

REPUBLIC OF SOUTH AFRICA

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# EMPLOYMENT SERVICES BILL

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*(As amended by the Portfolio Committee on Labour (National Assembly))  
(The English text is the official text of the Bill)*

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(MINISTER OF LABOUR)

[B 38D—2012]

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# BILL

To provide for public employment services; to provide for the establishment of schemes to promote the employment of young work seekers and other vulnerable persons; to provide for schemes to assist employees in distressed companies to retain employment; to facilitate the employment of foreign nationals in a manner that is consistent with the objects of this Act and the Immigration Act, 2002; to provide for the registration and regulation of private employment agencies; to provide for the establishment of the Employment Services Board; to provide for the establishment of Productivity South Africa; to provide for the establishment of Supported Employment Enterprises; to provide for transitional provisions; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## CHAPTER 1

### INTERPRETATION, PURPOSES AND ADMINISTRATION

#### Definitions 5

1. In this Act, unless the context otherwise indicates—
  - “**Basic Conditions of Employment Act**” means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
  - “**Board**” means the Employment Services Board established in terms of section 20; 10
  - “**Department**” means the Department of Labour;
  - “**Director-General**” means the Director-General of the Department;
  - “**employee**” bears the same meaning as defined in section 1 of the Basic Conditions of Employment Act;
  - “**employment services**” includes the provision of the following services: 15
    - (a) Advising or counselling of workers on career choices, either by the provision of information or other approaches;
    - (b) assessment of work seekers for—
      - (i) entry or re-entry into the labour market; or
      - (ii) education and training; 20
    - (c) referring work seekers—
      - (i) to employers to apply for vacancies; or
      - (ii) to training providers for education and training;
    - (d) assisting employers—
      - (i) by providing recruitment and placement services; 25
      - (ii) by advising employers on the availability of work seekers with skills that match their needs;
    - (e) performing the functions of temporary employment services; and
    - (f) any other prescribed employment service;
  - “**foreign national**” means an individual who is not a South African citizen or does 30 not have a permanent residence permit issued in terms of the Immigration Act;

- “**Immigration Act**” means the Immigration Act, 2002 (Act No. 13 of 2002);
- “**Labour Relations Act**” means the Labour Relations Act, 1995 (Act No. 66 of 1995);
- “**Minister**” means the Minister of Labour;
- “**NEDLAC**” means the National Economic, Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994);
- “**persons with disabilities**” includes persons who have long-term physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others;
- “**prescribe**” means prescribed by the Minister by regulation, and “**prescribed**” has a corresponding meaning;
- “**private employment agency**” means any person who provides employment services for gain;
- “**public employment services**” means the public employment services contemplated in section 5;
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “**registrar**” means the official designated as a registrar in terms of section 13;
- “**Skills Development Act**” means the Skills Development Act, 1998 (Act No. 97 of 1998);
- “**Supported Employment Enterprises**” means the national government component established in terms of section 42;
- “**temporary employment services**” bears the same meaning as defined in section 198 of the Labour Relations Act;
- “**this Act**” includes regulations;
- “**Unemployment Insurance Act**” means the Unemployment Insurance Act, 2001 (Act No. 63 of 2001);
- “**work opportunity**” means a vacancy or opportunity for employment or work experience, self-employment or community service;
- “**work scheme**” means any programme aimed at assisting people to find or remain in employment or to set themselves up in self-employment; and
- “**work seeker**” means any person who is looking for work.

## **Purpose of Act** 35

2. (1) The purpose of this Act is to—
- (a) promote employment;
  - (b) improve access to the labour market for work seekers;
  - (c) provide opportunities for new entrants to the labour market to gain work experience;
  - (d) improve the employment prospects of work seekers, in particular vulnerable work seekers;
  - (e) improve the employment and re-employment prospects of employees facing retrenchments;
  - (f) facilitate access to education and training for work seekers, in particular vulnerable work seekers;
  - (g) promote employment, growth and workplace productivity; and
  - (h) facilitate the employment of foreign nationals in the South African economy, where their contribution is needed in a manner—
    - (i) that gives effect to the right to fair labour practices contemplated in section 23 of the Constitution;
    - (ii) that does not impact adversely on existing labour standards or the rights and expectations of South African workers; and
    - (iii) that promotes the training of South African citizens and permanent residents.
- (2) The purpose is to be achieved by—
- (a) providing comprehensive and integrated free public employment services;
  - (b) coordinating the activities of public sector agencies whose activities impact on the provision of employment services;
  - (c) encouraging partnerships, including in the provision of employment services, to promote employment;

- (d) establishing schemes and other measures to promote employment; and
- (e) providing a regulatory framework for the operation of private employment agencies.

