

# The Skills Development Act

*transforming education and training for workers*

Parliament passed the Skills Development Act, 1998 ('the Act') in the context of high unemployment, grossly unequal distributions of income, inequality of opportunity based on the legacy of apartheid, poverty and low levels of investment in the South African labour market. The Act aims to address these features by way of a new set of institutions and financial schemes.

The purpose of the Act is to:

- develop the skills of the workforce;
- improve workers' quality of life, prospects of work and labour mobility;
- improve productivity in the workplace;
- promote self employment;
- improve the delivery of social services;
- increase the levels of investment in education and training in the labour market and improve the return on that investment;
- encourage employers to use the workplace as a learning environment;
- encourage workers to participate in learnerships and other training programmes to improve their employment prospects;
- help work seekers find work.

Parliament passed the Act on 20 October 1998 and most of its provisions came into operation on 10 September 1999. The Act repealed the whole of the Manpower Training Act, 1981, the Guidance and

*Brendan Barry and Dawn Norton outline the new legislation dealing with skills development.*

Placement Act, 1981, the Local Government Training Act, 1985 and the sections of the Telecommunications Act, 1996 which deal with training. The Act creates significant opportunities for trade unions to influence the type and extent of training to be provided by employers to workers.

## The National Skills Authority

The Act establishes the National Skills Authority (NSA).

The functions of the NSA are to:

- advise the Minister of Labour on a national skills development policy, a national skills development strategy and guidelines on its implementation;
- advise the Minister of Labour on the allocation of funds from the National Skills Fund;
- liaise with Sector Education and Training Authorities (SETAs) on the national skills development policy and strategy;
- conduct investigations on any matter arising out of the application of the Act.

Column contributed by Cheadle, Thompson and Haysom

The NSA is composed of 27 members appointed by the minister. Five members represent organised labour, five represent organised business, five represent community and development interests, five represent the interests of the state, four represent the interests of education and training providers, two have expertise in the provision of employment services and one member is nominated by the South African Qualifications Authority (SAQA).

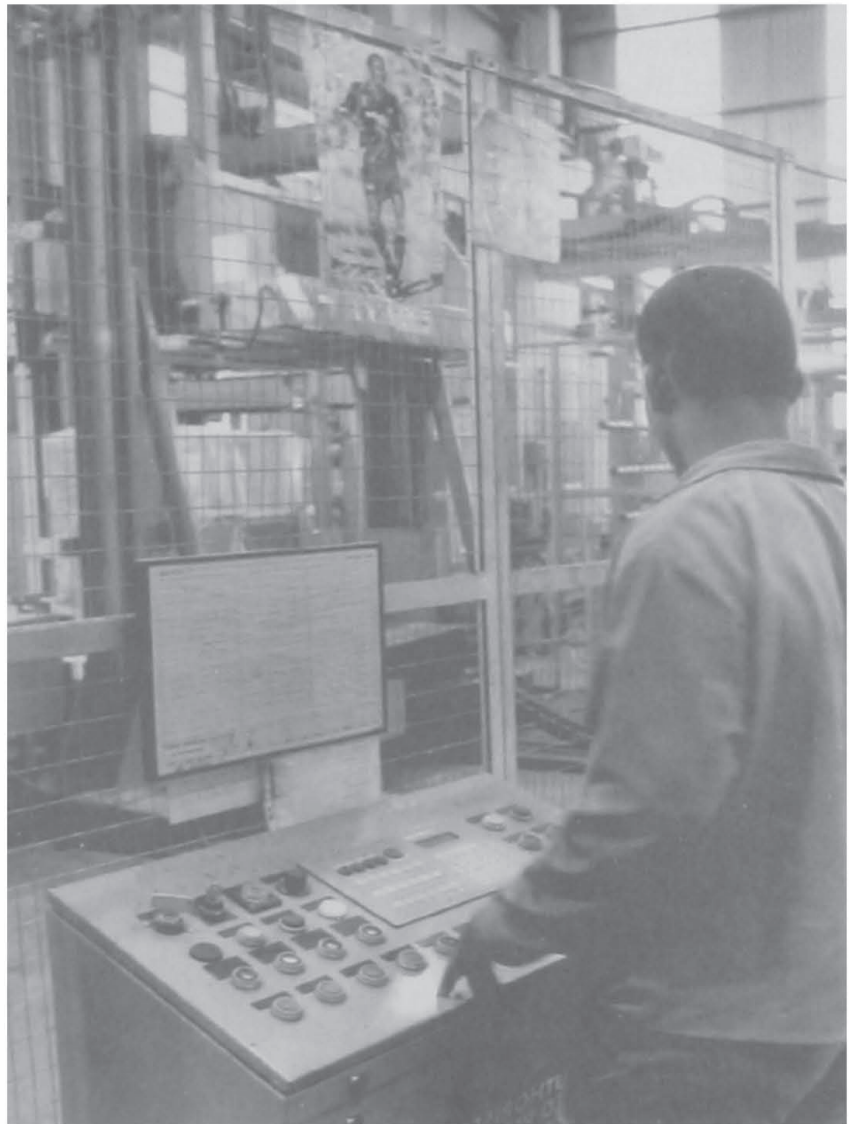
A member of the authority holds office for a period of three years and is eligible for re-appointment.

