



NATIONAL ECONOMIC DEVELOPMENT AND LABOUR COUNCIL

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LABOUR MARKET CHAMBER

NEDLAC REPORT ON THE SKILLS DEVELOPMENT ACT AMENDMENT BILL, 2008

1. INTRODUCTION AND BACKGROUND

- 1.1. As a result of the need for technical adjustments to the skills development policy that would come about due to the impending conclusion of the review of the National Qualifications Framework coupled with the emergence of issues related to ASGI-SA and JIPSA, the Department of Labour commenced during the first quarter of 2007 with a pro active internal technical review of the Skills Development Act, Act 97 of 1998.
- 1.2. The Department of Labour (DoL) tabled the issues before the chamber meeting held in September 2007. DoL reported that the technical adjustments to the Act and the employment services regulations were still work in progress and not as yet ready for referral to Nedlac. It was then agreed that the amendment to the SDA will be gazetted and would be brought to Nedlac in April 2008.
- 1.3. After lengthy and numerous initial internal and external stakeholder discussions had been held including discussions between DoL and DoE as well as within the National Skills Authority, the Minister of Labour approved the publication in the Gazette of the Skills Development Amendment Bill 2008 for a 30 day public comment period. The Gazette was published on 28th February 2008.
- 1.4. At the same time the Minister also instructed the Department to refer the Bill to Nedlac for discussion with social partners as is required by the Nedlac Act.
- 1.5. The Department received a large number of comments from a variety of stakeholders during the public comment period. Numerous changes were effected to the Bill as result of these comments received. The version of the Bill that was referred to Nedlac for discussion at the Task Team of the LMC contained all these changes.
- 1.6. In essence it is proposed that the Skills Development Act (1998) would be amended due to the need for technical adjustment as follows:

- The National Skills Fund (NSF) which had to be registered as a public entity under Schedule 3A because it is funded by Levies and not by Fiscus from National Treasury;
- The establishment of the Quality Council for Trades and Occupations requested by the Joint Policy Statement on the review of the National Qualifications Framework;
- The transfer of provisions in the sections of the Manpower Training Act 1981 in line with apprenticeships and the need for promotion and development of artisans in the country; and
- Strengthening the further implementation of Employment Services System.
- The inclusion of Productivity South Africa as a juristic person under the Skills Development Act.

2. NEDLAC PROCESS

2.1. The Department of Labour presented the Bill at the task team meeting held on 28 March 2008.

2.2. The task team comprised of the following representatives:

Business: V. Harbhajan; J. Botha; V. Mabena; T. Skenjana and M. Majola.

Labour: S. Moshoeshoe; I. Masita; J. van Niekerk and S. Gangca.

Government: S. Morotoba; F. Prinsloo and J du Preez.

Community: K. Mbongo; M. Toni and B. Modise.

2.3. The task team met on the following dates:

- 28 March 2008
- 04 April 2008
- 08 April 2008
- 14 April 2008

3. INPUTS RAISED BY CONSTITUENCIES

- 3.1. Business – See Annexure A
- 3.2. Community – See attached pdf document
- 3.3. Labour – See Annexure C

4. AREAS OF AGREEMENT

4.1. Comments on agreements reached on each section of the bill are noted below:

4.1.1. Section 1 – Definitions

It was agreed to amend this section of the bill to allow only the minimum number of strategic level definitions to be included. Further operational definitions would be developed and included into regulations that will need to be developed as a result of the technical adjustments included in the bill. This is especially the case related to QCTO, artisan development and employment services.

4.2. Section 2 – Purposes of the Act

It was agreed to amend this section of the bill to give greater emphasis on the needs of unemployed persons.

4.3. Section 5 – Functions of the National Skills Authority

It was agreed to revert to the status quo whereby the NSA remains the advisory body to the Minister on allocation of funds from the NSF, with an adjusted phrasing of the Section 5 (1) a (iv) to broaden the advise given by the NSA to the Minister on the use of NSF Funds.

4.4. Section 6 – Composition of NSA and term and vacation of office.

It was agreed to amend this section of the bill so that the Minister appoints a new member or chairperson within ninety (90) days of a member or chairperson vacating his/her office.

4.5. Section 23 – Employment Services

It was agreed to amend this section of the bill to emphasize the needs of the unemployed and rural communities. It was also agreed to revert back to the current act that requires employers to only register vacancies with labour centres should it be prescribed.

4.6. Chapter 6B, Section 26E – Skills Development Institutes

It was agreed to accept this section of the bill as is once it was confirmed by the State that such Skills Development Institutes would be inclusive of public or private organizations, whether stand alone juristic persons or within other juristic persons such as the case with training centres of large private sector companies.

