



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 105

2008

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 1 of 2008: Vocational Education and Training Act, 2008.

Act No. 1, 2008 VOCATIONAL EDUCATION AND TRAINING ACT, 2008**ACT**

To establish the Namibia Training Authority, the Board of the Namibia Training Authority and the National Training Fund; to regulate the provision of vocational education and training; to provide for the funding of vocational education and training; to provide for the imposition of vocational education and training levy; to provide for the appointment of inspectors and designation of quality system auditors; and to provide for incidental matters.

(Signed by the President on 15 April 2008)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:

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SCHEDULE**PART I
PRELIMINARY PROVISIONS****Definitions**

1. In this Act, unless the context indicates otherwise -

“Board” means the Board of the NTA established by section 6;

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“committee” means a standing committee or other committee of the Board established in terms of or under section 15;

“designated agent” means an agent designated under section 37 to collect levies on behalf of the NTA;

“employee” means an individual, other than an independent contractor, who -

- (a) works for another person and who receives, or is entitled to receive, remuneration for that work; or
- (b) in any manner and for remuneration assists in carrying on or conducting the business of an employer;

“employer” means any person, including the State who -

- (a) employs or provides work for, an individual and who remunerates or who expressly or tacitly undertakes to remunerate that individual;
- (b) permits an individual to assist that person in any manner in the carrying on or conducting that person’s business;

“Fund” means the National Training Fund established by section 24;

“inspector” means an inspector appointed in terms of section 43;

“Labour Advisory Council” means the Labour Advisory Council referred to in section 89 of the Labour Act, 2004 (Act No. 15 of 2004);

“levy” means a vocational education and training levy imposed under section 35;

“Minister” means the Minister responsible for education;

“NTA” means the Namibia Training Authority established by section 4;

“Namibia Qualifications Authority” means the Namibia Qualifications Authority established by section 2 of the Namibia Qualifications Authority Act, 1996 (Act No. 29 of 1996);

“prescribed” means prescribed by regulation;

“quality systems auditor” means a quality systems auditor appointed under section 45;

“regulation” means a regulation made or in force under this Act;

“this Act,” includes the regulations;

“vocational education and training” means education and training which provides learners with occupational or work related knowledge and skills; and

“vocational education and training provider” means a person or organisation which offers vocational education and training programmes to learners.

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2. (1) This Act applies to vocational education and training in Namibia, except for education and training in the Namibian Defence Force or the Namibian Police Force.

(2) This Act binds the State.

(3) If there is a conflict between this Act and any other law dealing with vocational education and training, this Act prevails to the extent of the conflict.

Objects of Act

3. The objects of this Act are -

- (a) to achieve an effective and sustainable system of skills formation that -
 - (i) is aligned with the labour market;
 - (ii) provides the skills that are needed for accelerated development;
 - (iii) develops the competencies needed by young people for productive work and increased standards of living; and
 - (iv) promotes access, equity and quality in vocational education and training;
- (b) to establish a stable organisation and management system that -
 - (i) clarifies roles in and responsibilities for vocational education and training; and
 - (ii) is accountable to Parliament through the Minister;
- (c) to establish and maintain a sustainable partnership between government, the private sector and civil society to resource the provision of vocational education and training.

PART II
NAMIBIA TRAINING AUTHORITY

Establishment of NTA

4. (1) There is established a training authority to be known as the Namibia Training Authority.

(2) the NTA is a juristic person, capable of -

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging and disposing of property; and

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- (c) entering into contracts and performing all such acts for the proper performance of its functions under this Act which may lawfully be performed by a juristic person.

Powers and functions of NTA**5. (1) The NTA -**

- (a) must advise the Minister on national policy on vocational education and training;
- (b) may advise the Minister on -
 - (i) any matter arising from or connected with the application of this Act; and
 - (ii) any other matter concerning vocational education and training.

(2) The NTA must -

- (a) develop and implement a strategic plan for vocational education and training -
 - (i) to implement the national policy for vocational education and training; and
 - (ii) to increase access, equity and quality in vocational education and training;
- (b) promote the effectiveness and efficiency of vocational education and training in Namibia;
- (c) engage business, trade unions, training providers and other relevant stakeholders in building the vocational education and training system;
- (d) ensure that vocational education and training programs and services meet the current and emerging needs of industry, business and the broader community;
- (e) encourage the development of vocational education and training opportunities for the youth and the unemployed; and
- (f) endeavour to increase employment and self-employment opportunities.

(3) The NTA, in respect of vocational education and training and subject to the policies and procedures determined by the Namibia Qualifications Authority, may -

- (a) develop occupational standards, curriculum standards and qualifications;
- (b) accredit education and training providers and programmes;
- (c) register assessors, conduct assessments, including the recognition of prior learning and conduct quality audits;

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- (d) issue awards and certificates; and
- (e) negotiate articulation arrangements between vocational education and training programmes and other education and training programmes.
- (4) The NTA may, for the purpose of promoting vocational education and training -
 - (a) provide financial and technical assistance to employers, vocational education and training providers, employees, learners and other persons or bodies; or
 - (b) fund vocational education and training programmes and projects -
 - (i) identified in the national vocational education and training policy or the NTA's strategic plan for vocational education and training; or
 - (ii) that the NTA considers necessary to achieve the objects of this Act.
- (5) The NTA may -
 - (a) undertake research and conduct investigations in order to promote vocational education and training; and
 - (b) enter into agreements with any person or body for the provision of goods or services or the performance of functions that the NTA considers necessary to assist it -
 - (i) in the exercise and performance of its powers and functions;
 - (ii) to achieve the objects of this Act.
- (6) The NTA may exercise such other powers and perform such other functions as are -
 - (a) necessary to achieve the objects of this Act; or
 - (b) conferred on the NTA by this Act or any other law.