### SETAs

On 20 March 2000 the Minister of Labour established 25 SETAs, each with jurisdiction over a defined economic sector. On the same day the Minister of Labour abolished the 33 training boards established under the Manpower Training Act, 1981.

The Act provides that the assets, rights, liabilities and obligations of those training boards are transferred to the SETA responsible for their economic sector. As an interim arrangement, existing apprenticeships must be dealt with in terms of the Manpower Training Act, 1981, but the SETA must perform the functions of the old training boards with respect to the apprenticeship contracts.

The Minister of Labour will set a date on which this interim arrangement will end and publish it in the Government Gazette. On that date, existing



*The Skills Development Act aims to develop workers' skills.*

apprenticeship contracts will be considered as learnerships under the Skills Development Act. The primary functions of each SETA are to:

- develop a sector skills plan;
- implement the sector skills plan;
- promote learnerships;
- approve workplace skills plans;
- monitor education and training in the sector;
- allocate grants;
- support the development of learning materials.

A SETA consists of representatives from organised labour, organised employers (including small business) and relevant

government departments and may also include representatives from interested professional bodies and bargaining councils in the particular sector if the minister so approves.

Organised labour is represented on each of the 25 SETAs. Each SETA must consist of an equal number of members representing employers and employees.

The Act obliges SETAs to apply to SAQA for accreditation as Education and Training Quality Assurance bodies. Once so accredited SETAs will be responsible for the accreditation of training providers and quality assurance of their training.

## **Learnerships**

SETAs are responsible for establishing learnerships in their economic sectors. Learnerships are intended to address the gap between current education and training provision and labour market needs. Learnerships must consist of a structured learning component, and practical work experience of a specified nature and duration which leads to a qualification registered by SAQA and which is related to an occupation. Learnerships replace the old apprenticeships under the Manpower Training Act, 1981. Learnerships are

### **The 25 SETAs**

- SETA 1: Financial and Accounting Services
- SETA 2: Banking Sector Education and Training Authority
- SETA 3: Chemical Industries Education and Training Authority
- SETA 4: Clothing, Textiles, Footwear and Leather Sector Education and Training Authority
- SETA 5: Construction Education and Training Authority
- SETA 6: Diplomacy, Intelligence, Defense and Trade & Industry Sector Education and Training Authority
- SETA 7: Education, Training and Development Practices Sector Education and Training Authority
- SETA 8: Energy Sector Education and Training Authority
- SETA 9: Food and Beverages Manufacturing Industry Sector Education and Training Authority
- SETA 10: Forestry Industries Sector Education and Training Authority
- SETA 11: Health and Welfare Sector Education and Training Authority
- SETA 12: Information Systems, Electronics and Telecommunication Technologies
- SETA 13: Insurance Sector Education and Training Authority

- SETA 14: Local Government, Water and Related Services Sector Education and Training Authority
- SETA 15: Media, Advertising, Publishing, Printing and Packaging
- SETA 16: Mining Qualifications Authority
- SETA 17: Manufacturing, Engineering, and Related Services Education and Training Authority
- SETA 19: Police, Private Security, Legal and Correctional Services
- SETA 20: Primary Agriculture Education and Training Authority
- SETA 21: Public Sector Education and Training Authority
- SETA 22: Secondary Agriculture Sector Education and Training Authority
- SETA 23: Services Sector Education and Training Authority
- SETA 25: Tourism and Hospitality Education and Training Authority
- SETA 26: Transport Education and Training Authority
- SETA 27: Wholesale & Retail Sector Education and Training Authority

The anticipated SETAs in 'Personal care' and 'Sports, Arts, Culture and Entertainment' were not established because they were not financially viable.



