

# In the hot Seta

*The Skills Development Act, 1998 (SDA) established the new regulatory framework for promoting and developing the skills of the South African workforce and for achieving the objectives of the national skills development strategy. Dawn Norton and Brendan Barry analyse the impact of the amendments to the Skills Act which were originally drafted to bring Setas into line.*

In July, the Minister of Labour presented the Skills Development Amendment Bill, 2003 (the Amendment Bill) to Parliament, proposing various changes to the SDA that are designed to support and strengthen its implementation. The Amendment Bill has two broad objectives, firstly to strengthen the Minister's powers over sector education and training authorities (Setas) in response to various problems experienced since the SDA came into operation. Secondly to introduce a number of amendments of a more technical nature in order to improve the operation of the SDA.

Setas are critical institutions in the implementation of the SDA and the national skills development strategy. They provide a significant opportunity for trade unions to promote the education and training of workers. Trade union representatives sit on the governance structures of most Setas and are able to influence the type and quality of education and training and its financing in their respective economic sectors. As an indication of the scale of their activities to date - Setas have registered over 400 learnerships with the Department of Labour and more than 30 000 workers

have entered into learnerships agreements under Seta auspices. The funds available to Setas to perform their functions are significant. Between April 2001 and December 2002, Setas administered approximately R4,1 bn.

Minister of Labour, Membethisi Mdladlana has motivated for the Amendment Bill in the following terms:

*'... Whilst many of the achievements that I have alluded to are the product of the hard work of the Setas, it a matter of public record that some of the Setas have not worked well... It has been patently painful for me to watch with paralysis; incidences of poor performance, inadequate accountability and in some instances financial impropriety... The central reason for the Amendments are to give me the right to fix the problems that have arisen.'*

The principal amendments proposed by the Amendment Bill are discussed below.

## **Amendments affecting Setas Annual service level agreements**

In order to improve the performance of Setas and to render them more accountable to the Department of Labour, each Seta will now be required to conclude an annual service level

agreement with the Director-General of Labour. The agreement will set out performance standards, criteria, targets and reporting requirements. If the Director-General and a Seta cannot agree on the content of a service level agreement, the Minister will determine its content, after consulting the National Skills Authority.

## **Composition of Setas and equity considerations**

The proposed amendments will require each Seta to address equity considerations both in relation to its governing body and to its employees. In this regard, Setas must ensure that the organised employer, organised labour and relevant government constituencies represented on their governing bodies are sufficiently representative of designated groups (defined as black people, women and people with disabilities). The Minister will also be empowered to issue written instructions to Setas, setting out the required steps that they must take in the event that they do not prepare and implement an employment equity plan as contemplated by the Employment Equity Act, 1998, and to take steps against Setas who do not comply. *Seta finances*

Column contributed by Cheadle, Thompson and Hayson

Under the current law, the Minister prescribes limits on the administration expenditure of Setas. The proposed amendment will extend the Minister's discretionary power to prescribe the amount that a Seta may spend on:

- any aspect of its administration (irrespective of who performs its administration or management);
- salary bands within which employees may be remunerated;
- conditions under which employees may receive performance-related payments and the maximum payment that may be made in this regard; and
- allowances that may be paid to members and office-bearers of Setas or any other person who serves on a committee or other structure of a Seta.

Setas were listed as national public entities under the Public Finance Management Act, 1999 (PFMA) by the Minister of Finance with effect from 1 April 2001 and from that date were subject to the financial accountability provisions of the PFMA. The proposed amendment explicitly requires that Setas be managed in accordance with the PFMA and that each Seta prepare annual budgets, annual reports, financial statements and supply copies of these documents to the Director-General.

#### **Under-performing Setas**

The Amendment Bill seeks to empower the Minister to issue written instructions to an under-performing Seta, stipulating the steps that the Seta must take to remedy the situation and the period within which steps must be taken. The Minister may do so if a Seta:

- is not performing its functions;
- is not complying with its service level agreement;

- is not managing its finance in accordance with the Act;
- is not sufficiently representative in its membership; or
- has not prepared and implemented an employment equity plan.

If a Seta does not comply with an instruction, the Minister may:

- direct the Director-General to withhold all or a part of the Seta's levies or to appoint an administrator to take over the administration of the Seta or to perform its functions;
- order an investigation into the management and administration of the Seta; or
- take any other steps necessary to ensure that the Seta performs its functions or manages its finances in accordance with the Act.