Note: Section 26E was included under Chapter 6A in the Bill signed off by the Task Team. However subsequent to the meeting on Monday 14th April 2008, the Department was advised by its legal team to separate section 26E from Chapter 6A since

Chapter 6A only refers to Artisans while the Skills Development Institutes would cover any form of learning, not just artisan.

- 4.7. Chapter 6C, Section 26F to Section 26J – Quality Council for Trades and Occupations.
It was agreed to accept this section of the Bill with an addition to Section 26J to include the option for the Minister to make regulations for recognition of prior learning in respect of occupational qualifications.
- 4.8. Chapter 6D – Workplace Productivity and Competitiveness.
It was agreed to accept the inclusion of the section into the bill although it had not been there at the outset.
- 4.9. Section 28 – Use of the money in the Fund {National Skills Fund}
It was agreed to amend this section of the bill so that the Minister and not the Director General would have the power to prescribe the limit of levy funds which the fund could use for administration of the fund.
- 4.10. Section 29 – Control and Administration of the Fund {National Skills Fund}
It was agreed to amend this section of the Bill to remove the proposed National Skills Advisory Board and revert to the status quo whereby the NSA remains the advisory body to the Minister on allocation of funds from the NSF. This change also results in the removal of the proposed Schedule 5 of the Bill. It was also agreed that the Director General could be Accounting Authority for the NSF.
- 4.11. Section 36 – Regulations
It was agreed to amend this section of the Bill to revert to the status quo whereby the Minister may, after consulting the NSA, make regulations concerning the administration, operation, functioning, and obligations of the NSF.

5. AREAS OF DISAGREEMENT

- 5.1. Both Labour and Government were in support of the expansion of the Productivity South Africa to accommodate Community Constituencies' request for representation in the Board. Business objected to the expansion of the current membership of the Board to accommodate Community constituency.
- 5.2. The National Skills Fund Governance Model - Section 5
Business requested that the NSF be created a public entity and Community requested that the NSA should be created a public entity but

the UIF Model as proposed by Government was not supported by the social partners.

6. AREAS THAT NEEDS FURTHER DELIBERATION

- 6.1. It was acknowledged and agreed to by all the constituencies that the Bill allows for technical adjustments to the current Skills Development Act for the reasons noted under item 1.3.
- 6.2. The constituencies thus agreed that only those sections of the Skills Development Act as reflected in the Bill were to be amended at this time.
- 6.3. However all constituencies acknowledged that there are other areas of the Skills Development Act that need further review, in particular the sections dealing with:
 - o Sector Education Training Authorities (SETAs)
 - o National & Provincial Government Departments
- 6.4. It was agreed that these areas would be tabled for future discussion in the Labour Market Chamber pending outcomes of the current SETA Review process underway at NEDLAC.

7. CONCLUSION

- 7.1. It is acknowledged that the Nedlac parties may continue to advocate their views during the public consultation process at Parliament.
- 7.2. This report, therefore, completes consideration of the Skills Development Act Amendment Bill 2008 in Nedlac, and the report is hereby submitted to the Minister of Labour in terms of Section 8 of the Nedlac Act, No 35 of 1994.
- 7.3. The Bill makes reference to the National Qualifications Framework Act and it should be noted that consultations on the NQF had not been completed by the Nedlac social partners during the finalization of the Skills Development Amendment Bill.

ANNEXURE A

BUSA COMMENTS ON THE SKILLS DEVELOPMENT AMENDMENT BILL, 2008

Section 1: Definitions

"apprenticeship": It is proposed that the term "learnership" should not be used when defining the term 'apprenticeship' as it creates the impression that the learnership route is different from the apprenticeship route. There is only one route to becoming an artisan through the apprenticeship route that leads to a trade test.

"community of expert practice": It is proposed that these practitioners should be appointed by the QCTO rather than the Department as it is proposed. Since the QCTO will be a juristic person it would be more prudent if it appoints such practitioners. It is further proposed that guidelines and criteria for the appointment of these practitioners should be developed and published through regulations.

"Foundational learning": The definition of this term should be linked to the occupational foundational learning as contemplated in the occupational qualifications framework.

"Lead Artisan": The definition of a 'lead artisan' is irrelevant as no artisan is qualified beyond NQF Level 4. A person with a NQF Level 5 qualification holds a diploma. It is therefore proposed that this definition should be removed as it has no clear reference to this Bill nor to the artisan qualification in South Africa.