### **Interpretation**

3. Any person applying this Act must interpret its provisions to give effect to— 5
- (a) its purpose;
  - (b) the Constitution; and
  - (c) South Africa's obligations in terms of any relevant international labour standards and treaties.

### **Administration of Act** 10

4. Subject to the laws governing the public service, the Director-General must ensure that the Department—
- (a) including its provincial offices and labour centres, has suitable personnel and financial resources necessary for performing its functions in terms of this Act; and 15
  - (b) maintains labour centres at which members of the public are able to access the public employment services provided for in terms of this Act.

## **CHAPTER 2**

### **PUBLIC EMPLOYMENT SERVICES**

#### **Public employment services** 20

5. (1) The Department must provide the following public employment services free of charge to members of the public in a manner that is open and accessible:
- (a) Matching work seekers with available work opportunities;
  - (b) registering work seekers;
  - (c) registering job vacancies and other work opportunities; 25
  - (d) facilitating the placing of work seekers with employers or in other work opportunities;
  - (e) advising work seekers on access to education and training;
  - (f) advising workers on access to social security benefits;
  - (g) providing specialised services to assist vulnerable work seekers; 30
  - (h) facilitating the exchange of information among labour market participants, including employers, workers and work seekers, private employment agencies, Sector Education and Training Authorities and training providers;
  - (i) facilitating the employment of foreign nationals in a manner that is consistent with the object of this Act and the Immigration Act; and 35
  - (j) generally, performing any other function in terms of employment law or prescribed in terms of this Act.
- (2) The Department may also provide the following services to facilitate the matching of work seekers to work opportunities:
- (a) Vocational and career counselling; 40
  - (b) assessment of work seekers to determine suitability; and
  - (c) any other related life skills to secure employment or other forms of work.

#### **Promotion of employment of youth and other vulnerable work seekers**

6. (1) The Minister may, after consulting the Board, establish work schemes for the purpose of enabling youth and other vulnerable work seekers to enter employment, 45 remain in employment or be placed in opportunities for self-employment.
- (2) The employment of any person in terms of a scheme contemplated in subsection (1) is subject to any minimum terms and conditions established in accordance with the Basic Conditions of Employment Act or any applicable collective agreement.
- (3) The Minister may prescribe— 50
- (a) measures that may be provided for in terms of a scheme contemplated in subsection (1); and

- (b) the period for which a youth or any other vulnerable work seeker may be employed in terms of such scheme and may determine the remuneration of employees or other payments for the purposes of subsection (1).

### **Job retention**

7. (1) The Minister may, after consulting the Board, establish schemes to minimise the retrenchment of employees. 5

(2) Without limiting subsection (1), a scheme may provide for turn-around strategies, lay-offs, re-training or alternative employment opportunities.

(3) For the purposes of this section, “economic distress” means financial or operational difficulties which may result in an employer contemplating the dismissal of employees based on its operational requirements. 10

### **Employment of foreign nationals**

8. (1) An employer may not employ a foreign national within the territory of the Republic of South Africa prior to such foreign national producing an applicable and valid work permit, issued in terms of the Immigration Act. 15

(2) The Minister may, after consulting the Board, make regulations to facilitate the employment of foreign nationals, which regulations may include the following measures:

(a) The employers must satisfy themselves that there are no other persons in the Republic with suitable skills to fill a vacancy, before recruiting a foreign national; 20

(b) the employers may make use of public employment services or private employment agencies to assist the employers to recruit a suitable employee who is a South African citizen or permanent resident; and

(c) preparation of a skills transfer plan by employers in respect of any position in which a foreign national is employed. 25

(3) A regulation made in terms of this section may—

(a) include any other requirement necessary to implement the provisions of this section which are consistent with the Immigration Act; and

(b) differentiate between different categories of visas issued in terms of the Immigration Act and different categories of work. 30

(4) An employee who is employed without a valid work permit is entitled to enforce any claim that the employee may have in terms of any statute or employment relationship against his or her employer or any person who is liable in terms of the law.