PART III
BOARD OF NAMIBIA TRAINING AUTHORITY

Board of NTA

- 6.** There is established a board to be known as the Board of the Namibia Training Authority to administer and control the affairs of the NTA and which must -
- (a) determine the policies and procedures of the NTA;
 - (b) exercise control in general over the exercise of the powers and the performance of the functions of the NTA; and
 - (c) administer and control the National Training Fund.

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7. (1) The Board must ensure that it has and maintains -
- (a) effective, efficient and transparent systems of financial and risk management and internal control, including a system of internal audit; and
 - (b) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective.
- (2) The Board must take effective and appropriate steps to -
- (a) collect all revenue due to the NTA and the Fund; and
 - (b) prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the NTA.
- (3) The Board is responsible for the management, including the safeguarding of the assets and for the management of the revenue, expenditure and liabilities of the NTA and the Fund.
- (4) The Board must take effective and appropriate disciplinary steps against any staff member of the NTA who -
- (a) contravenes or fails to comply with the provisions of this Act;
 - (b) commits an act which undermines the financial management and internal control system of the NTA; or
 - (c) makes or permits any irregular expenditure or fruitless and wasteful expenditure.

Fiduciary duties of Board

8. (1) The Board must -
- (a) exercise the duty of utmost care to ensure reasonable protection of the assets and records of the NTA and the Fund;
 - (b) act with fidelity, honesty, integrity and in the best interests of the NTA and the Fund in managing their financial affairs.
- (2) A member of the Board may not -
- (a) act in a way that is inconsistent with the responsibilities of the Board in terms of this Act; or
 - (b) use the position or privileges of, or confidential information obtained as, a member of the Board, for personal gain or to improperly benefit another person.

Act No. 1, 2008 VOCATIONAL EDUCATION AND TRAINING ACT, 2008**Constitution of Board**

9. (1) The Board consists of eleven members appointed by the Minister, subject to section 15 of the State-owned Enterprises Governance Act, as follows -

- (a) five members nominated by employer representatives on the Labour Advisory Council;
- (b) two members nominated by trade union representatives on the Labour Advisory Council;
- (c) three members representing the government; and
- (d) a member of the Council of the Namibia Qualifications Authority, nominated by that Council.

(2) The Minister must appoint the chairperson and vice-chairperson of the Board from amongst the members of the Board.

Governance and performance agreements

10. (1) The Minister must, within one month of being constituted, and with due regard to any directives laid down by the Council under section 4 of the State-owned Enterprises Governance Act, enter into a written governance agreement with the Board in compliance with section 17 of that Act.

(2) The Minister, within 30 days of appointing a person as a member of the Board, and with due regard to any directives laid down by the Council under section 4 of the State-owned Enterprises Governance Act, must enter into a written performance agreement with such member in compliance with section 18 of that Act.

Term of office of member of Board

11. A member of the Board holds office for a term of three years, and is eligible for reappointment upon the expiry of his or her term of office.

Disqualifications for appointment as member of Board

12. A person is not eligible for appointment as member of the Board if the person -

- (a) is not a Namibian citizen or is not lawfully admitted to Namibia for permanent residence;
- (b) is not resident in Namibia;
- (c) is a member of Parliament, a regional council or local authority council;
- (d) is an unrehabilitated insolvent; or
- (e) has been convicted of an offence involving dishonesty and sentenced to imprisonment without the option of a fine.

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13. (1) The Minister may remove a member from office, if the Minister is satisfied that such member -

- (a) is incapacitated by physical or mental illness; or
- (b) is for whatever valid reason incapable of effectively and efficiently performing the member's duties.

(2) The Minister may only act in terms of subsection (1) after having afforded the member a fair opportunity to be heard.

Vacation of office and filling of vacancies on Board

14. (1) The office of a member of the Board becomes vacant if the member -

- (a) becomes subject to any disqualification referred to in section 12;
- (b) resigns by notice in writing addressed and delivered to the Minister;
- (c) is absent from three consecutive meetings of the Board without the leave of the chairperson of the Board; or
- (d) is removed from office by the Minister under section 13.

(2) If a member dies or vacates office before the expiration of that member's term of office, the vacancy must be filled for the unexpired portion of the term of office by the appointment of a suitable person by the Minister in accordance with section 9.

Councils and committees of Board

15. (1) The Board must establish -

- (a) the Standards, Assessment and Certification Council to advise the Board in the performance of its standards, assessment and certification setting functions;
- (b) the National Training Fund Council, to assist the Board to control and administer the National Training Fund; and
- (c) as standing committees of the Board, such industry skills committees as the Board considers appropriate, to assist the Board to meet the requirements for key industry sectors.”.

(2) The Board may establish such other committees of the Board as it considers necessary for the effective exercise and performance of the powers and functions of the NTA.

