REPUBLIC OF SOUTH AFRICA
IRIPHABHULIKI YASENINGIZIMU AFRIKA

Vol. 561 Cape Town, Kaapstad, 28 March 2012 No. 35191

THE PRESIDENCY

No. 258 28 March 2012

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

Act No. 26 of 2011: Skills Development Amendment Act, 2011

IHHOVISI LIKAMONGAMELI

Ino. 258 28 March 2012

Ngalokhu kwaziswa ukuthi uMongameli usewuvumile loMthetho nosewuzoshicilelelwa umphakathi:—

Ino. 26 Ka 2011: Umthetho Ochibiyela ukuThuthukiswa KwaMakhono, 2011

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 27 March 2012)

ACT

To amend the Skills Development Act, 1998, so as to define certain words or expressions and to delete certain obsolete definitions; to amend provisions relating to the establishment, amalgamation and dissolution of SETAs; to provide for the incorporation of a subsector of one SETA into another SETA; to provide for the composition of an Accounting Authority for each SETA; to regulate the eligibility to become a member of an Accounting Authority; to provide for a constitution for every SETA; to regulate the conduct of a member of an Accounting Authority, or of a member of the staff, of a SETA when engaging in business with the SETA; to require members of Accounting Authorities to disclose any conflict of interest with the relevant SETA; and to repeal or amend certain provisions which became obsolete as a result of the transfer of the administration of the said Act to the Minister of Higher Education and Training; 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, section 1 of Act 31 of 2003, section 1 of Act 37 of 2008 and section 4 of Act 26 of 2010

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

(a) by the insertion before the definition of "apprenticeship" of the following definition:
" **'Accounting Authority'** means the Accounting Authority of a SETA contemplated in section 11;";

(b) by the insertion after the definition of "artisan" of the following definition:
" **'Chairperson'** means the Chairperson of the Accounting Authority;";

(c) by the deletion of the definition "employment services";

(d) by the substitution for the definition of "National Qualifications Framework" of the following definition:

INCAZELO EJWAYELEKILE:

[ ] Amagama acaciswe ngombhalo ogqamile akubakaki abayisikwele abonisa okukhishwayo emthethweni osebenzayo.

________ Amagama adwetshelwe ngomugqa ogqamile akhombisa okufakelwayo emthethweni osebenzayo.

(English text signed by the President)
(Assented to 27 March 2012)

UMTHETHO

Ukuchibiyela uMthetho wokuThuthukisa amaKhono, we-1998, ukuze kuchazwe amagama noma amazwi athile futhi kususwe nezincazelo ezithile esezaphelelwa isikhathi; ukuchibiyela imibandela ehambisana nokusungulwa, ukuhlanganiswa nokushatshalaliswa kwe-SETA; ukuhlinzekela ngokuhlanganisa imikhakha emincane ye-SETA kwenye i-SETA; ukuhlinzekela ngokusungula uPhiko oNgamele ku-SETA ngayinye; ukulawula labo okufanele babe ngamalungu uPhiko oNgamele, ukuhlinzekela ngomthethosisekelo we-SETA ngayinye; ukulawula indlela yokuziphatha kwamalungu oMkhandlu oNgamele, noma kwabasebenzi be-SETA uma beqhuba imisebenzi ye-SETA; isidingo sokuba amalungu uPhiko oNgamele adalule inzuzo ethile ku-SETA; kanye nokuchitha noma ukuchibiyela imibandela ethile esiphelelwa isikhathi ngesizathu sokudlulisela ukusingathwa kwalo Mthetho kuNgqongqoshe wezeMfundo ePhakeme nokuQeqesha; kanye nokuhlinzekela izindaba ezihambisana nawo.

NGAKHO-KE UZOMISWA iPhalamende laseNingizimu Afrika ngale ndlela elandelayo:—

Ukuchibiyela isigaba soku-1 soMthetho wama-97 we-1998, njengoba uchitshiyelwe ngesigaba sama-23 soMthetho wesi-9 we-1999, isigaba soku-1 soMthetho wama-31 wezi-2003, isigaba soku-1 soMthetho wama-37 wezi-2008 nesigaba sesi-4 soMthetho wama-26 wezi-2010

1. Ngakho-ke isigaba soku-1 soMthetho wokuThuthukisa amaKhono, we-1998 (obizwa ngokuthi uMthethongqangi), siyachitshiyelwa—

(a) ngokushutheka ngaphambi kwencazelo "ukufundela umsebenzi ngaphansi komqashi" ngale ncazelo elandelayo:
" **'uPhiko oLuNgamele'** luchaza uPhiko oLuNgamele we-SETA ovezwe esigabeni se-11;" ';

(b) ngokushutheka ngemuva kwencazelo "ingcweti emsebenzini wezandla" le ncazelo elandelayo:
" **'uSihlalo'** uchaza uSihlalo woPhiko oLuNgamele;";

(c) ngokususa incazelo "uphiko lwezemisebenzi";

(d) ngokufaka endaweni yencazelo "uHlaka lweziQu lukaZwelonke" le ncazelo elandelayo:

" '**National Qualifications Framework**' means the National Qualifications Framework contemplated by the **[National Qualifications Framework Act, 2008]** NQF Act;";

(e) by the insertion after the definition of "NEDLAC" of the following definition:

" '**NQF Act**' means the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);";

(f) by the insertion after the definition of "Occupational Qualifications Framework" of the following definition:

" '**organised employers**'—

(a) means any employers' organisation in the sector in question that is registered in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other association of employers in that sector that represents the interests of its members as employers; and

(b) includes a State Department referred to in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), as an employer in that sector;";

(g) by the insertion after the definition of "SETA" of the following definition:

" '**SIC Code**' means a code contained in the Standard Industrial Classification of all Economic Activities published by Statistics South Africa;";

(h) by the substitution for the definition of "South African Qualifications Authority" of the following definition:

" '**South African Qualifications Authority**' means the South African Qualifications Authority **[established by section 3 of the South African Qualifications Authority Act]** referred to in section 10 of the NQF Act;"; and

(i) by the deletion of the definition of "South African Qualifications Authority Act".

Amendment of section 2 of Act 97 of 1998, as amended by section 23 of Act 9 of 1999 and section 2 of Act 37 of 2008

2. Section 2 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of paragraphs *(g)* and *(h)*;

(b) by the deletion in subsection (2)*(a)* of subparagraphs (v) and (vi); and

(c) by the insertion in subsection (2)*(a)* of the word "and" at the end of subparagraph (x), the deletion in that subsection of the word "and" at the end of subparagraph (xi) and the deletion in that subsection of subparagraph (xii).

Amendment of section 3 of Act 97 of 1998

3. Section 3 of the principal Act is hereby amended by the substitution for paragraph *(b)* of the following paragraph:

"*(b)* the objects of the **[South African Qualifications Authority Act]** NQF Act.".

Amendment of section 5 of Act 97 of 1998, as amended by section 2 of Act 31 of 2003 and section 3 of Act 37 of 2008

4. Section 5 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) Subsection (1)*(a)*(iv) does not apply to regulations in respect of which the Minister is required to consult with the QCTO **[or Productivity South Africa]**.".

Amendment of section 9 of Act 97 1998, as amended by section 4 of Act 31 of 2004

5. Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) *(a)* The Minister may, **[in the prescribed manner]** by notice in the *Gazette* and for a period specified in the notice, establish a sector education and training authority with a constitution contemplated in section 13 for any national economic sector, having regard to any relevant SIC Code.

" '**uHlaka lweziQu lukaZwelonke**' luchaza uHlaka lweziQu lukaZwelonke oluvezwe [**i-*National Qualification Framework Act*, 2008**] i-NQF Act;";

(e) ngokushutheka ngemuva kwencazelo "ye-NEDLAC" le ncazelo elandelayo: " '**i-NQF Act**' ichaza i-*National Qualifcations Framework Act*, 2008 (Act No. 67 of 2008);";

(f) ngokushutheka ngemuva kwencazelo "uHlala lweziQu zoMsebenzi" le ncazelo elandelayo:
" '**izinhlangano zabaqashi**'—
(a) zichaza izinhlangano zabaqashi kulowo mkhakha obhaliswe ngokwemigomo ye-*Labour Relations Act*, 1995 (Act No. 66 of 1995), nezinye izinhlangano zabaqashi kulowo mkhakha ozimele izidingo zamalungu azo angabasebenzi; futhi
(b) kubandakanya uMnyango woMbuso oshiwe esiThasiselweni soku-1 ku-*Public Service Act*, 1994 *(Proclamation No. 103 of 1994)*, ongumqashi kulowo mkhakha;";

(g) ngokushutheka ngemuva kwencazelo "i-SETA" le ncazelo elandelayo: " '**i-SIC Code**' ichaza ikhodi ye-Standard Industrial Classification of all Economic Activities published by Statistics South Africa;";

(h) ngokufaka endaweni yencazelo "uPhiko lweziQu lwaseNingizimu Afrika" le ncazelo elandelayo:
" '**uPhiko lweziQu lwaseNingizimu Afrika**' luchaza uPhiko lweziQu lwaseNingizimu Afrika [**olwasungulwa ngesigaba sesi-3 se-*South African Qualifications Authority Act***] olubalulwe esigabeni se-10 se-NQF Act;"; futhi

(i) ngokususa incazelo "ye-*South African Qualifications Authority Act*".