### **Prohibited acts in respect of foreign nationals** 35

9. An employer may not require or permit a foreign national—

(a) to perform any work which such foreign national is not authorised to perform in terms of his or her work permit; or

(b) to engage in work contrary to the terms of their work permit.

### **Reporting on vacancies and filling of positions** 40

10. (1) The Minister may, after consulting the Board, make regulations requiring employers to notify the Department of—

(a) any vacancy or new position in their establishment in a manner and within such period as the Minister may determine;

(b) the employment of any work seeker referred by a labour centre; and 45

(c) any matter necessary to promote the provision of efficient matching services.

(2) A regulation made in terms of subsection (1) may differentiate between different categories of work and different categories of employers.

### **Employment information**

11. The Department may develop and operate an employment information system for monitoring, evaluating, researching and analysing trends, which may include, but are not limited to, the following information: 50

(a) The names, qualifications and previous occupations of work seekers;

- (b) vacancies in the labour market;
- (c) training opportunities that are available;
- (d) specialised skills and qualifications possessed by work seekers registered on the public employment services system; or
- (e) details of the employer. 5

### **Financing of public employment services**

- 12.** (1) The provision of public employment services in terms of this Act must be financed from the money defrayed from the budget vote of the Department for this purpose and may, in addition, be financed from—
- (a) money allocated from the Unemployment Insurance Fund in accordance with the provisions of the Unemployment Insurance Act; 10
  - (b) money allocated from the Compensation Fund in accordance with the provisions of the Compensation For Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);
  - (c) money generated from the registration of private employment agencies, with the concurrence of the Minister of Finance; and 15
  - (d) grants and donations made for this purpose to the Department.
- (2) The monies received by the Department for public employment services may only be used in the prescribed manner and to fund—
- (a) the administration and performance of its functions in terms of this Act; 20
  - (b) schemes for retrenched workers, work seekers, in particular vulnerable work seekers;
  - (c) rehabilitation and promotion of re-entry into employment for people who are disabled as a result of being injured on duty or contracting an occupational disease; 25
  - (d) subsidies to organisations providing work opportunities for vulnerable work seekers;
  - (e) private employment agencies for specific or specialised projects in respect of vulnerable workers; or
  - (f) any other project, that the Minister may decide upon, that promotes the provision of public employment services or that is consistent with the objects of this Act. 30

## **CHAPTER 3**

### **PRIVATE EMPLOYMENT AGENCIES**

#### **Registration of private employment agencies 35**

- 13.** (1) The Minister may, after consulting the Board, prescribe criteria for the registration of private employment agencies.
- (2) The criteria for registering private employment agencies must differentiate between private employments—
- (a) that are registered as temporary employment services; or 40
  - (b) that only seek to perform other employment services as contemplated in this Act.
- (3) The Minister must designate an official of the Department as the registrar of private employment agencies.
- (4) Any person wishing to provide employment services must apply to the registrar in the prescribed form and manner in order to register as a private employment agency. 45
- (5) The registrar must, within 60 days of the application, issue a private employment agency with—
- (a) a certificate of registration, if the application is successful or a temporary certificate of registration as prescribed; or 50
  - (b) a letter containing reasons, notifying the private employment agency that it has not been granted registration, in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).
- (6) The registration certificate of a private employment agency must specify whether or not the private employment agency is permitted to perform the functions of a temporary employment service. 55

(7) The registrar must maintain in electronic form a register of private employment agencies that have been registered in terms of this Act and must make suitable arrangements for the public to access the register.

(8) The private employment agency must display its certificate of registration in a conspicuous place at the premises from where it operates. 5

(9) A person may not operate a private employment agency except in accordance with the provisions of this Act and the terms of its registration.

### **Prohibited acts in respect of private employment agencies**

- 14.** A private employment agency may not—
- (a) provide false employment services information; 10
  - (b) provide any employment service that it is not authorised to perform in terms of its certificate of registration;
  - (c) counterfeit, alter or transfer its registration certificate; or
  - (d) retain the original identity documents or original qualification certificates of work seekers. 15

### **Charging of fees by private employment agencies**

**15.** (1) No person may charge a fee to any work seeker for providing employment services to that work seeker.

(2) Despite subsection (1), the Minister may, after consulting the Board, by notice in the *Gazette* permit private employment agencies to charge fees in terms of a specified fee to specified categories of employees or for the provision of specialised services. 20

(3) A notice in terms of subsection (2) may specify categories of employees by reference to the work performed or to the earnings of such employees.