(3) A committee must -

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- (a) advise the Board on such matters relating to the powers and functions of the Board as the Board may refer to the committee;
 - (b) assist the Board in the exercise and performance of such powers and functions of the Board as the Board may designate in respect of the committee;
 - (c) perform such other functions as may be conferred by or under this Act.
- (4) The Board must determine the membership of any committee and designate a member of the committee as chairperson thereof.
- (5) The Board, in respect of a committee -
- (a) must appoint its members from members of the Board, and may include any other persons;
 - (b) must determine its terms of reference, subject to this section;
 - (c) may make rules relating to the holding of and procedures at meetings;
 - (d) may at any time dissolve or reconstitute a committee.

Disclosure of interests by members of Board

- 16.** (1) A member of the Board must -
- (a) disclose to the Board any direct or indirect personal or private business interest that the member or any spouse, partner or close family member may have in any matter before the Board; and
 - (b) withdraw from the meeting when the matter referred to in paragraph (a) is considered, unless the Board, after having considered the matter, directs that the member's direct or indirect interest in the matter is trivial or irrelevant.
- (2) A disclosure by a member in accordance with subsection (1), and the decision taken by the remaining members in connection with the disclosure, must be recorded in the minutes of the meeting.
- (3) A member who refuses or fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding N\$2 000 or to imprisonment not exceeding a period of six months, or to both such fine and such imprisonment.

Meetings and decisions of Board

- 17.** (1) The Minister must convene the first meeting of the Board and thereafter, subject to subsection (2), meetings must be held at such times and places as the Board determines, but at least four meetings must be held in each year.
- (2) The chairperson of the Board may at any time, and must if so requested in writing by the Minister or by at least six members, convene a special meeting of the Board.

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(3) The majority of all the members forms a quorum at a meeting of the Board.

(4) The chairperson of the Board presides at meetings of the Board or, in his or her absence, the vice-chairperson or, in the absence of both the chairperson and the vicechairperson, the members present at a meeting must elect from amongst their number a member to preside.

(5) A decision of the majority of the members present at a meeting of the Board constitutes a decision of the Board and, in the event of an equality of votes, the member presiding at the meeting has a casting vote in addition to a deliberative vote.

(6) A decision of the Board or an act performed under the authority of the Board is not invalid only by reason of -

(a) a vacancy on the Board; or

(b) the fact that a person not entitled to sit as a member of the Board was in attendance when the decision was taken or act authorized,

if the decision was taken or act was authorized by a majority of the members who were present and entitled to vote at such meeting.

(7) Subject to this Act, the Board may regulate its procedures that must be followed when a meeting of the Board is convened.

(8) The Board must cause proper minutes to be kept of proceedings at its meetings.

(9) The Board may invite any person whose presence is in its opinion desirable to attend and to participate in the deliberations of a meeting of the Board, but such person has no right to vote.

(10) Despite subsection (5), a written resolution not passed at a meeting of the Board but signed by all the members of the Board at that time present in Namibia and sufficient to constitute a quorum -

(a) is as valid and effectual as if it had been passed at a meeting of the Board duly convened and constituted; and

(b) must be recorded in the minutes of the next meeting of the Board.

Limitation of liability of members of Board, Councils and committees

18. A member of the Board, a Council of the NTA or any committee is not liable for anything done or omitted in good faith and not attributable to gross negligence during the exercise or performance of his or her powers or functions as members of the Board, a Council or committee in terms of or under this Act.

Remuneration and allowances of members of Board, Councils and committees

19. (1) The Minister must, with the concurrence of the Minister for finance, determine the remuneration and allowances payable to members of the Board, a Council of the NTA and committee, subject to section 22(1) of the State-owned Enterprises Governance Act.

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(2) A member of the Board, a Council of the NTA or a committee who is in full-time service of the State may not be paid any remuneration or allowance.

Delegation of powers and assignment of functions of Board

20. (1) The Board may, in writing and subject to such conditions as the Board may determine, delegate any of its powers or assign any function to a Council of the NTA, a committee of the NTA, a staff member of the NTA or any other competent person or body and may at any time revoke such delegation.

(2) A delegation or assignment under subsection (1) -

- (a) does not divest the Board of the power or function so delegated or assigned and the Board may at any time amend or set aside any decision made under the delegation; and
- (b) does not prevent the exercise of the power or the performance of the function by the Board itself.

(3) The Board may not delegate -

- (a) its power to delegate;
- (b) the power to approve the annual budget or any supplementary budget of receipts and expenditure, the annual balance sheet or any statement of account of the NTA or the Fund, or to make rules.

Chief executive officer and other staff members

21. (1) The Board, with the concurrence of the Minister, must appoint a suitable person who has expertise relevant to the functions of the NTA to be the Chief Executive Officer of the NTA.

(2) The Chief Executive Officer -

- (a) is an *ex officio* member of the Board, but has no right to vote;
- (b) holds office for a term of five years, and is eligible for reappointment at the end of that term; and
- (c) is responsible for the carrying out of the resolutions of the Board and manages the affairs of the NTA and the Board subject to the control and directions of the Board.

(3) Whenever the office of the chief executive officer is vacant, or the chief executive officer is for any reason unable to perform the functions of the office, the Board, may appoint -

- (a) a staff member of the NTA; or
- (b) any other suitable person,

to act as chief executive officer during the vacancy or during the period that the chief executive officer is unable to perform those functions.