Ukuchibiyela isigaba sesi-2 soMthetho wama-97 we-1998, njengoba uchitshiyelwe ngesigaba sama-23 soMthetho wesi-9 we-1999 nesigaba sesi-2 soMthetho wama-37 wezi-2008

2. Ngakho-ke isigaba sesi-2 soMthethongqangi sichitshiyelwe—
(a) ngokususa esigatsheni soku-(1) indima *(g)* no-*(h)*;
(b) ngokususa isigatshana sesi-(2)*(a)* sendimana (v) no-(vi); futhi
(c) ngokushutheka esigatshaneni sesi-(2)*(a)* igama elithi "futhi" ekugcineni kwendimana (x), ngokususa kulesi sigatshana igama "futhi" ekugcineni kwendimana (xi) kanye nokususa kuleso sigatshana indimana (xii).

Ukuchibiyela isigaba sesi-3 soMthetho wama-97 we-1998

3. Ngakho-ke isigaba sesi-3 soMthethongqangi sichitshiyelwe ngokufaka endaweni yendima *(b)* le ndima elandelayo:
"*(b)* izinjongo [**ze-*South African Qualifcations Authority Act***] i-NQF Act.".

Ukuchibiyela isigaba sesi-5 soMthetho wama-97 we-1998, njengoba uchitshiyelwe ngesigaba sesi-2 soMthetho wama-31 wezi-2003 nesigaba sesi-3 soMthetho wama-37 wezi- 2008

4. Ngakho-ke isigaba sesi-5 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana sesi-(4) lesi sigatshana esilandelayo:
"(4) Isigatshana soku-(1)*(a)*(iv) asisebenzi ezimisweni zomthetho lapho kufanele uNgqongqoshe axhumane ne-QCTO [**noma ne-*Productivity South Africa***].".

Ukuchibiyela isigaba sesi-9 soMthetho wama-97 we-1998, njengoba sichitshiyelwe ngesigaba sesi-4 soMthetho wama-31 wezi-2004

5. Ngakho-ke isigaba sesi-9 soMthethomgqangi sichitshiyelwe ngokufaka endaweni yesigatshana soku-1 lesi sigatshana esilandelayo:
"(1) *(a)* UNgqongqoshe, [**ngendlela enqunyiwe**] ngokusebenzisa isaziso kuSomqulu futhi ngesikhathi esivezwe esazisweni, angasungula umkhakha wezemfundo nophiko lwezokuqeqesha ngokusebenzisa umthethosisekelo ovezwe esigatsheni se-13 emkhakheni wezomnotho, ngokubheka i-SIC Code efanele.

(b) The Minister may in the manner contemplated in paragraph *(a)* re-establish the sector education and training authority contemplated in that paragraph when the period contemplated in that paragraph has lapsed.".

Amendment of section 9A of Act 97 of 1998, as inserted by section 5 of Act 31 of 2005

6. Section 9A of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) The Minister must **[approve]** provide a constitution contemplated in section 13 for the amalgamated SETA."; and

(b) by the addition of the following subsections:

"(9) Subject to sections 197 and 197A of the Labour Relations Act, 1995 (Act No. 66 of 1995), the contracts of employment between the SETAs (herein referred to as 'the old employer') and its employees are automatically transferred to the amalgamated single SETA (herein referred to as 'the new employer') as from the date of the amalgamation contemplated in subsection (1), but any redeployment of an employee as a consequence of the amalgamation or dissolution is subject to applicable labour legislation.

(10) If two or more SETAs are amalgamated into a single SETA in terms of subsection (1), all the rights and obligations between the old employers and each employee at the time of the amalgamation continue in force as if they were rights and obligations between the new employer and each employee and anything done before the amalgamation by or in relation to the old employers must be regarded as having been done by or in relation to the new employer.

(11) An amalgamation contemplated in subsection (1) does not interrupt the employee's continuity of employment.

(12) The provisions of subsections (1) to (6) do not affect the liability of any person to be disciplined for, prosecuted for, convicted of and sentenced for any offence or misconduct.

(13) An employee is subject to the disciplinary codes and rules applicable to the new single amalgamated SETA as from the date of the amalgamation contemplated in subsection (1), but if any enquiry into incapacity or any proceedings in respect of a charge of misconduct had been instituted or commenced against any employee before the date of the amalgamation, such enquiry or proceedings continue in terms of the codes and rules applicable to the relevant SETA immediately prior to the amalgamation.

(14) Notwithstanding subsection (13), until the new single SETA has made disciplinary codes or rules, the disciplinary codes and rules of the respective old SETAs are applicable to employees.

(15) Notwithstanding subsection (1), the old employer may undertake rationalisation of its workforce according to operational requirements in accordance with section 189 of the Labour Relations Act, 1995 (Act No. 66 of 1995), prior to the date of the amalgamation contemplated in subsection (1).".

(b) UNgqongqoshe ngendlela ebalulwe endimeni *(a)* angasungula kabusha umkhakha wezemfundo nophiko lwezokuqeqesha oluvezwe kuleyo ndima uma sekuphele isikhathi ezivezwe kuleyo ndima.".

Ukuchibiyela isigaba sesi-9A soMthetho wama-97 we-1998, njengoba kushuthekwe isigaba sesi-5 soMthetho wama-31 wezi-2005

6. Ngakho-ke isigana sesi-9A soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana sesi-(2) isigatshana esilandelayo:

"(2) UNgqongqoshe kufanele **[agunyaze]** ahlinzekele ngomthethosisekelo ovezwe esigatsheni se-13 sokuhlanganisa i-SETA."; futhi

(b) ngokungeza lezi zigatshana ezilandelayo:

"(9) Isihloko nesigaba se-197 ne-197A se-*Labour Relations Act*, 1995 (Act No. 66 of 1995), izivumelwano zokuqasha eziphakathi kwama-SETA (la ezibizwa 'ngomqashi omdala') kanye nezisebenzi zabo zizodluliselwa ku-SETA eyodwa (kulokhu ebizwa ngokuthi 'umqashi umusha') kusukela ngosuku lokuhlanganiswa kwawo okuvezwe esigatshaneni soku-(1), kodwa izinhlelo zakabusha zomsebenzi ezidalwe ukuhlanganiswa noma ukushatshalaliswa zizolandela umthetho wezemisebenzi osebenzayo.

(10) Uma kuhlanganiswe ama-SETA amabili noma angaphezulu kwamabili aba i-SETA eyodwa ngokwemigomo yesigatshana soku-(1), wonke amalungelo nezibophezelo okuphakathi kwabaqashi abadala nomsebenzi ngamunye ngesikhathi ehlanganiswa kuzoqhubeka kusebenza njengamalungelo nezibophezelo eziphakathi komqashi omusha nomsebenzi ngamunye futhi konke okwenziwe ngaphambi kokuba ahlanganiswe noma okuhambisana nomqashi omusha kufanele kuthathwe njengokwenziwe noma njengokuhambisana nomqashi omusha.

(11) Ukuhlanganiswa okuvezwe esigatshaneni soku-(1) akuphazamisi ukuqhubeka kokusebenza komsebenzi.

(12) Imibandela yesigatshana soku-(1) ukuya kwesesi-(6) ayichaphazeli umuntu okusafanele aqondiswe, ashushiswe, olahlwe icala futhi osegwetshelwe icala noma ukungaziphathi kahle.