"Learning programme": The definition that is contemplated in the NQF Bill is preferred. The proposed definition in the SDA Bill suggests different routes to artisan qualification. All learning activities in the internship, apprenticeship, learnership culminating in a trade test are similar which all mean a single route.

"occupational qualification": An occupational qualification needs to be expanded properly through a guideline or published regulations.

"service level agreement": There needs to be a definition of this term as it is contemplated in Section 5(h)(ii). The use of this term in this section may be interpreted differently in different sectors or contexts leading to different practices that may cause confusion.

"Institutes of Sectoral Occupational Excellence": This term needs to be defined as it is not clear how these institutions are different from other providers referred to in this Bill.

"unit standard": It is necessary to define this term in this Bill and then make proper reference to it when dealing with the OQF and the functions of the QCTO. In this way there will also be proper liaison and link with the NQF Bill and the GEFTQA Bill.

"placement opportunity" – It means 'any' opportunity for work or learning that could be offered to an individual and includes a vacancy for employment, an opportunity for self-employment, a learning programme and community service". The concern lies in the provisions

that arise later on in the Bill which allow the Minister to develop regulations in regard to Employers having to report such placement opportunities to Provincial/ Local Department of Labour Offices etc. What about organisations that have internal advertising processes first? What about the interpretation of "learning programme" as many TES provide learning programmes as part of the client service arrangement – must these also now form part of the reporting requirement? The potential impact is enormous and interpretation of these provisions too broad and unclear

Section 2 : Purposes of Act

Section 2 (2) (a) (vii): The word "*Institute*" should be included to enable this clause to read as follows:

"Artisan development Institute and or Institutes of Sectoral Occupational Excellence".

Section 5 : Functions of the National Skills Authority

Section 5(1) (f): It is not clear what is meant by "strategic framework" in this clause especially when it is compared with the role of the NSF Board.

Section 10: SETA Responsibilities

Section 10 (1) (i): It is provided that "A SETA must...liaise with the Provincial Offices and labour centres of the Department....about placement opportunities". The impact of this provision on TES is a concern because TES as levy-paying members of SETA's should surely be provided with preferential opportunities to optimise placement opportunities as defined above.

Section 6: Composition of National Skills Authority and term and vacation of office

The legislation is silent on the process to be followed when a NSA Chairperson resigns during the term of office. It is proposed that a provision should be inserted which compels the Minister to appoint a new Chairperson *within 90 days*. A further provision should allow the Minister to make an interim appointment of the Chairperson from the ranks of the Deputy Chairpersons.

Section 16: Learnerships

Section 16 (1) (b): It is proposed that the words "*of a specified nature and duration*" be retained in this clause.

Section 16 (2): Learnerships and apprenticeships to artisan qualification are viewed as being identical. Therefore they are not different learning programmes. They are a single route to artisan qualification.

Section 23 : Employment Services

Section 23 (1) (b): Each province must establish a skills development forum to engage on and co-ordinate skills development activities. There appears to be a degree of duplication as these provincial offices are also required to establish or register skills development providers and Institutes of Sectoral and Occupational Excellence (ISOE).

Section 23 (2): This section continues to provide that the functions of the Labour Centres in the Provinces include: "to register placement opportunities". The earlier concerns expressed in regard to the interpretation, nature and extent of what a placement opportunity encompasses is of serious concerns – this is because it may have a prejudicial impact on the industry's profitability, market growth, responsiveness, ability to pursue identified opportunities, confidentiality and the like. The inclusion of "learning" opportunities complicates the matter seriously as an employer would have to also register such learning opportunities with the Labour Centre...

Section 23 (3): The Amendment Bill continues to provide that: "The Minister may, after consulting the NSA, ...require each EMPLOYER (ie TES and their clients) to notify a labour centre in the prescribed manner of (a) any placement opportunity that employer has; and (b) the placing of any worker referred by that labour centre in any placement opportunity with that employer." Given the foregoing concerns raised, this obligation ignores a range of practicalities that exist in companies, such as internal adverts, career and succession planning, centralised recruitment and selection as opposed to regional recruitment and the like. In addition, the impact of this could be that employers of domestic servants and gardeners would have to register opportunities when they arise.

Chapter 6 A : Artisan Dvelopment

Section 26A: The details of how to administer the functions of the national artisan moderation body must be built into the relevant regulations.

Section 26D: There is only one route to artisan qualification, therefore the apprenticeship and learnership should not be separated as two routes.

It is proposed that a trade test in respect of a specified trade must be written on the following conditions:

- a learner must have acquired the relevant knowledge;
- a learner must have completed the relevant practical training; and
- a learner must have had reasonable exposure to the work experience in the specified trade and demonstrate readiness to take the test.