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(4) The Board may appoint such additional staff members of the NTA as the Board considers necessary to assist it in the exercise of its powers and the performance of its functions in terms of or under this Act.

Performance agreements of management staff of NTA

22. (1) The Board must require the Chief Executive Officer, and such other senior management staff of the NTA as the Board may determine, to enter into a performance agreement with the Board, with due regard to any directive laid down by the Council under section 4 of the State-owned Enterprises Governance Act, setting out, among others -

- (a) the terms and conditions of appointment;
- (b) objectives to be achieved and the time frame for achievement thereof; and
- (c) measures necessary to evidence such achievement.

(2) Failure on the part of the Chief Executive Officer or other senior management staff member to comply with any provision of a performance agreement which he or she entered into with the Board, constitutes a ground for his or her dismissal from the service of the NTA, subject to the rules of natural justice.

Remuneration of management and other staff of NTA

23. Subject to section 22(3) of the State-owned Enterprises Governance Act, the Board -

- (a) with the concurrence of the Minister, determines the conditions of service, remuneration and other benefits of the Chief Executive Officer and other management staff of the Fund; and
- (b) determines the conditions of service, remuneration and other benefits of other staff members of the NTA below management level.

PART IV
NATIONAL TRAINING FUND

National Training Fund

- 24.** (1) The National Training Fund is established.
- (2) The National Training Fund consists of -
- (a) money voted by Parliament for the purposes of the Fund, the NTA or for the administration of this Act;
 - (b) any education and training levies, interest and penalties paid by employers in terms of this Act;
 - (c) any money received by the NTA, including donations;
 - (d) any interest earned on investments of the Fund; and

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(e) any money to which the Fund is or may become entitled.

(3) The Vocational Training Fund established by section 44 of the National Vocational Training Act, 1994 (Act 18 of 1994) ceases to exist at the date of commencement of this Act and -

(a) all amounts standing to the credit of that Fund at that date, devolve upon and vest in the Fund; and

(b) all assets, rights, liabilities and obligations of the Vocational Training Fund devolve upon and vest in the Fund.

(4) No transfer duty, stamp duty, fee or costs are payable in respect of the transfer of any assets, rights liabilities or obligations between the Vocational Training Fund and the Fund as contemplated in this section.

(5) the Registrar of Deeds or any other person in charge of any other office where a register or a record is being kept of the ownership of or entitlement to an asset or right referred to in subsection (3)(b) must make such entries in or on any relevant register, title deed or other document in his or her office or submitted to him or her as may be necessary to effect the transfer thereof to the Fund.

Control and administration of Fund

25. The control and administration of the Fund vests in the Board.

Use of money in Fund

26. The Fund may only be applied -

(a) to provide financial and technical assistance to employers, vocational education and training providers, employees, learners and other persons or bodies to promote vocational education and training; and

(b) to fund vocational education and training programmes and projects -

(i) identified in the national policy on vocational education and training or the NTA's strategic plan for vocational education and training; or

(ii) that the NTA considers necessary to achieve the objects of this Act.

(c) to expenditure incurred by the NTA in the performance of its functions in terms of or under this Act, including its core administration costs as contemplated in sections 5 and 7;

(d) to any other expenditure incurred by the NTA or the Board in or in connection with the performance of their functions in terms of this Act; and

(e) to any other expenditure authorised by this Act.

Bank accounts of Fund

27. (1) The Board must open and maintain with a bank or banks approved by the Minister from time to time -

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- (a) an account known as the National Training Fund Account into which all monies payable to the Fund must be deposited; and
 - (b) a reserve account into which surplus money in the Fund may be deposited and from which any investments contemplated in section 28 may be made.
- (2) The Board may operate subsidiary accounts within the National Training Fund Account.
- (3) The objects of the reserve account contemplated in subsection (1) are -
- (a) to provide for unseen demands on the Fund; and
 - (b) to stabilise the level of vocational education and training levies.
- (4) The Board must determine the amounts to be held in the reserve account and may authorise payments from the reserve account.

Investment of Fund money

28. The Board, with the approval of the Minister and the Minister of Finance, may invest surplus money in the Fund with due regard -

- (a) to the maintenance, growth and preservation of the Fund; and
- (b) to economic and commercial viability of any investments.

Income of Fund exempt from tax

29. The income of the Fund, including income from any investments, is exempt from income tax or any other tax.

PART V
FINANCIAL PLANNING AND REPORTING OF NAMIBIA TRAINING
AUTHORITY AND NATIONAL TRAINING FUND

Financial year of NTA and Fund

30. The financial year of the NTA and of the Fund ends on 31 March of each year.

Business and financial plan of NTA and Fund

31. (1) The NTA must, at least 90 days before the commencement of its next financial year, or a later date determined by the Minister, submit to the Minister for approval a business and financial plan that complies with the requirements of section 19(3) of the State-owned Enterprises Governance Act.

(2) The NTA may not, in respect of its core administrative expenditure in any financial year, budget or spend an amount exceeding fifteen percent of its estimated revenue for that financial year, unless otherwise approved by the Minister.

- (3) The NTA must -

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- (a) after consulting the Minister, appoint a person registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951) and engaged in public practice as such, as the auditor of the NTA and the Fund; and
- (b) cause the accounting and related records of the NTA and the Fund to be audited annually by that person.