(13) Umsebenzi uzobhekana nendlela yokuqondiswa kwezigwegwe kanye nemithetho esebenzayo ye-SETA eyodwa ehlanganisiwe kusukela ngosuku lokuhlanganiswa okuvezwe esigatshaneni soku-(1), kodwa uma kunophenyo lokungaqhubi ngendlela umsebenzi noma lwezinyathelo zokungaziphathi kahle sezenziwe noma seziqalile ezibhekene nomsebenzi ngaphambi kosuku lokuhlanganisa, lolo phenyo noma lezo zinyathelo kuzoqhubeka ngokwemigomo yenqubo nemithetho esebenzayo ku-SETA eqondene ngokushesha ngaphambi kokuba ahlanganiswe.

(14) Nakuba kunesigatshana se-(13), kuze kube i-SETA entsha isiyimisile inqubo yokuqondisa izigwegwe noma imithetho, inqubo yokuqondisa izigwegwe nemithetho yama-SETA amadala izosebenza kubasebenzi.

(15) Nakuba kunesigatshana soku-(1), umqashi omdala angenza inzuzo ngomsebenzi ngokulandela izidingo zomsebenzi ezihambisana nesigaba se-189 se-*Labour Relations Act, 1995 (Act No. 66 of 1995)*, ngophambi kosuku lokuhlanganiswa okuvezwe esigatshaneni soku-(1).".

Insertion of section 9B in Act 97 of 1998

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

"**Incorporation of subsector into SETA**

9B. (1) Subject to sections 197 and 197A of the Labour Relations Act, 1995 (Act No. 66 of 1995), the Minister may, after consultation with the National Skills Authority and by notice in the *Gazette*, incorporate a SIC Code of one SETA into another SETA.

(2) The assets, liabilities, rights and obligations of the SETA in respect of a subsector relating to the SIC Code in question devolve upon the SETA into which the SIC Code has been incorporated—

(a) in a manner agreed to by the Accounting Authorities of the SETAs concerned; or

(b) if no agreement can be reached, in the manner determined by the Minister.".

Amendment of section 10A of Act 97 of 1998, as inserted by section 7 of Act 31 of 2003

8. Section 10A of the principal Act is hereby amended by the deletion in subsection (1) of the word "and" at the end of paragraph *(b)*, the insertion in that subsection of the word "and" at the end of paragraph *(c)* and the addition of the following paragraph:

"*(d)* any assistance that the SETA is to provide in terms of this Act to assist the Minister in complying with his or her responsibility in accordance with the policy determined by the President of the Republic relating to service delivery and relating to the functions of the relevant SETA.".

Substitution of section 11 of Act 97 of 1998

9. The following section is hereby substituted for section 11 of the principal Act:

"**Composition of Accounting Authority of SETA**

11. (1) *(a)* Subject to paragraph *(b)*, the Minister must appoint the Chairperson of the Accounting Authority of a SETA after consultation with the National Skills Authority.

(b) The Minister must by notice in the *Gazette* invite nominations for the position of Chairperson of an Accounting Authority from interested parties in the relevant sector.

(2) *(a)* Subject to paragraph *(b)* and section 13(2), the Minister must appoint 14 persons as members of the Accounting Authority of a SETA.

(b) The members referred to in paragraph *(a)* may not include more than—

(i) six persons who must be nominated by organised labour;

(ii) six persons who must be nominated by organised employers; and

(iii) two persons who must be nominated by—

(aa) any government department that has an interest in the relevant sector and that is not an organised employer;

(bb) any interested professional body;

(cc) any bargaining council with jurisdiction in the sector in question; or

(dd) any organisation in a community that has an identifiable interest in skills development in the sector in question.

(3) *(a)* The members referred to in subsection (2) have full voting rights and, subject to paragraph *(b)*, the Chairperson has no voting rights.

(b) In the case of an equality of votes, the chairperson has a casting vote.

Ukushutheka isigaba se-9B eMthethweni wama-97 we-1998

7. Ngakho-ke lesi sigaba esilandelayo sishuthekwe kuMthethongqangi ngemuva kwesigaba se-9A:

"Ukufakwa kwemikhakha emincane ngaphansi kwe-SETA

9B. (1) Ngokwesigaba se-197 ne-197A se-*Labour Relations Act*, 1995 (Act No. 66 of 1995), uNgqongqoshe ngemuva kokuxoxisana noPhiko lwezamaKhono lukaZwelonke, futhi ngokusebenzis Isaziso kuSomqulu, angahlanganisa iNqubo ye-SIC yenye i-SETA neyenye i-SETA.

(2) Izimpahla, izikweletu, amalungelo nezibophezelo ze-SETA eziphathelene nemikahkha emincane ezihambisana naleyo Nqubo ye-SIC ezidluliselwa ku-SETA ehlanganiswe neNqubo ye-SIC—

(a) ngendlela okuvunyelenwe ngayo noPhiko oluNgamele lwama-SETA aqondene; noma

(b) uma singekho isivumelwano esitholakalayo, ngendlela enqunywe uNgqongqoshe.".

Ukuchibiyela isigaba se-10A soMthetho wama-97 we-1998, njengoba kushuthekwe isigaba sesi-7 soMthetho wama-31 wezi-2002

8. Ngakho-ke isigaba se-10A soMthethongqangi sichitshiyelwe ngokususa isigatshana soku-(1) segama "futhi" ekupheleni kwendima *(b)*, ngokushutheka kuleso sigatshana igama "futhi" ekupheleni kwendima *(c)* nokungeza le ndima elandelayo:

"*(d)* usizo oluzonikezelwa i-SETA ngokwemigomo yalo Mthetho ukusiza uNgqongqoshe ukulandela imisebenzi yakhe ngokulandela inqubomgomo enqunywe uMongameli ehambisana nokunikezela ngezidingo futhi ehambisana nemisebenzi ye-SETA eqondene ye-SETA.".

Ukushintsha isigaba se-11 soMthetho wama-97 we-1998

9. Ngakho-ke lesi sigaba esilandelayo sishintshiwe esigatsheni se-11 soMthethongqangi:

"Ukwakheka koPhiko oluNgamele lwe-SETA

11. (1) *(a)* Ngokwendima *(b)*, uNgqongqoshe kufanele aqoke uSihlalo woPhiko oluNgamele ku-SETA ngemuva kokuxoxisana noPhiko lwezamaKhono lukaZwelonke.

(b) UNgqongqoshe kufanele asebenzise isaziso kuSomqulu ukumema ukuphakanyiswa kwamagama esikhundla sikaSihlalo oPhikweni oluNgamele kulabo abanentshisekelo emkhakheni oqondene.

(2) *(a)* Ngokwendima *(b)* nesigaba se-13(2), uNgqongqoshe kufanele aqoke abantu abayi-14 ukuba babe amalungu oPhiko oluNgamele e-SETA.

(b) Amalungu ashiwo endimeni *(a)* akufanele afake abantu abangaphezulu—

(i) abantu abayisithupha okufanele amagama abo aphakanyiswe izinhlangano ezihleliwe;

(ii) abantu abayisithupha okufanele baphakanyiswe umqashi; futhi

(iii) abantu ababili okufanele baphakanyiswe—

(aa) umnyango kahulumeni onentshisekelo emkhakheni othile okungewona umqashi;

(bb) amagatsha anentshisekelo;

(cc) umkhandlu wokuxoxisana onegunya kulowo mkhakha; noma

(dd) inhlangano yomphakathi enentshisekelo ebonakalayo ekuthuthukiseni amakhono kulowo mkhakha.

(3) *(a)* Amalungu ashiwo esigatshaneni sesi-(2) anamalungelo agcwele okuvota, ngokwendima *(b)* futhi uSihlalo akanalo ilungelo lokuvota.

(b) Uma kwenzeka kuba namavoti alinganayo, usihlalo unevoti elizoba ngunqamulajuqu.

(4) In appointing the members of contemplated in subsection (2), the Minister must ensure, in so far as is practicably possible, that the membership of the Accounting Authority in question—

(a) represents the interest identified in the national skills development strategy contemplated in section 5(1)*(a)*(ii);

(b) taken as a whole, achieves—

(i) gender representation;

(ii) demographic representation;

(iii) representation of disadvantaged persons or communities which have been prejudiced by past racial and gender discrimination in relation to access to skills development programmes; and

(iv) a blend of knowledge, skills and experience required for the effective functioning of the SETA in question; and

(c) is drawn from the ranks of senior officials in the organisations in question.

(5) The Minister must at least three months before the end of the period contemplated in section 9(1)*(a)* request the Chief Executive Officer of the relevant SETA contemplated in section 13B to invite nominations from organised labour, organised employers, government departments, professional bodies, bargaining councils and organisations contemplated in subsection (2) and listed in the constitution of the relevant SETA.".