(4) A private employment agency must not deduct any amount from the remuneration of an employee or require or permit an employee to pay any amount in respect of the placing of that employee with an employer. 25

(5) Any agreement between a private employment agency and a client in terms of which employees perform work for the client, must specify separately the remuneration that employees will receive and the fee that the client is paying to the private employment agency. 30

(6) A provision in any agreement concluded with an employee that is in breach of this section is invalid and of no force and effect.

(7) The Commission for Conciliation, Mediation and Arbitration established in terms of section 112 of the Labour Relations Act or a bargaining council having jurisdiction may conciliate and arbitrate any dispute concerning the application of this section. 35

### **Retention of information by private employment agencies**

**16.** (1) A private employment agency must keep an electronic or manual register reflecting—

- (a) the work seekers registered with them;
- (b) work seekers that have been placed in employment; and 40
- (c) particulars of the employer where the work seeker was placed.

(2) The records contemplated in subsection (1) must be retained for a minimum period of three years.

### **Confidentiality of information collected**

**17.** (1) The processing of personal information of work seekers by a private employment agency must— 45

- (a) be done in a manner that protects the information and ensures respect for the privacy of the work seeker; and
- (b) be limited to matters related to the qualifications and professional experience of the work seeker concerned or any other relevant information. 50

(2) A private employment agency—

- (a) may provide information to a prospective employer concerning a work seeker, in accordance with subsection (1);
- (b) must, if requested by the Department, provide the necessary information to the Department, provided that this does not infringe any right of the individual 55

- concerned, any proprietary right or law regulating the disclosure of information; and
- (c) may provide information to any other organ of state only if it is required to do so in terms of any other legislation or for the purposes of the administration of justice.

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### **Cancellation of registration of private employment agency**

**18.** (1) The registrar may cancel the registration of a private employment agency for failure to comply with the requirements of this Act or any regulations made in terms of this Act or any prescribed procedures.

(2) The registrar must, before withdrawing the registration of a private employment agency—

- (a) notify the private employment agency in writing of his or her intention to cancel its registration and of the reasons for so doing;
- (b) give the private employment agency 30 days, calculated from the date the notice is given in terms of paragraph (a), an opportunity to make representations on why its registration should not be cancelled;
- (c) consider any representations received; and
- (d) notify the agency of the decision.

(3) If the registration is withdrawn, the registrar must remove the name of such private employment agency from the register of private employment agencies.

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### **Review of decision of registrar**

**19.** (1) Any person aggrieved by the decision of the registrar not to grant or to cancel registration, may apply for a review in the Labour Court against that decision within 30 days of the date of the decision of the registrar.

(2) The Labour Court may, on good cause shown, extend the period within which a person may lodge the application for review.

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## **CHAPTER 4**

### **EMPLOYMENT SERVICES BOARD**

#### **Establishment of Employment Services Board**

**20.** The Employment Services Board is hereby established.

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#### **Composition of Board**

**21.** (1) The Board consists of the following suitable persons appointed by the Minister:

- (a) An independent chairperson, who is a non-voting member of the Board;
- (b) three persons appointed *ex officio* to represent the interests of the State; and
- (c) three persons from each of the following constituencies, nominated by NEDLAC:
- (i) Organised labour;
- (ii) organised business; and
- (iii) organisations of community and development interests.

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(2) A member of the Board—

- (a) may be appointed for a term of up to five years; and
- (b) may be reappointed for a maximum of two terms.

(3) The appointment of the members contemplated in subsection (1)(a) and (b) must be done after following a fair and competitive selection process.

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#### **Functions of Board**

**22.** The Board must advise the Minister on—

- (a) work opportunities;
- (b) the criteria for the registration and de-registration of private employment agencies and the implementation and enforcement of the provisions of this Act applicable to private employment agencies;

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- (c) the development of criteria and guidelines for the implementation of this Act and the exercise of any function in terms of this Act;
- (d) the promotion of supported work for persons with disabilities as contemplated by Chapter 6;
- (e) any regulations that the Minister may, or must, make in terms of this Act; 5
- (f) the publication of an annual employment services report; and
- (g) any other matter related to employment services, on request of the Minister or NEDLAC.