Section 26E: There needs to be a clear distinction between Artisan Development Institutes and Institutes of Sectoral Occupational Excellence. There is no clarity on the differences between the two types of institutes.

Section 26E (1) (a): Insert "of" between ".....assessment" and ".....artisan" to read ".....assessment of artisan" It is also proposed that learners or apprentices should be assessed and not artisans. Therefore "artisan" should be replaced with 'learners' or 'apprentices'.

Section 26E (1) (b): It is not clear what is meant by "*professional development for artisans*" in this clause.

Section 26 E (2): Some training centres belonging to registered companies that are involved in the training of artisans may not necessarily be "juristic person". Does this mean that such training centres will not qualify as artisan institutes or institutes of sectoral occupational

excellence? This is also the reason why there must be a definition of the institutes of sectoral occupational excellence.

Chapter 6B : Quality Council for Trades and Occupations

Section 26F (1)(c) : "*occupational standards*" need to be defined in order to differentiate them from "*unit standards*" if indeed there is a difference between these two terms.

Section 26H: The functions of the QCTO need to be linked or aligned with the functions of other Quality Councils (QCs) as contemplated in the NQF Bill. This should help with clarifying their different roles and limit their bounds at the same time foster integration and articulation amongst the QCs.

Section 26H (2): The difference between clauses (b) and (d) is not clear. One of these must be deleted if there is no difference in meaning between them.

Section 28: Use of money in fund

It is proposed that money allocated to the NSF may be used to administer the Fund at a limit not exceeding two percent of the fund income even if the Director General may limit the prescribed amount to be used for administration.

Section 29: Control and administration of Fund

Section 29 (1) (d): It is proposed that the NSF should be established as a juristic person with a full Accountable Board appointed by the Minister. As a juristic person the Board must be responsible for the appointment of the Executive Officer.

Section 29 (6) (a): The term "*strategic framework*" needs to be clarified in this clause.

The functions of the NSF need to be articulated and clarified just as those of the QCTO have been articulated in this Bill.

General:

Section 36:

A further concern arises in section 36 where the Minister is provided with unjustifiably broad powers to (after consultation with the NSA) make regulations concerning "any matter which may or must be prescribed under this Act". Given the impact of various current and pending statutory regulations on the social partners beyond the skills development domain, there should be engagement at NEDLAC as well. This concern appears to be well founded given a later provision in paragraphs (o), (p) and (q) where the Bill provides that:

"circumstances specified in the regulations under which a private employment services agency may charge fees in respect of an services provided by private employment services agencies and the maximum fees that may be charged...services for which private employment services agencies may not charge work seekers fees...a form for registering private employment services agencies..."

ANNEXURE C

Comments from the Labour Constituency for 2008 Bills at Nedlac on the 28 March 2008

1. Skill Development Amendment Bill, 2008
 - Definitions
 - i. No definition of SDF
 - ii. No mention of Skills Development Committees
 - iii. No mention of "worker" / "employee"
 - iv. Compulsion with Employment Equity
 - v. Link between EE and SD*
 - Purpose of the bill
 - i. Composition of National Artisan Moderation Body?
 - ii. 5.1.a.iv) we have a problem with the removal of allocation authority from the NSA. Clarify reason for "removal of teeth"... (NB: All references to be considered)
 - iii. 3c (p. 13): Organised labour questions the participation of training providers in decision-making process as this might result in a conflict of interest.
 - iv. 4: Amend to read "holds office for a period not exceeding five years and may be reappointed at the expiry of his or her term of office, but may not serve for more than two consecutive terms of office"
 - v. S22: 9.1.b: Delete personnel and financial and replace with "resources and capacity"
 - vi. Typing error (23.c) "institutes"
 - Main Features of the Bill
 - Promotion and Development of Artisans
 - Transfer of provisions in the existing sections of the Manpower Training Act 58 of 1981, in respect of apprenticeship
 1. Definition of lead and entrepreneurial artisans
 2. Process of consultation should include workshops
 - Strengthening the further implementation of Employment Services
 - Establishment of the QCTO as required by the Joint Policy Statement on the review of the NQF
 1. Amend to read "holds office for a period not exceeding five years and may be reappointed at the expiry of his or her term of office, but may not serve for more than two consecutive terms of office"
 - Listing of the NSF as a Public Entity
 1. We note with concern that resources meant for development are being overstretched through the creation of unnecessary administrative/ bureaucratic structures
 2. Furthermore that the Role of the National Skills Authority is being diminished