Insertion of sections 11A and 11B in Act 97 of 1998

10. The following sections are hereby inserted in the principal Act after section 11:

"Eligibility to become member of Accounting Authority

11A. A person does not qualify for appointment to an Accounting Authority—

(a) unless he or she is a citizen of and is permanently residing in the Republic;

(b) if he or she is subject to an order of a competent court declaring such person to be mentally ill or disordered;

(c) if he or she is an employee of the SETA in question;

(d) if he or she is convicted, after the commencement of the Skills Development Amendment Act, 2011, whether in the Republic or elsewhere, of any offence for which such person is sentenced to imprisonment without the option of a fine;

(e) if he or she, at any time prior to the commencement of the Skills Development Amendment Act, 2011, was convicted, or at any time after such commencement, is convicted—

(i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury, or an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), or Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);

(ii) elsewhere, of any offence corresponding materially with any offence contemplated in subparagraph (i); and

(iii) whether in the Republic or elsewhere, of any other offence involving dishonesty; or

(f) if he or she has been convicted of an offence under this Act.

(4) Uma kuqokwa amalungu abalulwe esigatshaneni sesi-(2), uNgqongqoshe kufanele aqikelele, ukuthi kungenzeka yini ukuba amalungu alelo Phiko oluNgamele —

(a) amele izintshisekelo ezivezwe kumaqhinga okuthuthukisa amakhono kazwelonke avezwe esigatsheni sesi-5(1)*(a)*(ii);

(b) uma esewonke—

(i) amele ubulili;

(ii) amele izindawo;

(iii) amele abantu abebencishwe amathuba phambilini noma imiphakathi ebikhishelwe eceleni phambilini ngokwebala noma ngokucwaswa ngokobulili kokuphathelene nezinhlelo zokufinyelela ekuthuthukisweni kwamakhono; futhi

(iv) ulwazi oluhlukene, amakhono nolwazi oludingekayo ukuze leyo SETA isebenze ngempumelelo; futhi

(c) kube abantu abathathwe ezikhundleni ezihlukene zaleyo nhlangano.

(5) UNgqongqoshe okungenani zingakapheli izinyanga ezintathu ngaphambi kokuphela kwesikhathi esiveziwe esigabeni sesi-9(1)*(a)* kufanele acele uMphathi oMkhulu we-SETA eqondene ovezwe esigatsheni se-13B ukuba acela uhlu lwamagama aphakanyisiwe izinhlangano zemisebenzi ezihleliwe, abaqashi, iminyango kahulumeni, izinhlaka ezisemthethweni, imikhandlu yezokuxoxisana nezinhlangano ezivezwe esigatshaneni sesi-(2) futhi ezisohlwini lwesiThasiselo sesi-4 soMthethosisekelo we-SETA eqondene.".

Ukushutheka isigaba se-11A no-11B eMthethweni wama-97 we-1998

10. Ngakho-ke lezi zigaba ezilandelayo zishuthekwe kuMthethongqangi ngemuva kwesigaba se-11:

"Ofanelwe ukuba ilungu loPhiko oluNgamele

11A. Umuntu akafanele aqokwe ukuba ingxenye yoPhiko oluNgamele—

(a) ngaphandle uma ongumhlali waseRiphabhuliki ngokugcwele;

(b) uma ebhekene nomyalelo wenkantolo omemezela ukuthi lowo muntu ugula ngekhanda noma akathathi kahle ekhanda;

(c) uma engumsebenzi waleyo SETA;

(d) uma alahlwa icala, ngemuva kokuqala ukusebenza koMthetho oChibiyela ukuThuthukiswa kwamaKhono, wezi-2011, eRiphabhuliki noma kwenye indawo, kuyicala lowo muntu wagwetshwa ukuboshwa wanganikezwa inhlawulo;

(e) uma lowo muntu ngaphambi kokuqala ukusebenza koMthetho oChibiyela ukuThuthukiswa kwamaKhono, wezi-2011, walahlwa icala, noma elahlwa icala ngemuva kokuqala kwalo mthetho—

(i) eRiphabhuliki, lokuntshontsha, ukukhwabanisa, ukwenza imifanekiso engafanele futhi waguqula umqulu ongafanele, ukuqamba amanga efungile, noma icala ngokwemigomo ye-*Prevention of Corruption Act, 1958 (Act No.6 of 1958), i-Corruption Act, 1992 (Act No. 94 of 2002),*

(ii) noma iNgxenye yoku-1 kuya kweyesi-4, noma isigaba se-17, 20 noma sama-21 (ezihambisana nalawa macala abaluliwe) eSahluko sesi-2 se-*Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);*

(iii) kwenye indawo, walahlwa icala elihambisana ngqo necala elivezwe endimaneni (i); futhi

(iv) lelahlwe icala eRiphabhuliki noma kwenye indawo elihambisana nokungathembeki; noma

(f) uma alahlwa icala ngaphansi kwalo Mthetho.

Vacation of office by members of Accounting Authority

11B. (1) A member of the Accounting Authority vacates office if that member—
(a) resigns by written notice, addressed to the Accounting Authority and the Minister;
(b) no longer satisfies the eligibility requirements contemplated in section 11A; or
(c) is removed from office in the manner contemplated in the constitution referred to in section 13(1).

Disclosure of conflict of interests

11C. (1) A person may not be appointed on an Accounting Authority, unless the necessary disclosure has been made that such person—
(a) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the SETA in question; or
(b) his or her spouse, partner or associate holds an office in or is employed by any SETA, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph *(a)*.

(2) If at any stage during the course of any proceedings before the Accounting Authority it appears that any Accounting Authority member has or may have an interest which may cause such conflict of interest to arise on his or her part—
(a) such Accounting Authority member must forthwith fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining Accounting Authority members to discuss the matter and determine whether such Accounting Authority member is precluded from participating in such meeting by reason of a conflict of interest; and
(b) such disclosure, and the decision taken by the remaining Accounting Authority members regarding such determination, must be recorded in the minutes of the meeting in question.

(3) If any Accounting Authority member fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting of the Accounting Authority is held or in any manner whatsoever participates in the proceedings of the Accounting Authority, the relevant proceedings of the Accounting Authority shall be null and void.".

Substitution of section 13 in Act 97 of 1998, as amended by section 8 of Act 31 of 2003

11. The following section is hereby substituted for section 13 of the principal Act:

"Constitution of SETA

13. (1) The Minister must provide a constitution for every SETA which, subject to this Act, must be in line with a standard constitution prescribed by the Minister.

(2) Subject to this Act, the standard constitution referred to in subsection (1) must at least contain the following matters:
(a) The responsibilities of the Accounting Authority of the SETA;
(b) The identification of the SETA by—
  (i) name;
  (ii) setting out its scope of coverage;
  (iii) setting out its constituencies in the relevant sector; and
  (iv) setting out its legal status;
(c) The general objectives of the SETA and its objectives in respect of—
  (i) employers in the relevant sector; and
  (ii) employees in the relevant sector;

Ukushiya izikhundla kwamalungu oPhiko oluNgamele

11B. (1) Ilungu loPhiko oluNgamele lizoshiya isikhundla uma lelo lungu—
(a) lisula ngokubhala isaziso, esiqondiswe oPhikweni oluNgamele nakuNgqongqoshe;
(b) lingasahambisani nezidingo ezifanele ezivezwe esigatsheni se-11A; noma
(c) likhishwa esikhundleni ngendlela evezwe kumthethosisekelo obalulwe esigatsheni se-13(1).

Ukudalula izinzuzo

11C. (1) Akekho umuntu ozoqokwa oPhikweni oluNgamele, ngaphandle uma lowo muntu esedalule ukuthi—
(a) uyazuza ngqo noma ngenye indlela, yena noma umlingani wakhe, asebenzisana naye noma abambisene naye kukhona akuzuzayo ngqo noma ngenye indlela kuleyo SETA; noma
(b) umlingani wakhe, asebenzisana naye noma abambisene naye unesikhundla noma usebenzela i-SETA, inhlangano noma elinye igatsha, lezamabhizinisi noma okungelona lezamabhizinisi, elinenzuzo eliyitholayo evezwe endimeni ye-*(a)*.

