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THE PRESIDENCY

No. 1674

14 November 2003

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

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



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

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

ACT

To amend the Skills Development Act, 1998, so as to define certain expressions and amend certain definitions; to extend the functions of the National Skills Authority; to change the composition of the National Skills Authority; to extend the Minister's powers in respect of SETAs; to provide anew for the obligations of SETAs in respect of financial management; to require SETAs to conclude service level agreements with the Director-General; to ensure that the membership of SETAs are representative of designated groups; to empower the Minister to make regulations regarding learnership agreements; to regulate private employment service agencies; to allow the use of money in the National Skills Fund for the administration of the Fund; to provide anew for budgeting in respect of training by national and provincial public entities; to empower the Minister to establish and promote a national standard to promote good practice in skills development; to extend the Minister's power to make regulations; and to amend Schedule 2; to effect consequential amendments to the Mine Health and Safety Act, 1996; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 97 of 1998, as amended by section 23 of Act 9 of 1999

1. Section 1 of the Skills Development Act, 1998 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of "Department" of the following definition:

" 'designated groups' means black people, women and people with disabilities;";

(b) by the deletion in the definition of "employment services" of the word "or" at the end of paragraph (d) and the insertion after that paragraph of the following paragraph:

"(dA) procuring for or providing to a client other persons to render services to or perform work for the client, irrespective of by whom those persons are remunerated; or";

(c) by the insertion after the definition of "prescribed" of the following definitions:

" 'private employment services agency' means any person that provides employment services for gain;

'Public Finance Management Act' means the Public Finance Management Act, 1999 (Act No. 1 of 1999);";

- (d) by the substitution for the definition of “regulation” of the following definition:
 “ ‘regulation’ means a regulation made and in force in terms of [section 36] this Act.”; and
- (e) by the insertion after the definition of “regulation” of the following definition: 5
 “ ‘service level agreement’ means a service level agreement concluded in terms of section 10A.”.

Amendment of section 5 of Act 97 of 1998

2. Section 5 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: 10
 “(b) to liaise with SETAs on—
 (i) the national skills development policy; **[and]**
 (ii) the national skills development strategy; and
 (iii) sector skills plans.”.

Amendment of section 6 of Act 97 of 1998

3. Section 6 of the principal Act is hereby amended— 15
- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 “(b) 24 voting and **[three]** five non-voting members appointed by the Minister; and”; 20
- (b) by the insertion in subsection (2) after paragraph (e) of the following paragraph:
 “(eA) two non-voting members, who have expertise in skills development, appointed by the Minister after consultation with the National Skills Authority.”. 25

Amendment of section 9 of Act 97 of 1998

4. Section 9 of the principal Act is hereby amended by the addition of the following subsection:
 “(4) The Minister may, after consulting the National Skills Authority and the SETAs in question and subject to subsection (2), change the sector of a SETA and must publish a notice in the Gazette reflecting such change.” 30

Insertion of section 9A in Act 97 of 1998

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

“Amalgamation and dissolution of SETAs

- 9A.** (1) The Minister may, after consulting the National Skills Authority and the SETAs in question and subject to section 9(2), amalgamate two or more SETAs. 35
- (2) The Minister must approve a constitution for the amalgamated SETA.
- (3) The Minister must publish a notice in the *Gazette* containing— 40
- (a) the date of the amalgamation;
 (b) the sector for which the amalgamated SETA is established; and
 (c) any other matter necessary to prescribe in order to establish the amalgamation.
- (4) On the establishment of the amalgamated SETA, all assets, rights, liabilities and obligations of the amalgamating SETAs devolve upon and vest in the amalgamated SETA. 45
- (5) The Minister may, after consulting the National Skills Authority and the SETA in question, dissolve a SETA if the SETA is unable to continue to perform its functions.
- (6) The Minister must publish a notice in the *Gazette*— 50
- (a) containing the date of the dissolution of the SETA;

- (b) setting out the manner in which, and by whom, the SETA is to be wound-up;
- (c) setting out how any assets remaining after the winding-up of the SETA must be distributed; and
- (d) providing for any other matter necessary for the dissolution and winding-up of the SETA in question. 5
- (7) No transfer duty, stamp duty, fee or costs are payable in respect of the transfer of any assets, rights, liabilities or obligations between SETAs as contemplated in this section.
- (8) The Registrar of Deeds on presentation of proof of any transfer of immovable property contemplated in this section must endorse the title deeds accordingly and make the entries in the relevant register that are necessary to register the transfer.” 10

Amendment of section 10 of Act 97 of 1998, as amended by section 23 of Act 9 of 1999 15

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

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “A SETA must, in accordance with any requirements that may be prescribed—” 20
- (b) by the substitution in subsection (1)(b) for subparagraph (iii) of the following subparagraph:
- “(iii) allocating grants in the prescribed manner and in accordance with any prescribed standards and criteria to employers, education and training providers and workers; and” 25
- (c) by the substitution in subsection (1) for paragraph (h) of the following paragraph:
- “(h) [report] submit to the Director-General [on]—
- (i) any budgets, reports and financial statements on its income and expenditure that it is required to prepare in terms of the Public Finance Management Act; and 30
- (ii) plans and reports on the implementation of its sector skills plan and service level agreement;” and
- (d) by the substitution in subsection (1) for paragraph (j) of the following paragraphs: 35
- “(j) subject to section 14, appoint staff necessary for the performance of its functions; [and]
- (jA) promote the national standard established in terms of section 30B; and”.