### **Constitution of Board**

- 23.** (1) The Board must, as soon as possible after the appointment of its members and subject to the approval of the Minister, adopt a constitution. 10
- (2) Subject to this Act, the constitution of the Board must provide for—
- (a) the procedure for the election of a deputy chairperson to act on behalf of the chairperson, in the absence of the chairperson;
  - (b) the establishment and functioning of a committee of the Board, including an executive committee; 15
  - (c) the rules for convening and conducting of meetings of the Board and its committees, including the quorum required for and the minutes to be kept of those meetings;
  - (d) the voting rights of the different members and the manner in which decisions are to be taken by the Board and its committees; 20
  - (e) a code of conduct for the members of the Board;
  - (f) the determination through arbitration of any dispute concerning the interpretation or application of the constitution;
  - (g) subject to subsections (3) and (4), a procedure for amending the constitution; 25 and
  - (h) any other matter necessary for the performance of the functions of the Board.
- (3) At least 30 days' notice must be given for a meeting of the Board at which an amendment to the constitution is to be considered.
- (4) A supporting vote of at least two thirds of the members of the Board and the approval of the Minister is required for an amendment to its constitution. 30

### **Disqualification from membership of Board**

- 24.** A person may not be appointed as or remain a member of the Board, as the case may be, if that person—
- (a) is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person's estate; 35
  - (b) has been declared by a competent court to be mentally ill;
  - (c) has been convicted, in the Republic or elsewhere, of theft, fraud, forgery, perjury or any other offence involving dishonesty;
  - (d) has been convicted of any other offence, whether in the Republic or elsewhere, committed after the Constitution of the Republic of South Africa, 1993, took effect, and sentenced to imprisonment without the option of a fine; 40
  - (e) has been, or is, removed from an office of trust on account of misconduct in respect of fraud or the misappropriation of money;
  - (f) is otherwise disqualified from serving as a member of a board in terms of the Companies Act, 2008 (Act No. 71 of 2008); or 45
  - (g) has or acquires an interest in a business or enterprise which may conflict or interfere with the proper performance of his or her functions as a member of the Board.

### **Resignation and removal from office** 50

- 25.** (1) A member of the Board may resign by giving to the Minister—
- (a) one month's written notice; or
  - (b) less than one month's written notice, with the approval of the Minister.
- (2) The Minister may, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), remove a member of the Board from office— 55
- (a) if such member becomes disqualified in terms of section 24;
  - (b) if such member acted contrary to this Act;

- (c) if such member failed to disclose an interest or to withdraw from a meeting as required;
- (d) if such member has failed to perform the functions of his or her office efficiently and effectively;
- (e) on the ground of misconduct, incapacity or incompetence; or 5
- (f) if such member is absent from three consecutive meetings without leave of the chairperson.

### **Dissolution of Board**

**26.** (1) The Minister may dissolve the Board if the Minister, on good cause shown, loses confidence in the ability of the Board to perform its functions effectively and efficiently or on any reasonable grounds. 10

(2) The Minister may dissolve the Board only after having—

- (a) provided the Board with reasons for losing confidence in its abilities;
- (b) given the Board a reasonable opportunity to respond to those reasons; and
- (c) afforded the Board a hearing on any submissions received. 15

(3) If the Minister dissolves the Board, the Minister—

- (i) may appoint an administrator to take over the functions of the Board to do anything which the Board might otherwise be empowered or required to do by or under this Act, subject to such conditions as the Minister may determine; and 20
- (ii) must, as soon as it is feasible, but not later than three months after the dissolution of the Board, replace the members of the Board in the same manner as the manner in which they were appointed.

(4) The appointment of the administrator terminates when the Board members have been replaced. 25

### **Secretariat of Board**

**27.** The Director-General must provide the necessary resources and secretariat to enable the Board to fulfil its functions.

### **Remuneration and allowances**

**28.** A member of the Board who is not in full-time employment of the State may be paid such remuneration and allowances as may be determined by the Minister, after consultation with the Minister of Finance. 30

### **Finances**

**29.** (1) The funds of the Board consist of monies defrayed from the budget vote of the Department. 35

(2) The Director-General, as the accounting officer of the Department, is responsible for the funds referred to in subsection (1), subject to the Public Finance Management Act.

### **Reporting**

**30.** (1) The Board must report to the Minister at least once every year on its activities. 40

(2) The Board must report to the Minister on the activities of the Board as and when requested to do so by the Minister.

## **CHAPTER 5**

### **PRODUCTIVITY SOUTH AFRICA**

#### **Establishment of Productivity South Africa 45**

**31.** (1) Productivity South Africa is hereby established as a juristic person to promote employment growth and productivity.