(2) Noma nini uma kunezithangamu zoPhiko oluNgamele kuhlaluka ukuthi ilungu loPhiko oluNgamele noma kungaba khona inzuzo engadala ukuba kube nokushayisana kwemibono ngasohlangothini lwalo—
(a) lelo lungu loPhiko oluNgamele kufanele ngaleso sikhathi lidalule umsuka waleyo nzuzo futhi liphume emhlanganweni ukuze akwazi amalungu oPhiko oluNgamele asele ukudingida lolo daba futhi anqume uma lelo lungu loPhiko oluNgamele lizokhishelwa eceleni lingabi ingxenye yomhlangano ngoba kunenzuzo eliyitholayo; futhi
(b) lokhu elikudalulile, futhi nesinqumo esithathwe amalungu oPhiko oluNgamele asele mayelana naleso sinqumo, kufanele kubhalwe phansi kumaminithi alowo mhlangano.

(3) Uma kunelungu loPhiko oluNgamele elihluleka ukudalula inzuzo njengoba kufanele ngokwesigatshana sesi-(2) noma, ngokulandela imibandela yaleso sigatshana, uma ekhona kuleyo ndawo okubanjelwe kuyona umhlangano woPhiko oluNgamele noma ngayiphi indlela eba ingxenye ezithangamini zoPhiko oluNgamele, lezo zithangamu eziqondene zoPhiko oluNgamele zizothathwa njengezingasebenzi futhi zizosulwa.".

Ukushintsha isigaba se-13 soMthetho wama-97 we-1998, njengoba uchitshiyelwe ngesigaba sesi-8 soMthetho wama-31 wezi-2003

11. Ngakho-ke lesi sigaba esilandelayo sifakwe endaweni yesigaba se-13 soMthethongqangi:

"**uMthethosisekelo we-SETA**

13.(1) UNgqongqoshe kufanele ahlinzekele ngomthethosisekelo kuma-SETA ngokwalo Mthetho, okufanele ahambisane nomthethosisekelo obekiwe onqunywe uNgqongqoshe.

(2) Ngokwalo Mthetho, umthethosisekelo obekiwe ovezwe esigatshaneni soku-(1) kufanele okungenani uhlanganise lokhu okulandelayo:
(a) Imisebenzsi yoPhiko oluNgamele lwe-SETA;
(b) Incazelo ye-SETA ephathelene—
(i) negama;
(ii) ukubeka ngokucacile umsebenzi wayo;
(iii) ukubeka ngokusobala amagatsha ayo emkhakheni oqondene; futhi
(iv) nokubeka ngokusobala isimo sayo sezomthetho;
(c) Izinjongo ezijwayelekile ze-SETA kanye nezinjongo zayo eziphathelene—
(i) nabasebenzi emkhakheni oqondene; kanye
(ii) nabaqashi emkhakheni oqondene;

(*d*) The functions of the SETA;
(*e*) The framework, procedure and process for the development of a strategic plan for the SETA relating to this Act and in accordance with the Public Finance Management Act;
(*f*) The Accounting Authority of the SETA in respect of—
  (i) its composition of members in accordance with the number of members per constituency;
  (ii) its powers and duties, and delegation of functions;
  (iii) its size;
  (iv) its capacity;
  (v) the nomination and appointment of members;
  (vi) consultation on proportional representation;
  (vii) alternates for members;
  (viii) the term of office of members;
  (ix) the induction and capacity building of members and alternates;
  (x) the first meeting at each new term of office of members;
  (xi) the suspension of members;
  (xii) the removal of members from office;
  (xiii) the filling of vacancies in the Accounting Authority; and
  (xiv) the application to the Accounting Authority for listing as new organisations;
(*g*) The establishment of—
  (i) an Executive Committee, including its composition, term of office and functions;
  (ii) an Audit Committee, including its composition, accountability and functions;
  (iii) a Finance Committee, including its composition, accountability and functions;
  (iv) a Remuneration Committee, including its composition, accountability and functions; and
  (v) a Governance and Strategy Committee, including its composition, accountability and functions;
(*h*) The Chairperson of the Accounting Authority regarding his or her—
  (i) appointment;
  (ii) term of office;
  (iii) functions;
  (iv) temporary absence or incapacity; and
  (v) vacation of office;
(*i*) Meetings, special meetings and meeting procedures of the Accounting Authority, Executive Committee, chambers and other committees;
(*j*) The appointment of the Chief Executive Officer and other employees and the duties of the Chief Executive Officer;
(*k*) The finances of the SETA, in respect of—
  (i) sources of finance;
  (ii) investments;
  (iii) purposes for which funds may be used;
  (iv) financial records of the SETA;
  (v) the audit of the SETA;
  (vi) the financial responsibility of the Executive Committee of the SETA; and
  (vii) signatories to accounts;
(*l*) A code of conduct for the SETA;
(*m*) A dispute resolution system;
(*n*) The indemnification of members of the Accounting Authority of the SETA, members of committees and employees of the Accounting Authority;
(*o*) The amalgamation with other SETAs and the dissolution of the SETA;
(*p*) The taking over of the administration of the SETA; and
(*q*) The amendment of the constitution of the SETA.

(3) A SETA may apply to the Minister in writing for a deviation from the standard constitution referred to in subsection (1).

(d) Imisebenzi ye-SETA;

(e) Uhlaka, inqubo nohlelo lwesu lobuchule lwe-SETA oluhambisana nalo Mthetho futhi ngokulandela i-*Public Finance Management Act;*

(f) UPhiko oluNgamele lwe-SETA mayelana—
- (i) nokwakheka kwamalungu ayo ngokulandela inani lamalungu egatsheni ngalinye;
- (ii) amandla ayo nemisebenzi, nokudlulisela imisebenzi;
- (iii) ubukhulu bayo;
- (iv) umthamo wamandla ayo;
- (v) ukuphakanyiswa nokuqokwa kwamalungu ayo;
- (vi) ukuxhumana okuhambisana nezithulo;
- (vii) ukushintsha amalungu;
- (viii) isikhathi anqunyelwe ukusebenza ngaso;
- (ix) ukwethulwa nokudlondlobalisa amalungu nalabo abawashintshayo;
- (x) umhlangano wokuqala wamalungu ngesikhathi esengamalungu;
- (xi) ukumiswa kwamalungu;
- (xii) ukukhishwa kwamalungi esikhundleni;
- (xiii) ukuvala izikhala zemisebenzi oPhikweni oluNgamele; kanye
- (xiv) nokufaka isicelo oPhikweni eliNgamele lokuba sohlwini lwezinhlangano ezintsha;

(g) Ukusungulwa kwe—
- (i) Komidi leziPhathimandla, kubandakanya nendlela elakheke ngayo, isikhathi elizosebenza ngaso nemisebenzi yalo;
- (ii) Komidi eliNcwandinga amaBhuku, kubandakanya nokwakheka kwalo, ukubhekelela nemisebenzi;
- (iii) Komidi leziMali, kubandakanya nokwakheka kwalo, ukubhekelela nemisebenzi;
- (iv) Komidi lezamaHolo, kubandakanya nokwakheka kwalo, ukubhekelela nemisebenzi, kanye
- (v) Komidi eliNgamele namaQhinga, kubandakanya nokwakheka kwalo, ukubhekelela nemisebenzi;

(h) USihlalo woPhiko oluNgamele mayelana—
- (i) nokuqokwa kwakhe;
- (ii) isikhathi sokusebenza;
- (iii) imisebenzi;
- (iv) ukungabi khona isikhashana noma ukungakwazi ukuqhuba umsebenzi; kanye
- (v) nokushiya isikhundla;

(i) Imihlangano, imihlangano ekhethekile kanye nenqubo yemihlangano yoPhiko oluNgamele, iKomidi leziPhathimandla, izigcawu namanyeamakomidi;

(j) Ukuqokwa koMphathi oMkhulu kanye nabanye abasebenzi nemisebenzi yoMphathi oMkhulu;

(k) Izimali ze-SETA, mayelana—
- (i) nalapho izimali zivela khona;
- (ii) imali etshaliwe;
- (iii) izinjongo imali ezosetshenziswa ukufeza zona;
- (iv) imininingwane egciniwe ye-SETA;
- (v) ukuhlolwa kwamabhuku e-SETA;
- (vi) lapho kusetshenziswa khona imali yeKomidi leziPhathimandla ze-SETA; kanye
- (vii) abanegunya lokusayinda ama-akhawunti;

(l) Indlela yokuziphatha ku-SETA;

(m) Indlela yokusombulula izingxabano;

(n) ndlela amalungu oPhiko oluNgamele ku-SETA, amalungu amakomidi kanye nabasebenzi boPhiko oluNgamele abazobonakala ngayo;

(o) Ukuhlanganiswa nama-SETA nokuhlakazwa kwama-SETA;

(p) Ukuthatha izintambo zokuphatha ku-SETA; kanye

(q) Nokuchitshiyelwa komthethosisekelo we-SETA.