Annual report and financial statements of NTA and Fund

32. (1) The NTA must -

- (a) keep full and proper records of the financial affairs of the NTA and the Fund;
- (b) prepare financial statements for each financial year in accordance with generally accepted accounting practice;
- (c) submit those financial statements within three months after the end of the financial year to the auditor of the NTA and the Fund for auditing;
- (d) submit within six months of the end of the financial year to the Minister -
 - (i) an annual report on the activities of the NTA during that financial year;
 - (ii) the audited financial statements of the NTA and the Fund for that financial year; and
 - (iii) the report of the auditor on those statements.

(2) The annual report and financial statements referred to in subsection (1) must comply with the requirements of section 26(2) of the State-owned Enterprises Governance Act and must -

- (a) fairly present the state of affairs of the NTA and the Fund, their business, their financial results, their performance against predetermined objectives and their financial position at the end of the financial year concerned;
- (b) include particulars of -
 - (i) any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year;
 - (ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure;
 - (iii) any losses recovered or written off; and (iv) any other matter that may be prescribed.

(3) The Minister must table the report and statements referred to in subsection (2) in the National Assembly -

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- (a) within 30 days after receipt thereof, if the National Assembly is in ordinary session; or
- (b) if the National Assembly is not in ordinary session, within 30 days of the commencement of its next ordinary session.

Goods and services charges and other revenue of NTA

33. (1) The NTA may, with the approval of the Minister, charge for any goods and services that it provides in the performance of its functions under this Act.

(2) Any money received by the NTA for the provision of goods and services in terms of subsection (1) and any money received by the NTA from any other source must be paid into the National Training Fund.

Winding up of NTA and Fund

34. The NTA and the Fund may not be wound up except by or under the authority of an Act of Parliament.

PART VI
VOCATIONAL EDUCATION AND TRAINING LEVY

Imposition of levy

35. (1) Subject to section 36, the Minister, with the concurrence of the Minister of Finance and after consulting the Board, by notice in the *Gazette*, may impose a levy to be paid by -

- (a) employers in general; or
- (b) specific categories of employers,

for the purpose of facilitating and encouraging vocational education and training.

- (2) The notice referred to in subsection (1) must contain -
 - (a) a description of the employers who must pay the levy;
 - (b) the rate and manner of calculating or determining the levy;
 - (c) the date or dates on, or periods within, which the levy is payable;
 - (d) a description of the body to which the levy must be paid and the required manner of payment; and
 - (e) any other matter which is in the opinion of the Minister necessary for the effective imposition and collection of the levy.

(3) Different amounts of levy may be imposed under subsection (1) for different categories of employers by having regard -

- (a) to the number of employees employed by such employers;

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- (b) to the payroll or turnover of such employers; and
- (c) to such other criteria as the Minister, after consulting the Board, may consider relevant.

(4) The Minister, by notice in the *Gazette*, with the concurrence of the Minister of Finance and after consulting the Board, may vary or withdraw any notice issued under subsection (1).

Notice of intention to impose or vary levy

36. (1) Before imposing or varying a levy under section 35, the Minister must -

- (a) by notice in the *Gazette* -
 - (i) inform affected employers of any such intention by specifying -
 - (aa) the details of the proposed imposition or variation;
 - (bb) the reasons for the proposed imposition or variation;
 - (cc) the proposed date or dates of commencement of the proposed imposition or variation; and
 - (ii) invite affected employers to make representations to the Minister within 30 days of publication of the notice or such further period as the Minister may determine; and
- (b) consider any representations made in terms of paragraph (a)(ii).

(2) A notice imposing or varying a levy must be published in the *Gazette* at least 30 days before its commencement.

Payment and collection of levy

37. (1) Any levy payable by an employer in terms of this Act, must be paid -

- (a) to the NTA; or
- (b) to an agent designated by the Minister, after consulting the Board and by notice in the *Gazette*, to collect the levy on behalf of the NTA.

(2) Subject to subsection (3), the designated agent may withhold from its payment to the NTA the costs of collection of the levy.

(3) The total amount of collection costs referred to in subsection (2) may not exceed such percentage, as may be prescribed, of the total amount of levies collected by the designated agent.

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38. If an employer fails to pay a levy or any portion of a levy on or before the due date for payment, interest is payable on the outstanding amount at the rate prescribed under the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975), calculated from the last day for payment to the day that payment is received by the NTA or by the designated agent.

Penalties on default of payment

39. If any levy remains unpaid after the last day for payment thereof, a penalty of ten percent of that unpaid amount is payable by the employer in addition to the interest contemplated in section 38.

Levy as debt due to Fund

40. (1) Any levy, penalty or interest due by an employer in terms of this Act is, from the date that it is due, deemed to be a debt due to the Fund and may be recovered by the NTA or the designated agent in the manner provided for in this section.

(2) Subject to subsection (3), the NTA or designated agent may, in respect of any debt due as contemplated in subsection (1), file with the clerk or registrar of a court of competent jurisdiction a statement -

- (a) certified as correct by the chief executive officer of the Fund or the equivalent officer of the designated agent; and
- (b) stating the amount of all levies, penalties and interest due to the Fund by the employer.

