSikhwameni kukhawundi yebhange yalowo SETA.

Umkhakha wezokuxhumana kude

15. (1) Kuye ngelungelo lohlamvana (2), iSikhwama saMandla Abasebenzi okubhekiswe kuso kusigaba 78(1) soMthetho wezokuXhumana Kude siyaqhubeka ukubakhona sengathi izigaba 78 kuya ku 87 zalowoMthetho azichithwanga.

- (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.

Exemptions from transfer duty, donations tax or any other tax

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

- (2) ISikhwama okubhekiswe kuso kuhlamlvana (1) siyaphela ukubakhona—
(a) mhlaka 31 Mashi 2000; noma
(b) ekumisweni kweSETA enamandla kumkhakha wezokuxhumana.
- (3) Uma lesoSikhwama siphela ukubakhona njengokulaya—
(a) kohlamlvana 2(a), imali eseleyo eSikhwameni mayidluliselwe kwiSikhwama saMakhono kaZwelonke; noma
(b) kohlamlvana 2(b), imali eseleyo eSikhwameni mayidluliselwe kuSETA okubhekiswe kuyo kulolo hlamlvana.
- (4) Kuye ngelungelo lohlamlvana (5), iminikelo ecatshangwe kusigaba 86 (1) soMthetho wezokuXhumana Kude esetshenziswayo masinyane ngaphambi kokuqala kwaloMthetho, izohlala isetshenziswa kuze kube umhlaka 31 Mashi 2000 sengathi lowoMthetho awuchithwanga.
- (5) Uma iSETA enamandla emkhakheni wezokuxhumana imiswa, iminikelo ecatshangwe kuhlamlvana (4) mayifakwe kulowo SETA.

Iziyekelo kusibopho semali yokudlulisa impahla, intela yezipho noma iyiphi enye entela

16. Noma ikuphi ukudluliswa kwempahla noma amalungelo acatshangwe kuleSheduli kukhululiwe kusibopho semali yokwedlulisa impahla, intela yezipho noma iyiphi enye intela.