(3) I-SETA ingafaka isicelo kuNgqongqoshe sokuphambuka kumthethosisekelo oshiwo esigatshaneni soku-(1).

(4) The application contemplated in subsection (3) must set out the extent of the deviation requested and must be accompanied by a detailed motivation to justify the requested deviation.

(5) The Minister may approve the deviation contemplated in subsection (3) if the deviation—

(a) is unique to the functions and operation of the SETA in question;

(b) is justified within the framework of the national skills development strategy; and

(c) is recommended by the National Skills Authority as a deviation required by the operational needs of the SETA in question.".

Insertion of sections 13A and 13B in Act 97 of 1998

12. The following sections are hereby inserted in the principal Act after section 13:

"Conduct of Accounting Authority member or staff member

13A. (1) Any member of an Accounting Authority, or any member of the staff, of a SETA—

(a) (i) must, before he or she assumes office, declare any business, commercial or financial activities undertaken for financial gain that may raise a possible conflict of interest with the SETA in question;

(ii) may not conduct business, directly or indirectly, with the SETA which constitutes a conflict of interest with the SETA;

(b) (i) may not have a conflict of interest with the SETA in question;

(ii) may not have a direct or indirect financial, personal or other interest in any matter to be discussed at a meeting and which entails or may entail a conflict or possible conflict of interest with the SETA in question;

(iii) must, before the meeting and in writing, inform the chairperson of that meeting of that conflict or possible conflict of interest.

(2) The business referred to in subsection (1)*(a)* relates to conduct that is aimed at receiving any direct or indirect financial personal gain that does not form part of the employment relationship.

(3) *(a)* Any person may, in writing, inform the chairperson of a meeting, before the meeting, of a conflict or possible conflict of interest of a member contemplated in subsection (1) with the SETA in question of which such person may be aware.

(b) A member referred to in paragraph *(a)* is obliged to recuse himself or herself from the meeting during the discussion of the matter and the voting thereon.

(4) A committee or chamber of the Accounting Authority with delegated functions in terms of this Act may not take a decision on a matter considered by it if any member has a conflict of interest contemplated in this section.

(5) A member of the Accounting Authority, or a member of a committee or chamber of the Accounting Authority contemplated in subsection (4), who contravenes section 11C(2) and (3) or this section may, after the Accounting Authority has followed a due process, be—

(a) suspended from attending a meeting; or

(b) disqualified as a member of the Accounting Authority or a member of a committee or chamber of the Accounting Authority, as the case may be.

(4) Isicelo esivezwe esigatshaneni sesi-(3) kufanele siveze indlela okuphambukwe ngayo ecceliwe futhi kufanele sihambisane nezincomo ezigcwele eziseka ukuphambuka okuceliwe.

(5) UNgqongqoshe angavuma ukuphambuka okuvezwe kulesi sigatshana (3) uma ukuphambuka—

(a) kuhlukile emisebenzini nasendleleni ye-SETA okukhulunywa ngayo;

(b) kuvunyelwe ngaphansi kohlaka lwamaqhinga okuthuthukisa amakhono; futhi

(c) kunconywe uPhiko lwamaKhono lukaZwelonke njengokuphambuka okudingekayo ngokwezidingo zomsebenzi waleyo-SETA.".

Ukushutheka isigaba se-13A ne-13B eMthethweni wama-97 we-1998

12. Ngakho-ke lezi zigaba ezilandelayo zishuthekwe kuMthethongqangi ngemuva kwesigaba se-13:

"Ukuziphatha kwamalungu uPhiko oluNgamele noma kwabasebenzi

13A.(1) Ilungu loPhiko oluNgamele, noma abasebenzi be-SETA—

(a) (i) kufanele, ngaphambi kokuba liqale ukusebenza, lidalule ibhizinisi, imisebenzi yezamabhizinisi noma yezimali eliyenzayo ukuze lithole imali engenza kube nokushayisana kwemibono naleyo-SETA;

(ii) Akufanele lenze umsebenzi oqondene ngqo noma ngenye indlela ongabangela ukushayisana kwemibono ne-SETA;

(b) (i) Akufanele libe nemibono eshayisana ne-SETA;

(ii) akufanele lithole ngqo izimali noma ngenye indlela, ukuzibandakanya noma inzuzo etholakala ngenye indlela odabeni oluzodingidwa emhlanganweni futhi oluphathelene noma olungaphathelana ukushayisana noma okungaholela ekushayisaneni kwemibono naleyo SETA;

(iii) kufanele, ngaphambi komhlangano futhi libhale phansi, lazise usihlalo walowo mhlangano ngokushayisana kwemibono noma okungabangela ukushayisana kwemibono.

(2) IBhizinisi elishiwo esigatshaneni soku-(1)*(a)* liqondiswe kulokho okwenziwayo okuhloswe ngakho ukuzuza imali eqondene ngqo noma engaqondene ngqo nomuntu futhi engeyona ingxenye yomsebenzii awuqashelwe.

(3) *(a)* Noma ubani angabhala, azise unobhala womhlangano, ngaphambi komhlangano ngokushayisana kwemibono noma ngokungenzeka kube nokushayisana kwemibono kwelungu elishiwo esigatshaneni soku-(1) naleyo-SETA lowo muntu okungenzeka ukuba uyazi ngakho.

(b) Ilungu elivezwe endimeni *(a)* libophezekile ukuba lizihoxise emhlanganweni uma kusanezingxoxo eziphathelene nalolo daba futhi kunamavoti ngalo.

(4) Ikomidi noma isigcawu soPhiko oluNgamele elithweswe imisebenzi ngokwemigomo yalo Mthetho akufanele lithathe isinqumo odabeni oludingidwa ilona uma kunelungu elinokungqozulana kwezifiso okuvezwe kulesi sigaba.

(5) Ilungu loPhiko oluNgamele, noma ilungu lekomidi noma lesigcawu soPhiko oluNgamele elivezwe esigatshaneni sesi-(4), eliphula isigaba se-11C(2) nesesi-(3) noma lesi sigaba, uma uPhiko oluNgamele selulandele uhlelo olufanele linga,—

(a) lingamiswa lingawuthameli umhlangano; noma

(b) liyekiswe ukuba ilungu loPhiko oluNgamele noma ilungu lekomidi noma lesigcawu soPhiko oluNgamele, noma okunye kwalokhu.".

Appointment of Chief Executive Officer

13B. (1) The members of an Accounting Authority must within six months of their appointment, after following a transparent process, submit a list of names of three persons who have experience in accounting, financial and senior management matters to the Minister.

(2) The Minister must appoint one of the persons contemplated in subsection (1) as Chief Executive Officer of the SETA in question.

(3) The Chief Executive Officer must be appointed for a term of office that corresponds with the terms of office of the members of the Accounting Authority concerned, but may stay in office for a period of six months if the SETA in question has been re-established in terms of section 9(1)*(b)*.

(4) The Minister must, after consultation with the National Skills Authority, make regulations regarding—

(a) the process that an Accounting Authority must follow for the purposes of subsection (1), including regarding—
   (i) the advertising of the post;
   (ii) the criteria and method of recruitment; and
   (iii) the shortlisting and selection;

(b) the salary level of the Chief Executive Officer; and

(c) the criteria and process to enable an Accounting Authority to determine other conditions of service of the Chief Executive Officer.

(5) The Minister may make regulations regarding the performance by a Chief Executive Officer of his or her functions in terms of this Act in order to ensure that the SETA performs its functions contemplated in section 10A(1)*(a)* effectively.".

Amendment of section 20 of Act 97 of 1998, as amended by section 14 of Act 31 of 2003

13. Section 20 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph *(b)* of the following paragraph:

"*(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]** contemplated in Chapter 2 of the NQF Act;".

Substitution of heading to Chapter 6 of Act 97 of 1998, as substituted by section 8 of Act 37 of 2008

14. The following heading is hereby substituted for the heading to Chapter 6 in the principal Act:

"**Administration Act**".