Insertion of section 10A in Act 97 of 1998

7. The following section is hereby inserted in the principal Act after section 10: 40

“SETAs to conclude service level agreements

- 10A. (1) For each financial year, every SETA must conclude with the Director-General a service level agreement concerning—**
- (a) the SETA’s performance of its functions in terms of this Act and the national skills development strategy; 45
- (b) the SETA’s annual business plan; and
- (c) any assistance that the Director-General is to provide to the SETA in order to enable it to perform its functions.
- (2) If the Director-General and a SETA cannot agree on the contents of a service level agreement within the prescribed period, the Minister must determine the contents of the service level agreement after consulting the National Skills Authority. 50
- (3) The determination by the Minister in respect of a service level agreement is final and binding.
- (4) The Minister must, after consultation with the National Skills Authority, make regulations concerning— 55

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

Amendment of section 13 of Act 97 of 1998

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

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

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

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

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

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

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

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

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

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

(5) Every SETA must—

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

Insertion of section 14A in Act 97 of 1998

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

“Minister may issue written instructions to SETAs

- 14A.** (1) The Minister may issue a written instruction to a SETA if—
- (a) the SETA is not performing any of its functions or not complying with its service level agreement; 5
 - (b) the SETA is not managing its finances in accordance with this Act;
 - (c) the SETA’s membership is not representative of the constituencies contemplated in section 11; or
 - (d) the SETA has not prepared and implemented an employment equity plan as contemplated in section 20 of the Employment Equity Act, 1998 (Act No. 55 of 1998). 10
- (2) An instruction issued under subsection (1) must set out—
- (a) the reason for issuing the instruction;
 - (b) any provision of the Act that the SETA has not complied with; and 15
 - (c) the steps that the SETA is required to take and the period within which such steps must be taken.
- (3) At the request of a SETA, the Minister may—
- (a) extend the period for complying with an instruction; or
 - (b) revise the terms of the instruction. 20
- (4) If a SETA has not complied with an instruction issued in terms of this section within the specified period, the Minister may—
- (a) direct the Director-General to withhold all or part of the allocation to the SETA in terms of section 8(3)(b) of the Skills Development Levies Act for such period and on such conditions as the Director-General may determine; 25
 - (b) invoke section 15 without further notice to the SETA;
 - (c) order an investigation into the management and administration of the SETA; or
 - (d) take any other steps necessary to ensure that the SETA performs its functions or manages its finances in accordance with this Act. 30
- (5) If a SETA has unreasonably failed to institute disciplinary proceedings for misconduct against any employee of the SETA, the Minister may direct the SETA to institute disciplinary proceedings against that employee.” 35

Amendment of section 15 of Act 97 of 1998

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

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

- “(1) The Minister may, after consultation with the National Skills Authority[, by notice in the *Gazette*,] and the SETA in question, direct the Director-General to appoint an administrator to take over the administration of a SETA or to perform the functions of a SETA if [the Minister is of the opinion that]— 40
- (a) the SETA fails to perform its functions; 45
 - (b) there is mismanagement of its finances; [or]
 - (c) its membership no longer substantially represents the composition contemplated in section 11;
 - (d) the SETA has failed to comply with its service level agreement; or
 - (e) the SETA has failed to comply with an instruction issued by the Minister in terms of section 14A. 50

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

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

Amendment of section 17 of Act 97 of 1998

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

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

Amendment of section 19 of Act 97 of 1998

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

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

Amendment of section 20 of Act 97 of 1998

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

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

Substitution of heading to Chapter 6 of Act 97 of 1998

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

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

Amendment of section 24 of Act 97 of 1998

16. Section 24 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 5
 “(1) Any person who wishes to provide employment services for gain must apply for registration as a private employment services agency to the Director-General in the prescribed manner.”;
- (b) by the substitution for subsection (4) of the following subsection:
 “(4) A registered private employment [service] services agency must comply with the prescribed criteria.”; and
- (c) by the addition of the following subsection: 10
 “(5) The Director-General may withdraw the registration of any private employment services agency that fails to comply with this Act or any prescribed requirements or criteria.”.