(2) Productivity South Africa must be managed in accordance with the Public Finance Management Act.

(3) Productivity South Africa acts through its Board.

(4) For the purpose of this chapter, “Board” means the Board of Productivity South Africa established in terms of section 33.

### **Functions of Productivity South Africa**

- 32.** The functions of Productivity South Africa are— 5
- (a) to promote a culture of productivity in the workplace;
  - (b) to develop relevant productivity competencies;
  - (c) to facilitate and evaluate productivity improvement and competitiveness in workplaces;
  - (d) to measure and evaluate productivity in the workplace; 10
  - (e) to maintain a data-base of productivity and competitiveness systems and to publicise these systems;
  - (f) to undertake productivity-related research;
  - (g) to support initiatives aimed at preventing job losses; and
  - (h) to perform any other prescribed function. 15

### **Establishment and composition of Board of Productivity South Africa**

- 33.** (1) The Board of Productivity South Africa is hereby established.
- (2) The Board consists of seven members appointed by the Minister, as follows:
- (a) A chairperson;
  - (b) two members nominated by NEDLAC to represent organised labour; 20
  - (c) two members nominated by NEDLAC to represent organised business; and
  - (d) two members to represent the government.
- (3) The appointment of the members contemplated in subsection (2)(a) and (d) must be done after following a fair and competitive selection process.
- (4) The Board is responsible for the management and control of the affairs of 25 Productivity South Africa.
- (5) The members of the Board hold office for a period of five years and are eligible for reappointment upon expiry of their terms of office, but may not serve for more than two consecutive terms of office.

### **Constitution of Board of Productivity South Africa 30**

- 34.** (1) The Board must, as soon as possible after the appointment of its members, prepare and adopt a constitution, subject to the approval of the Minister.
- (2) The constitution contemplated in subsection (1) must, subject to this Act, provide for—
- (a) the establishment and functioning of committees of the Board, including an 35 executive committee;
  - (b) rules for convening and conducting of meetings of the Board and its committees, including the quorum required for and the minutes to be kept for those meetings;
  - (c) the voting rights of the different members of the Board and the manner in 40 which decisions are to be taken by the Board and its committees;
  - (d) the procedure for the filling of vacancies of the Board;
  - (e) a code of conduct for members of the Board;
  - (f) the determination through arbitration of any dispute concerning the interpretation or application of the constitution; 45
  - (g) the procedure for amending the constitution;
  - (h) financial arrangements, including bank accounts, investment of surplus money, annual budgets, annual reports, financial statements and annual audits; and
  - (i) any other matter necessary for the effective performance of the functions of 50 Productivity South Africa.

### **Chief Executive Officer**

- 35.** (1) The Board must appoint a Chief Executive Officer for the Board, who is the accounting officer of the Board.

(2) The Chief Executive Officer is responsible for the administration and the general management and control of the day-to-day functioning of Productivity South Africa, subject to the directions and instructions issued by the Board.

(3) The Chief Executive Officer must, at the request of the Board, attend any meeting of the Board, but is not entitled to vote. 5

(4) The Chief Executive Officer must, in addition to such function as may be assigned to him or her in terms of this Act—

- (a) supervise the employees of the Board;
- (b) account for the assets and liabilities of the Board; and
- (c) perform any function and exercise any power assigned to him or her by the Board. 10

(5) The Board may appoint any other employees it deems necessary for the effective performance of the functions of Productivity South Africa by the Board.

(6) The procedure for the appointment of the Chief Executive Officer and other employees of the Board must be determined by the Board in terms of the rules. 15

(7) The Board must have due regard to representivity with reference to race, gender and disability when appointing the Chief Executive Officer and other employees.

(8) The Board must determine the conditions of service, remuneration and service benefits of the Chief Executive Officer and other employees, after consultation with the Minister of Finance. 20

(9) If the Chief Executive Officer is for any reason unable to perform his or her functions, or if the post of the Chief Executive Officer is vacant, the Board may designate a person in the service of the Board to act as the acting Chief Executive Officer until the Chief Executive Officer is able to resume office, or until the Board appoints a new Chief Executive Officer. 25

### **Dissolution of Board**

**36.** (1) The Minister may dissolve the Board if the Minister, on good cause shown, loses confidence in the ability of the Board to perform its functions effectively and efficiently or on any reasonable grounds.