Amendment of section 22 of Act 97 of 1998, as substituted by section 9 of Act 37 of 2008

15. Section 22 of the principal Act is hereby amended by the deletion of subsection (1).

Substitution of section 23 of Act 97 of 1998

16. The following section is hereby substituted for section 23 of the principal Act:

"**Functions of provincial offices**

23. The functions of the provincial offices of the Department in respect of this Act are—

(a) to establish a skills development forum as prescribed;

(b) to maintain a data-base of skills development providers within their jurisdiction; and

(c) to perform any other prescribed or delegated function.".

"Ukuqokwa koMphathi oMkhulu

13B. (1) Amalungu uPhiko oluNgamele kufanele zingakapheli izinyanga eziyisithupha eqokiwe, ngemuva kokulandela uhlelo oluvulelekile, ahambise uhlu lwamagama abantu abathathu abanolwazi lokubala izimali, ezezimali nokuphatha ahanjiswe kuNgqongqoshe.

(2) UNgqongqoshe kufanele aqoke umuntu uyedwa kulabo abavezwe esigatshaneni soku-(1) ukuba abe uMphathi oMkhulu walcyo SETA.

(3) UMphathi oMkhulu kufanele aqokelwe isikhathi esihambisana nesikhathi sokusebenza samalungu alolo Phiko oluNgamele oluqondene, kodwa angahlala esikhundleni isikhathi esiyizinyanga eziyisithupha uma leyo SETA isungulwe kabusha ngokwemigomo yesigaba sesi-9(1)*(b)*.

(4) UNgqongqoshe ngemuva kokuxoxisana noPhiko lwezamaKhono lukaZwelonke, angamisa izimiso zomthetho eziphathelene—

(a) nohlelo okufanele uPhiko oluNgamele lilulandele ngokwesigatshana soku-(1), oluphathelene
  (i) nokukhangiswa kwesikhala somsebenzi;
  (ii) inqubo nendlela yokuqasha; kanye
  (iii) nokukhetha inani labafanele nokubakhetha;

(b) silinganiso somholo woMphathi oMkhulu; kanye

(c) nenqubo kanye nohlelo oluzosiza uPhiko oluNgamele ukuba lunqume imibandela yomsebenzi woPhiko oluNgamele.

(5) UNgqongqoshe angamisa izimiso zomthetho eziphathelene nendlela uMphathi oMkhulu aqhuba ngayo imisebenzi yakhe ngokwemigomo yalo Mthetho ukuze kuqikelelwe ukuthi i-SETA iqhuba imisebenzi evezwe esigatsheni se-10A(1)*(a)* ngendlela efanele.".

Ukuchibiyela isigaba sama-20 soMthetho wama-97 we-1998, njengoba uchitshiyelwe ngesigaba se-14 soMthetho wama-31 wezi-2003

13. Ngakho-ke isigaba sama-20 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana soku-(1) sendimana *(b)* le ndima elandelayo:

"*(b)* uma seziphelile, zizoba ingxenye yeziqu ezibhalisiwe ngokwemigomo yoHlaka lweziQu lukaZwelonke **[njengoba kuchaziwe esigatsheni soku-1 se-South African Qualifcations Authority Act]** oluvezwe esaHlukweni sesi-2 se-NQF Act;".

Ukuguqula isihloko sesaHluko sesi-6 soMthetho wama-97 we-1998, njengoba kufakwe isigaba sesi-8 soMthetho wama-37 wezi-2008

14. Ngakho-ke lesi sihloko esilandelayo siguquliwe kwafakwa isaHluko sesi-6 soMthethongqangi:

"i-***Administration Act***".

Ukuchibiyela isigaba sama-22 soMthetho wama-97 we-1998, njengoba kufakwe isigaba sesi-9 soMthetho wama-37 wezi-2008

15. Ngakho-ke isigaba sama-22 soMthethongqangi sichitshiyelwe ngokususa isigatshana soku-(1).

Ukushintsha isigaba sama-23 soMthetho wama-97 we-1998

16. Ngakho-ke lesi sigaba esilandelayo singene endaweni yesigaba sama-23 soMthethongqangi:

"Imisebenzi yamahhovisi ezifunda

23. Imisebenzi yamahhovisi ezifunda oMnyango kulo Mthetho—

(a) asungula isithangamu sokuthuthukisa amakhono njengoba kunqunyiwe;

(b) agcina imininingwane yabaphakela ngokuthuthukisa amakhono abangaphansi kwegunya lawo; futhi

(c) aqhuba eminye imisebenzi enqunyiwe noma edluliselwe kuwona.".

Repeal of section 24 of Act 97 of 1998

17. Section 24 of the principal Act is hereby repealed.

Repeal of section 25 of Act 97 of 1998

18. Section 25 of the principal Act is hereby repealed.

Repeal of section 26 of Act 97 of 1998

19. Section 26 of the principal Act is hereby repealed.

Amendment of section 26H of Act 97 of 1998, as inserted by section 11 of Act 37 of 2008

20. Section 26H of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The QCTO must perform its functions in terms of this Act and the **[National Qualifications Framework Act, 2008]** NQF Act.".

Repeal of section 26K of Act 97 of 1998

21. Section 26K of the principal Act is hereby repealed.

Repeal of section 26L of Act 97 of 1998

22. Section 26L of the principal Act is hereby repealed.

Repeal of section 26M of Act 97 of 1998

23. Section 26M of the principal Act is hereby repealed.

Repeal of section 26N of Act 97 of 1998

24. Section 26N of the principal Act is hereby repealed.

Amendment of section 32 of Act 97 of 1998, as substituted by section 22 of Act 31 of 2003

25. Section 32 of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 36 of Act 97 of 1998, as substituted by section 24 of Act 31 of 2004 and amended by section 14 of Act 37 of 2008

26. Section 36 of the principal Act is hereby amended by the deletion of paragraphs *(o)*, *(p)* and *(q)*.

Amendment of Schedule 2A to Act 97 of 1998

27. Schedule 2A to the principal Act is hereby amended—

(a) by the substitution in item 1 for the definition of "ETQA" of the following definition:

" **'ETQA'** means an Education and Training Quality Assurance Body accredited in terms of section 5(1)*(a)*(ii) of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), responsible for monitoring and auditing achievements in terms of national standards or qualifications, and to which specific functions relating to the monitoring and auditing of national standards or qualifications have been assigned in terms of section 5(1)*(b)*(i) of that Act;"; and

Ukuchithwa kwesigaba sama-24 soMthetho wama-97 we-1998

17. Ngakho-ke isigaba sama-24 soMthethongqangi sichithiwe.

Ukuchithwa kwesigaba sama-25 somthetho wama-97 we-1998

18. Ngakho-ke isigaba sama-25 soMthethongqangi sichithiwe.

Ukuchithwa kwesigaba sama-26 soMthetho wama-97 we-1998

19. Ngakho-ke isigaba sama-26 soMthethongqangi sichithiwe.

Ukuchithwa kwesigaba sama-26H soMthetho wama-97 we-1998, njengoba kushuthekwe isigaba se-11 soMthetho wama-37 wezi-2008

20. Ngakho-ke isigaba sama-26H soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana sesi-(2) lesi sigatshana esilandelayo:

"(2) I-QCTO kufanele iqhube imisebenzi yayo ngokwemigomo yalo Mthetho **[ye-National Qualifications Framework Act, 2008]** ne-NQF Act.".