(3) A statement filed under subsection (2) has the effect of, and any proceedings may be taken thereon, as if it were, a civil judgment of the court at which the statement was filed, in favour of the Fund for a liquid debt in the amount specified in the statement.

(4) The NTA or designated agent must, before filing a statement under subsection (2), serve a written notice on the employer concerned -

- (a) accompanied by a copy of the statement; and
- (b) informing the employer of its intention to file the statement 30 days after serving the notice.

(5) The chief executive officer of the NTA or the equivalent officer of the designated agent may by notice in writing, addressed to the clerk or registrar of the court in question, withdraw a statement filed with that clerk or registrar and thereupon that statement ceases to have any effect.

(6) The NTA or designated agent may institute proceedings afresh under subsection (2) in respect of the levies, penalties or interest to which a statement withdrawn under subsection (5) relates.

Act No. 1, 2008 VOCATIONAL EDUCATION AND TRAINING ACT, 2008**Exemption from levy**

41. The Minister, on recommendation of the Board and by notice in the *Gazette*, may exempt any employer or category or class of employer from the payment of a levy imposed under section 35.

Employers to keep records and furnish information

42. Every employer who is liable in terms of a notice issued under section 35 to pay a levy must -

- (a) keep and maintain at his, her or its principal places of business in Namibia up-to-date records of all employees in their employment; and
- (b) within the period specified in any such notice, furnish the NTA or designated agent with such information pertaining to his, her or its employees or business as the NTA or designated agent may reasonably request in any such notice.

Appointment and powers of inspectors

43. (1) Subject to the laws governing the public service, the Minister may appoint any suitable person as an inspector to promote, monitor and enforce compliance with this Act in so far as it relates to the collection of levies by the NTA or designated agent.

(2) Any person appointed as an inspector under subsection (1) must be furnished with a certificate of appointment signed by the Minister.

(3) In order to monitor and enforce compliance with this Act in so far as it relates to the collection of levies by the NTA or the designated agent, an inspector may without warrant or notice, at any reasonable time enter any workplace or any other place, which is not a home, where an employer carries on business or keeps any records.

(4) An inspector may enter a home or any place other than a place contemplated in subsection (3) only -

- (a) with the consent of the owner or occupier; or
- (b) if authorised by a warrant under subsection (5) to do so.

(5) A magistrate, or judge of the High Court, in chambers and having jurisdiction may issue a warrant on written application by an inspector stating under oath or affirmation the reasons for the need to enter the place in order to monitor and enforce compliance with this Act in so far as it relates to the collection of levies by the NTA or designated agent.

(6) In order to monitor and enforce compliance with this Act in so far as it relates to the collection of levies by the NTA or the designated agent, an inspector may -

- (a) question any person either alone or in the presence of any other person on any matter to which this Act relates;

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- (b) order any person who has control over or custody of any book, document or thing to produce without delay, at such time and place as may be determined by the inspector, such book, document or thing;
 - (c) seize any book, document or thing which in the opinion of the inspector may serve as evidence in any matter in terms of this Act;
 - (d) examine or cause to be examined, make extracts from or copies of, any book, document or thing produced to or seized by the inspector and order any person who in the opinion of the inspector is qualified to do so to explain any entry in the book, document or thing; and
 - (e) order an employee to appear before the inspector at such time and place as may be determined by the inspector and question that employee.
- (7) An inspector performing any function in terms of this section -
- (a) may be accompanied by an interpreter and any other person reasonably required to assist in conducting the inspection;
 - (b) must produce on request the certificate of appointment referred to in subsection (2);
 - (c) must provide a receipt for any book, document or thing seized or produced in terms of subsection (6); and
 - (d) must return anything so seized or produced within a reasonable time.

PART VII
GENERAL PROVISIONS

Disclosure of information

44. (1) A person may not disclose any information obtained in the performance of such person's functions in terms of this Act, except -

- (a) to the extent that it may be necessary for compliance with this Act;
 - (b) for the purposes of the administration of justice; or
 - (c) at the request of the Minister or any other person entitled thereto.
- (2) A person who contravenes subsection (1) commits an offence.

Designation and powers of quality systems auditors

45. (1) The Board may designate any person with relevant expertise as a quality systems auditor to assist the NTA to promote and monitor compliance with the conditions of any accreditation, registration or technical or financial assistance contemplated by this Act.

(2) The Board must provide every quality systems auditor with a certificate of designation.

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(3) For the purpose of monitoring compliance with the conditions of any accreditation, registration, technical or financial assistance contemplated by this Act, a quality systems auditor may -

- (a) on reasonable notice enter any premises of a vocational education and training provider;
- (b) interview any employee or learner on the premises; or
- (c) require a vocational education and training provider to disclose any relevant record, document or particulars in respect of the programme and may make copies thereof.

(4) Every vocational education and training provider and every employee of such a provider must co-operate with a quality systems auditor in the performance of his or her functions and must provide reasonable assistance to the quality systems auditor in this regard.

(5) A quality systems auditor, while on the premises of a vocational education and training provider pursuant to this section, must produce on request, the certificate of appointment referred to in subsection (2).