*Learnerships are also available to unemployed workers.*

intended to improve the old system by:

- offering training both within and beyond the formal sector;
- focusing on a wider range of occupations;
- integrating theoretical education with skills training.

Furthermore, learnerships are available to a wider range of learners including first-time work seekers and unemployed workers.

Learnerships are established by learnership agreements between a learner, an employer and an accredited training provider and must be registered with the relevant SETA. The learner and employer must also enter into a contract of employment. The SETA is required to give a record of learnerships to the Department of Labour.

### **Planning Unit**

The Act provides for the establishment of a Skills Development Planning Unit in the

Department of Labour. This Unit will research and analyse skills deficits and needs in the labour market and assist in formulating the national skills development strategy. The Unit will also provide information on skills to the Minister of Labour, the NSA, SETAs, education and training providers and organs of state.

### **Financing**

The Skills Development Levies Act, 1999 is an allied piece of legislation concerned with the financing of the Skills Development Act. As from 1 April 2000 employers will be obliged to pay a levy of 0,5% of their payroll to the South African Revenue Service (SARS). This levy will increase to 1% as from 1 April 2001.

The purpose of this levy is to fund the skills development of employees and unemployed persons.

Employers who are exempt from



*Learnerships will integrate theoretical education with skills training.*

paying the levy include:

- ❑ those who are exempt from income tax in terms of section 10(1)(f) or section 10(1)(fA) (religious, educational or charitable institutions) of the Income Tax Act, 1962;
- ❑ employers who are not required to register as employers with the SARS on grounds that all their employees are not liable for PAYE and whose total payroll is estimated to be less than R250 000 per annum or such other amount determined by the Minister of Labour.

A public service employer in the national or provincial sphere of government and any public entity which gets 80% or more of its expenditure from funds voted by parliament (such as the Human Rights Commission or Gender Commission) is

not required to pay the leviable amount. However, they must budget the same amount (ie 0,5% and later 1%) for purposes of education and training.

The Department of Labour estimates that the skills development levy grant scheme will yield about R1-billion for training and skills development this year and double that next year. The SARS will distribute:

- ❑ 80% of the levies (ie approximately R800-million) to SETAs (in proportion to the amounts collected from employers registered with a particular SETA);
- ❑ the remaining 20% (ie approximately R200-million) to the National Skills Fund ('Fund').

The money in the Fund may be used only for projects identified in the national skills

strategy as national priorities, or for other projects the Director-General of Labour determines are related to the purposes of the Act. These national projects are in the process of being identified.

Employers may reclaim much of the levy they have paid if they provide skills training for their workforce. The aim of the levy is to encourage employers who do not offer training opportunities for their employees (or very little training) to raise the skills levels of their employees.

The employer's incentive to provide training is to recover a proportion of their levy. In turn the levy rewards employers who currently provide significant skills training to their employees because they may now recover a proportion of their training expenditure. Furthermore, each SETA will make grants available to employers who are able to implement training for specific skills shortages identified by the SETA.

It is anticipated that employers will be concerned to recover as much of the levy they have paid as possible. An employer may recover:

- 15% of their levy if they employ or appoint a Skills Development Facilitator;
- 10% if they prepare a workplace skills plan;
- 20% if they implement this plan.

A Skills Development Facilitator is responsible for developing and planning a firm's skills development strategy. This Facilitator assists employers and employees to draft and implement their workplace skills plans. These plans must identify and prioritise the training needs in a particular workplace and indicate which employees will receive training.

## Enforcement

Chapter Ten and Schedule Two of the BCEA apply (with the necessary changes

required by the context) to monitoring and enforcing the Act, and any legal proceedings concerning a contravention of the Act.

In brief, these provisions provide for the appointment of labour inspectors who may conduct inspections, investigate complaints and issue compliance orders. A labour inspector may, without warrant or notice, enter a workplace or a premises used for training, to monitor or enforce compliance.

An employer may be fined for failing to comply with a provision of the Act. The fine is calculated as a percentage of the amount owing. A person may be sentenced to a fine or imprisonment for a period not exceeding one year if he or she is convicted of an offence in terms of the Act. Offences include:

- failure to pay the levy;
- obtaining prescribed documents by fraudulent means;
- giving false information knowing it to be false;
- obstructing or attempting to improperly influence a person who is performing a function in terms of the Act.

## Conclusion

The Act provides significant opportunities for trade unions to shape skills development policy, strategy and implementation:

- at national level on the NSA;
- at sector level on each SETA, particularly in developing and implementing sector skills plans and promoting learnerships;
- at workplace level in developing workplace skills plans. ★

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