Ukuchithwa kwesigaba sama-26K soMthetho wama-97 we-1998

21. Ngakho-ke isigaba sama-26K soMthethongqangi sichithiwe.

Ukuchithwa kwesigaba sama-26L soMthetho wama-97 we-1998

22. Ngakho-ke isigaba sama-26L soMthethongqangi sichithiwe.

Ukuchithwa kwesigaba sama-26M soMthetho wama-97 we-1998

23. Ngakho-ke isigaba sama-26M soMthethongqangi sichithiwe.

Ukuchithwa kwesigaba sama-26N soMthetho wama-97 we-1998

24. Ngakho-ke isigaba sama-26N soMthethongqangi sichithiwe.

Ukuchitshiyelwa kwesigaba sama-32 soMthetho wama-97 we-1998, njengoba kufakwe isigaba sama-22 soMthetho wama-31 wezi-2003

25. Ngakho-ke isigaba sama-32 soMthethongqangi sichitshiyelwe ngokususa isigatshana sesi-(2).

Ukuchibiyela isigaba sama-36 soMthetho wama-97 we-1998, njengoba kufakwe isigaba sama-24 soMthetho wama-31 wezi-2004 futhi wachitshiyelwa ngesigaba se-14 soMthetho wama-37 wezi-2008

26. Ngakho-ke isigaba sama-36 soMthethongqangi sichitshiyelwe ngokususa izindima *(o)*, *(p)* no-*(q)*.

Ukuchitshiyelwa kwesiThasiselo sesi-2A soMthetho wama-97 we-1998

27. Ngakho-ke isiThasiselo sei-2A kuMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yohlamvu loku-1 lwencazelo "ye-ETQA" kwafakwa le ncazelo elandelayo:

" **'i-ETQA'** ichaza iGatsha eliLawula iziNga lezeMfundo nokuQeqesha eligunyazwe ngokwemigomo yesigaba sesi-5(1)*(a)*(ii) se-*South African Qualifications Authority Act*, 1995 (Act No. 58 of 1995), elibhekele ukuqapha nokucwaninga izinzuzo ngokwemigomo yamazinga kazwelonke noma eziqu, futhi elithweswe imisebenzi ethile ehambisana nokuqapha nokucwaninga amazinga kazwelonke noma iziqu ngokwemigomo yohlamvu lwesi-5(1)*(b)*(i) lwalowo Mthetho;"; futhi

(*b*) by the substitution in item 6(1) for paragraphs *(b)* and *(c)* of the following paragraphs, respectively:

"*(b)* continue to perform all ETQA functions prescribed by the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); and

(c) have any matter concerning the performance of ETQA functions by a SETA dealt with in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).".

Repeal of Schedule 4 to Act 97 of 1998

28. Schedule 4 to the principal Act is hereby repealed.

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

29. The long title of the principal Act is hereby amended by the substitution for the expression "South African Qualifications Authority Act, 1995" of the expression "National Qualifications Framework Act, 2008".

Transitional provisions

30. (1) Any person appointed as a member of the Accounting Authority of a SETA in accordance with its constitution, remains so appointed if—

(a) that constitution was approved by the Minister and the constitution was effective immediately before section 12 of this Act takes effect; and

(b) the number of members according to the respective categories of membership are consistent with section 11 of the principal Act, as amended by this Act.

(2) The members contemplated in subsection (1) must be regarded as having been appointed in terms of section 11 of the principal Act, as amended by this Act.

(3) If the constitution of a SETA was effective immediately before section 12 of this Act takes effect, and if the constitution is not in line with the standard constitution referred to in section 13(1) of the principal Act, as amended by this Act, the Minister must consider a deviation from the standard constitution in terms of section 13(3) of the principal Act, as amended by this Act.

(4) If the Minister—

(a) approves a deviation in terms of the said section 13(3), the Minister must inform the SETA in question accordingly in writing; or

(b) cannot approve a deviation in terms of the said section 13(3), the Minister must provide the SETA in question with a constitution in line with the standard constitution contemplated in section 13(1) of the principal Act, as amended by this Act.

(5) The Minister must notify the SETA in question in writing of his or her direction in terms of subsection (4)*(b)*, and must instruct the SETA to invite nominations from the categories of roleplayers referred to in section 11 of the principal Act, as amended by this Act, within the timeframes set by the Minister in the notice.

(6) The Minister must provide the constitution of the SETA contemplated in subsection (4) in terms of section 13(1) of the principal Act, as amended by this Act, within six months of the date of the notice referred to in subsection (4).

(b) ngokufaka endaweni yohlamvu lwesi-6(1) lwendima *(b)* no-*(c)* lezi zindima ezilandelayo ngokulandelana:
"*(b)* qhubeka nokuqhuba yonke imisebenzi ye-ETQA enqunywe i-*South African Qualifications Authority Act*, 1995 (Act No. 58 of 1995); futhi
(c) kudingidwe udaba oluhambisana nokuqhutshwa kwemisebenzi ye-ETQA eyenziwa i-SETA ngokwemigomo ye-*South African Qualifications Authority Act*, 1995 (Act No. 58 of 1995).".

Ukuchithwa kwesiThasiselo sesi-4 soMthetho wama-97 we-1998

28. Ngakho-ke isiThasiselo sesi-4 soMthethongqangi sichithiwe.

Ukuchitshiyelwa kwesihloko soMthethosivivinywa uMthetho wama-97 we-1998, njengoba uchitshiyelwe ngesigaba sama-23 soMthetho wesi-9 we-1999

29. Ngakho-ke isihloko soMthethosivivinywa sichitshiyelwe ngokufaka endaweni yamagama "i-*South African Qualifications Authority Act*, 1995" kwafakwa lawa magama "i-*National Qualifications Framework Act*, 2008".

Imibandela yesikhashana

30. (1) Umuntu oqokwe njengelungu loPhiko oluNgamele ku-SETA ngokulandela umthethosisekelo walo, uzoqhubeka abe ilungu uma—
(a) lowo mthethosisekelo wagunyazwa uNgqongqoshe futhi lasungulwa ngaphambi kokuqala ukusebenza kwesigaba se-12 salo Mthetho; futhi
(b) inani lamalungu ngokulandelana kwemikhakha yobulungu ihambisana nesigaba se-11 soMthethongqangi, njengoba uchitshiyelwe ngalo Mthetho.

(2) Amalungu avezwe esigatshaneni soku-(1) kufanele athethwe sengathi aqokwe ngokwemigomo yesigaba se-11 soMthethongqangi, njengoba uchitshiyelwe ngalo Mthetho.

(3) Uma umthethosisekelo we-SETA waqala ukusebenza ngaphambi kokuqala ukusebenza kwesigaba se-12 salo Mthetho, futhi uma umthethosisekelo ungahambisani nomthethosisekelo ofanele oshiwo esigatsheni se-13(1) soMthethongqangi, njengoba sichitshiyelwe ngalo Mthetho, uNgqongqoshe kufanele abheke ukuba kuphambukwe kumthethosisekelo ofanele ngokwemigomo yesigaba se-13(3) soMthethongqangi, njengoba uchitshiyelwe ngalo Mthetho.

4) Uma uNgqongqoshe—
(a) egunyaza ukuba kuphambukwe ngokwemigomo ngokwalesi sigaba kufanele azise leyo SETA ngendlela efanele ngokubhalwe phansi; noma
(b) engeke agunyaze ukuphambuka ngokwemigomo yalesi sigaba se-13(3), uNgqongqoshe kufanele anikeze leyo SETA umthethosisekelo ohambisana namazinga omthethosisekelo ovezwe esigatsheni se-13(1) soMthethongqangi, njengoba uchitshiyelwe ngalo Mthetho.

(5) UNgqongqoshe kufanele azise leyo-SETA ngencwadi umhlahlandlela wakhe ngokwemigomo yesigatshana sesi-(4)*(b)*, futhi kufanele akhiphele i-SETA umyalelo ocela iziphakamiso emikhakheni yabaqondene abavezwe esigatsheni se-11 soMthethongqangi, njengoba sichitshiyelwe ngesigatshana sesi-5 salo Mthetho, esikhathini esibekwe uNgqongqoshe esazisweni.

(6) UNgqongqoshe kufanele akhiphe umthethosisekelo we-SETA ovezwe esigatshaneni sesi-(4) ngokwemigomo yesigaba se-13(1) soMthethongqangi, njengoba uchitshiyelwe ngalo Mthetho, zingakapheli izinyanga eziyisithupha kukhishwe isaziso esivezwe esigatshaneni sesi-(4).

Short title and commencement

31. (1) This Act is called the Skills Development Amendment Act, 2011, and takes effect on a date determined by the Minister by notice in the *Gazette.*

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

(3) Notwithstanding subsection (1), the Minister may not determine a date on which sections 1*(c)*, 2, 4, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26 and 28 take effect, unless the Minister of Labour has approved such determination.

Isihloko esifingqiwe nokuqala kwawo ukusebenza

31. (1) Lo Mthetho ubizwa ngokuthi uMthetho wokuThuthukisa amaKhono, wezi-2011, futhi uzoqala ukusebenza ngosuku oluzonqunywa uNgqongqoshe ngesaziso kuSomqulu.

(2) Kunganqunywa izinsuku ezihlukene ngaphansi kwesigatshana soku-(1) mayelana nemibandela ehlukene yalo Mthetho.

(3) Nakuba kunesigatshana soku-(1), uNgqongqoshe ngeke anqume usuku okuzoqala ngalo ukusebenza izigaba eziyi-1*(c)*, 2, 4, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26 nesama-28, ngaphandle uma uNgqongqoshe wezeMisebenzi egunyaze lokhu okunqunyiwe.