Offences and penalties

- 46.** (1) A person commits an offence if the person -
- (a) obstructs or attempts to influence improperly a person who is performing a function in terms of this Act;
 - (b) obtains or attempts to obtain any prescribed document by means of fraud or false pretences, or by presenting or submitting a false or forged document;
 - (c) pretends to be an inspector, a quality systems auditor or any other person performing a function in terms of this Act;
 - (d) refuses or fails to answer fully any lawful question put by an inspector, a quality systems auditor or any other person performing a function in terms of this Act;
 - (e) refuses or fails to comply with any lawful request by an inspector, a quality systems auditor or any other person performing a function in terms of this Act;
 - (f) hinders or obstructs an inspector, a quality systems auditor or any other person performing a function in terms of this Act; or
 - (g) refuses or fails to pay any levy, penalty or interest due under this Act.

(2) A person who is convicted of an offence referred to in subsection (1) or section 44(2) is liable to a fine not exceeding N\$2 000 or imprisonment for a period not exceeding 6 months, or to both such fine and such imprisonment.

Act No. 1, 2008 VOCATIONAL EDUCATION AND TRAINING ACT, 2008**Regulations**

47. (1) The Minister may, after consulting the Board, make regulations relating to -

- (a) a form of any application that may be made under this Act and the procedure and manner for submission of such application;
- (b) the exercise or performance by the NTA of any of its powers or functions in terms of this Act;
- (c) the administration, operation, functioning and obligations of the Fund;
- (d) the imposition and collection of the vocational education and training levy and the exemption of employers from payment of the levy;
- (e) the registration and accreditation of vocational education and training providers and programmes, including the procedure, criteria and conditions applicable to their registration and accreditation;
- (f) the certification of learning outcomes, including the maintenance of a database;
- (g) the registration and accreditation of assessors, including the procedures, criteria and conditions applicable to their registration and accreditation;
- (h) the development and registration of occupational standards, curriculum standards and qualifications in vocational education and training;
- (i) technical and financial assistance by the NTA to employers, employees, vocational education and training providers, learners and other persons and bodies;
- (j) the funding of vocational education and training programmes and projects including the procedures, criteria and conditions applicable to such funding;
- (k) the governance and management of the State-owned vocational training centres contemplated in section 49(4);
- (l) the funding of vocational training centres;
- (m) any matter which in terms of this Act is required or permitted to be prescribed; or
- (n) any other matter which the Minister considers necessary or expedient to prescribe in order to further the objects of this Act.

(2) Different regulations may be made under subsection (1) in respect of different classes of employers and employees and in respect of different areas.

(3) A regulation made under subsection (1) may prescribe a penalty not exceeding a fine of N\$2 000 or imprisonment for a period of 6 months, or not exceeding both such fine and such imprisonment, for any contravention thereof or failure to comply therewith.

Act No. 1, 2008 VOCATIONAL EDUCATION AND TRAINING ACT, 2008**Amendment and repeal of laws**

48. The laws specified in the Schedule are amended or repealed to the extent set out in the third column thereof.

Savings and transitional provisions

49. (1) For the purposes of this section -

“National Vocational Training Act” means the National Vocational Training Act, 1994 (Act 18 of 1994) repealed by section 48;

“Registrar” means the Registrar of Vocational Training Centres appointed under section 35 of the National Vocational Training Act; and

“Vocational Training Board” means the Vocational Training Board established by section 5(1) of the National Vocational Training Act.

(2) At the date of commencement of this Act, all assets, rights, liabilities and obligations of the Vocational Training Board devolve upon and vest in the NTA, and the Registrar of Deeds or any other person in charge of any other office where a register or a record is being kept of the ownership of or entitlement to an asset or right referred to in this subsection must make such entries in or on any relevant register, title deed or other document in his or her office or submitted to him or her as may be necessary to effect the transfer thereof to the NTA.

(3) All assets which at the date of commencement of this Act are owned or being utilized by -

- (a) the Directorate: Vocational Education and Training;
- (b) the National Trade Testing Centre established in terms of section 30 of the National Vocational Training Act;
- (c) the NTA Project Management Unit;
- (d) the State-owned vocational training centres contemplated in subsection (4),

are from that date devolve upon and vested in the NTA, and the Registrar of Deeds or any other person in charge of any other office where a register or a record is being kept of the ownership of or entitlement to an asset or right referred to in this subsection must make such entries in or on any relevant register, title deed or other document in his or her office or submitted to him or her as may be necessary to effect the transfer thereof to the NTA.

(4) The management and control of the State-owned vocational training centres registered in terms of section 38 of the National Vocational Training Act are at the date of commencement of this Act devolved upon the NTA, until such date -

- (a) as that centres are in the opinion of the Board able to be transformed by the Board into self-reliant vocational education and training providers; or

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- (b) if they are not able to be transformed under paragraph (a), the operation and conducting thereof are terminated by the Board,

and if -

- (i) a State-owned vocational training centre is transformed into a vocational education and training provider as contemplated in this subsection, all assets thereof remains the property of the NTA, unless the Board determines otherwise;
- (ii) the operation and conducting of a State-owned vocational training centre is terminated as contemplated in this subsection, all assets thereof remains the property of the NTA.

- (5) No transfer duty, stamp duty, fee or costs is payable in respect of the transfer of -

- (a) any assets, rights, liabilities or obligations from the Vocational Training Board to the NTA; or
- (b) any asset which is owned or being utilized by the Directorate: Vocational Education and Training, the National Trade Testing Centre, the NTA Project Management Unit or any State-owned vocational training centre, as contemplated in subsection (3).