Furthermore, if a Seta unreasonably fails to institute disciplinary proceedings for misconduct against any employee of the Seta, the Minister may direct the Seta to institute disciplinary proceedings.

#### **Taking over Seta administration**

The Amendment Bill extends the circumstances in which the Minister may direct the Director-General to appoint an administrator to take over the administration of a Seta or to perform its functions to include circumstances where the Seta fails to

comply with its service level agreement or fails to comply with an instruction issued by the Minister.

Under the current law the Minister is required to consult the National Skills Authority and the Seta concerned before directing the Director-General to appoint an administrator. The Amendment Bill will allow the Minister to act without consultation if the matter involves financial mismanagement and the delay caused by the consultation will be detrimental to the Seta's capacity to perform its SDA functions.



### Amalgamating Setas and changing their scope

The Amendment Bill empowers the Minister of Labour to amalgamate two or more Setas after consulting the National Skills Authority and the Setas in question. It also empowers the Minister to change the economic sector of a Seta after consulting the same parties.

### A new Seta function

The Bill seeks to introduce a new function for Setas - obliging them to promote a national standard of good practice in skills development which will be established by the Minister of Labour. The Department of Labour is currently piloting an international skills development standard - 'Investors in People' - a standard that recognises organisations for demonstrating their commitment to developing and recognising their employees. In addition to empowering the Minister to establish a national standard, the Bill will allow the Minister to establish an agency to promote the national standard. The Director-General will also be authorised to allocate funds from the National Skills Fund to promote the national standard.

### Regulations and Setas

The proposed amendments will extend the Minister's powers to make regulations on various matters relating to Seta functions. These include regulations on:

- procedures, time periods, assessment criteria and standards for the performance of Seta functions;

- in respect of grant allocations by Setas - categories and amount of grants, criteria or conditions attached to grants, evaluation of grant applications and the manner in which grants may be allocated; reporting by Setas and employers; and
- the financial systems that Setas must utilise.

### Other proposed amendments

#### *An intermediate agency for learnerships*

Under the current law, parties to a learnership agreement are restricted to the learner, the employer (or a group of employers) and a training provider. Small businesses have apparently been reluctant to enter into learnership agreements and the proposed amendment therefore seeks to introduce a new concept allowing an employer to contract a dedicated agency to perform the employer's functions in respect of the learnership agreement and the associated contract of employment. The Department of Labour hopes that this amendment will increase the number of learnerships provided in small firms and non-governmental organisations.

#### *Private employment agencies*

Private employment agencies are currently required to register with the Department of Labour. The Amendment Bill proposes empowering the Director-General to deregister unscrupulous employment agencies and where necessary compel them to close. The amendment will also empower labour inspectors appointed under the Basic

Conditions of Employment Act, 1997 to issue orders to cease conducting business as a private employment agency.

#### *Funding the administration of the National Skills Fund*

The Amendment Bill proposes that a maximum of 2% of money allocated to the National Skills Fund be used to administer the Fund. This will bring the Fund into line with other labour market statutory funds at the same level applicable to payments to the South African Revenue Services for collecting the skills development levy.

### The Minister's general regulation-making powers

The amendment also proposes extending the Minister's general regulation-making powers to include:

- employer obligations to appoint workplace skills facilitators and the rights and functions of workplace skills facilitators;
- trade union consultation rights on skills development matters;
- private employment services agencies; and
- the administration, operation, functioning and obligations of the National Skills Fund.

### Amendment to the Mine Health and Safety Act, 1996

The Mining Qualifications Authority (the 'MQA') was established under the Mine Health and Safety Act, 1996 and later recognised as the Seta for the mining industry when the SDA was introduced. The amendments seek to clarify the legal status of the MQA and to address the anomalies resulting from its governance under two different laws.

*Dawn Norton and Brendan Barry are attorneys at Cheadle Thompson and Haysom Inc.*

1. The Amendment Bill was approved in September 2003 by the Labour Portfolio Committee of the National Assembly and at the time of writing this article was under consideration by the National Council of Provinces. It is expected that the Bill will be passed by Parliament and assented to by the President before the end of the year.  
 2. Department of Labour, *Interim Annual Report for 2002 / 2003*, pg 34.  
 3. Minister of Labour's speech on 17 September 2003, on the tabling of amendments on the SDA.