Substitution of section 25 of Act 97 of 1998

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

“Cancellation of registration of private employment services agency

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

(2) If the Director-General has reason to believe that **[an]** a private employment [service] services agency is not complying with the prescribed criteria and accordingly that its registration should be cancelled, the Director-General must, before cancelling its registration—

- (a) notify the [service] agency of the intention to cancel registration and the reasons for doing so; 25
- (b) give the [service] agency 30 days from the date of the notice to make representations on why its registration should not be cancelled; and
- (c) take those representations into account in reaching a decision.

(3) If the Director-General cancels the registration of **[an]** a private employment [service] services agency, the Director-General must give written notice of that decision to the private employment [service] services agency.” 30

Amendment of section 28 of Act 97 of 1998

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

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

Amendment of section 29 of Act 97 of 1998 40

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

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

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

20. The following section is hereby substituted for section 30A of the principal Act:

“Budget for training by national and provincial public entities

30A. If 80 per cent or more of the expenditure of a national or provincial public entity is defrayed directly or indirectly from funds voted by Parliament, that entity **[must budget for at least]**—

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

Insertion of section 30B in Act 97 of 1998

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

“National standard of good practice in skills development

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

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

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

Substitution of section 32 of Act 97 of 1998

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

“Monitoring, enforcement and legal proceedings

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

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

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

Amendment of section 33 of Act 97 of 1998

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

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

Substitution of section 36 of Act 97 of 1998

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

“Regulations

36. The Minister may, after consultation with the National Skills Authority, by notice in the *Gazette*, make regulations **[relating to any matter which]** regarding— 5

- (a) any matter which may or must be prescribed under this Act; **[and]**
- (b) any procedure, period, criterion or standard for SETAs to perform any function in terms of section 10(1);
- (c) categories and amounts of grants that may be allocated in terms of section 10(1)(b)(iii); 10
- (d) the criteria or conditions that may be attached to grants allocated in terms of section 10(1)(b)(iii);
- (e) the evaluation of applications for grants in terms of section 10(1)(b)(iii); 15
- (f) the manner in which grants may be allocated in terms of section 10(1)(b)(iii);
- (g) the exercise by a SETA of any power contemplated in section 10(2);
- (h) the content, format and timeframe for submitting any report or plan that SETAs are required to submit in terms of this Act; 20
- (i) the services in respect of which a SETA may earn income in terms of section 14(1)(e) and the fees, including maximum fees, that may be charged in respect of such services;
- (j) the financial systems that SETAs are required to utilise;
- (k) the submission by employers to SETAs of workplace skills plans and reports and the form and contents of such reports; 25
- (l) the appointment by employers of workplace skills facilitators and the obligations of employers in respect of workplace skills facilitators;
- (m) the rights and functions of workplace skills facilitators;
- (n) the rights of registered trade unions, or other employee representatives, to consult with their employer over developing, implementing and reporting on workplace skills plans and on other matters dealt with in this Act; 30
- (o) circumstances specified in the regulations under which a private employment services agency may charge fees in respect of any services provided by private employment services agencies and the maximum fees that may be charged; 35
- (p) services for which private employment services agencies may not charge work-seekers fees;
- (q) a form for registering private employment services agencies; 40
- (r) the administration, operation, functioning and obligations of the National Skills Fund; and
- (s) any other matter which it is necessary or expedient to prescribe in order to achieve the purposes of this Act.”.

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

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

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

“(5) (a) Subject to subitem (4)(b), all sections [13 to 29] of the Manpower Training Act **[remains]** that concern apprentices remain in force as if that Act had not been repealed until a date determined by the Minister by notice in the *Gazette*. 50

(b) For the purposes of this subitem—

- (i) any function of the registrar must be performed by an official of the Department of Labour designated for that purpose in writing by the Minister; 55

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

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

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

“Mining Qualifications Authority

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

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(a) and with effect from 20 March 2000—

- (i) the Mining Qualifications Authority established in terms of section 41(3) of the Mine Health and Safety Act, 1996, must be regarded as having been established in terms of section 9(1) of this Act as SETA 16;
- (ii) Schedule 7 to the Mine Health and Safety Act, 1996, must be regarded as the constitution of SETA 16; and
- (iii) the Chief Inspector of Mines must be regarded as the chairperson of SETA 16;
- (b) the Minister may, in consultation with the Minister of Minerals and Energy and after consulting the Mining Qualifications Authority—
 - (i) amend Schedule 7 to the Mine Health and Safety Act, 1996, in order to bring the constitution of SETA 16 into line with the constitutions of other SETAs; and
 - (ii) allow an interested professional body or a bargaining council with jurisdiction in the mining sector to be represented on the Mining Qualifications Authority; and
- (c) the Minister must, in consultation with the Minister of Minerals and Energy, with regard to SETA 16, perform any function entrusted to the Minister in Chapter 3 of this Act.”.

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

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

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

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

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

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

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

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and

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

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

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

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SKILLS DEVELOPMENT AMENDMENT ACT, 2003

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

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

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

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

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Short title

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