(6) Any regulation made, any direction, order or directive issued, any request made or any requirement prescribed and any other thing done or purported to have been done under a provision of a law repealed by section 48 and which could be made, issued, prescribed or done under a corresponding provision of this Act, is deemed to have been made, issued, prescribed or done under that provision.

(7) The Chief Inspector of Apprenticeships and any other inspector appointed in terms of section 3(1)(a) of the National Vocational Training Act continue to perform their functions and exercise their powers as if that Act had not been repealed, until a date determined by the Minister, after consulting the Board and by notice in the *Gazette*.

(8) The Vocational Training Board continues to exist and must perform the functions of the Board of the Namibia Training Authority, until the chairperson and other members of the Board of the Namibia Training Authority are appointed.

(9) Any vocational standards approved under section 13 of the National Vocational Training Act and in force at the date of commencement of this Act, are deemed to be standards contemplated in section 5(3), and may be withdrawn, substituted or altered by the Board by notice in the *Gazette*.

(10) Any training scheme approved under section 15 of the National Vocational Training Act continues as if that Act had not been repealed and may be withdrawn, substituted or altered by the Minister, after consulting the Board and by notice in the *Gazette*.

(11) Any contract of apprenticeship registered under the National Vocational Training Act and any apprentice under that Act must be dealt with as if the National Vocational Training Act had not been repealed, except that the Board must perform the functions of the Vocational Training Board, until the contract of apprenticeship expires.

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(12) Subject to subsection (11), sections 17 to 28, inclusive, of the National Vocational Training Act remain in force as if that Act had not been repealed, until a date determined by the Minister after consulting the Board and by notice in the *Gazette*.

(13) Subject to subsection (12), the National Trade Testing and Certification Centre established under section 30 of the National Vocational Training Act continues to exist and to perform its functions as if that Act had not been repealed -

- (a) until a date determined by the Minister, after consulting the Board and by notice in the *Gazette*; and
- (b) except that the Board must perform the functions of the Vocational Training Board in respect of the National Trade Testing and Certification Centre until the date determined under paragraph (a).

(14) Any approval of a trade testing centre in terms of section 32 of the National Vocational Training Act remains in force subject to any conditions or directives in respect of that approval, until a date determined by the Minister, after consulting the Board and by notice in the *Gazette*.

(15) Subject to subsection (14), section 32(1) and (2) of the National Vocational Training Act remain in force as if that Act had not been repealed, until a date determined by the Minister, after consulting the Board and by notice in the *Gazette*.

(16) Subject to subsection (15), the registration of any vocational training centre registered in terms of section 38 of the National Vocational Training Act remains in force as if that Act had not been repealed, until a date determined by the Minister, after consulting the Board and by notice in the *Gazette*.

(17) Until the date determined under subsection (16), the certificate of registration of a vocational training centre may be withdrawn in terms of section 40 of the National Vocational Training Act, except that the Board must perform the functions of the Registrar referred to in that section.

(18) Any appeal contemplated in section 48 of the National Vocational Training Act must be dealt with as if the National Vocational Training Act had not been repealed, except the Board must perform the functions of the Vocational Training Board, until a date determined by the Minister by notice in the *Gazette*.

Short title and commencement

50. (1) This Act is called the Vocational Education and Training Act, 2008 and commences on a date to be determined by the Minister by notice in the *Gazette*.

(2) The Minister may determine different dates under subsection (1) in respect of different provisions of this Act.

Act No. 1, 2008 VOCATIONAL EDUCATION AND TRAINING ACT, 2008**SCHEDULE****LAWS AMENDED OR REPEALED**

(Section 48)

No. and year of law	Short title	Extent of repeal or amendment
Act No. 18 of 1994	National Vocational Training Act, 1994	The repeal of the whole
Act No. 29 of 1996	Namibia Qualifications Authority Act, 1996	<p>(a) The amendment of section 5 by the substitution for sub-paragraph (xi) of paragraph (g) of subsection (2) of the following subparagraph:</p> <p>“(xi) one shall be a member of the Board of the Namibia Training Authority established by section 6 of the Vocational Education and Training Act, 2008 (Act No. 1 of 2008), and nominated by that Board;”</p> <p>(b) The amendment of section 15 by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs -</p> <p>“(a) delegate any power conferred upon it by or under any provision of this Act, excluding the power to make rules, to the Director, Deputy Director, any committee established under section 9, [or] any member of the staff of the NTA <u>or any other competent body</u>; or</p> <p>(b) assign the performance of any function or duty entrusted to it by or under this Act to the Director, Deputy Director, or such committee, [or] such member of staff, <u>or such competent body</u>.”</p>
Act No. 26 of 2003	Higher Education Act, 2003	<p>(a) The amendment of section 1 by the 2003 substitution for paragraph (a) of the definition of “higher education” of the following paragraph:</p> <p>“(a) vocational education and training as defined in section 1 of the Vocational Education and Training Act, 2008 (Act No. 1 of 2008); or”</p>

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		<p>(b) The amendment of section 7 by the substitution for subparagraph (iii) of paragraph (d) of subsection (1) of the following subparagraph:</p> <p>“(iii) one must be a person nominated by the Board of the Namibia Training Authority established by section 6 of the Vocational Education and Training Act, 2008 (Act No. 1 of 2008);”.</p>
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