(2) The Minister may dissolve the Board only after having— 30

- (a) provided the Board with reasons for losing confidence in its abilities;
- (b) given the Board a reasonable opportunity to respond to those reasons; and
- (c) afforded the Board a hearing on any submissions received.

(3) If the Minister dissolves the Board, the Minister—

- (i) may appoint an administrator to take over the functions of the Board to do anything which the Board might otherwise be empowered or required to do by or under this Act, subject to such conditions as the Minister may determine; and 35
- (ii) must, as soon as it is feasible but not later than three months after the dissolution of the Board, replace the members of the Board in the same manner as the manner in which they were appointed. 40

(4) The appointment of the administrator terminates when the Board members have been replaced.

### **Disqualification from membership of Board**

**37.** A person may not be appointed as or remain as a member of the Board, as the case may be, if that person— 45

- (a) is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person's estate;
- (b) has been declared by a competent court to be mentally ill;
- (c) has been convicted, in the Republic or elsewhere, of theft, fraud, forgery, perjury or any other offence involving dishonesty; 50
- (d) has been convicted of any other offence, whether in the Republic or elsewhere, committed after the Constitution of the Republic of South Africa, 1993, took effect, and sentenced to imprisonment without the option of a fine;
- (e) has been, or is, removed from an office of trust on account of misconduct in respect of fraud or the misappropriation of money; 55
- (f) is otherwise disqualified from serving as a member of a board in terms of the Companies Act, 2008 (Act No. 71 of 2008); or
- (g) has or acquires an interest in a business or enterprise which may conflict or interfere with the proper performance of his or her functions as a member of the Board. 60

**Resignation and removal from office**

- 38.** (1) A member of the Board may resign by giving to the Minister—
- (a) one month's written notice; or
  - (b) less than one month's written notice, with the approval of the Minister.
- (2) The Minister may, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), remove a member of the Board from office—
- (a) if such member becomes disqualified in terms of section 37;
  - (b) if such member acted contrary to this Act;
  - (c) if such member failed to disclose an interest or to withdraw from a meeting as required;
  - (d) if such member has failed to perform the functions of his or her office efficiently and effectively;
  - (e) on the ground of misconduct, incapacity or incompetence; or
  - (f) if such member is absent from three consecutive meetings without leave of the chairperson.

**Remuneration of members of Board of Productivity South Africa**

**39.** A member of the Board, who is not in the full-time employ of the State, may receive such remuneration and allowances as the Minister may determine, after consultation with the Minister of Finance.

**Finances of Productivity South Africa**

**40.** Productivity South Africa is financed from—

- (a) money appropriated by Parliament for this purpose;
- (b) income earned from services rendered by it;
- (c) grants or donations made to it; and
- (d) money received from any other source.

**Reporting**

- 41.** (1) The Board must report to the Minister at least once every year on its activities.
- (2) The Minister must table the report contemplated in subsection (1) in Parliament within 14 days after receipt thereof if Parliament is in ordinary session or, if Parliament is not in ordinary session, within 14 days after the commencement of its next ordinary session.

**CHAPTER 6****PROMOTION OF SUPPORTED WORK FOR PERSONS WITH DISABILITIES****Establishment of Supported Employment Enterprises**

**42.** (1) Supported Employment Enterprises is hereby established as a national government component contemplated in section 7A of the Public Service Act, 1994 (Proclamation No. 103 of 1994), to promote work and employment opportunities for persons with disabilities.

(2) Supported Employment Enterprises must be managed in accordance with the Public Finance Management Act.

**Functions of Supported Employment Enterprises**

**43.** The functions of Supported Employment Enterprises are to—

- (a) facilitate supported employment;
- (b) provide work opportunities for persons with disabilities;
- (c) develop and implement programmes that promote the employability of persons with disabilities, including persons with permanent disablement as defined in the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), in the light of their evolving needs in a changing economy; and

- (d) perform any other function as may be prescribed by the Minister.

### **Appointment of head of Supported Employment Enterprises**

44. The Minister must, in accordance with the Public Service Act, 1994 (Proclamation No. 103 of 1994), appoint a head of Supported Employment Enterprises, who is also the Chief Executive Officer and accounting officer of Supported Employment Enterprises. 5

### **Powers and functions of head of Supported Employment Enterprises**

45. (1) The head of Supported Employment Enterprises is responsible for—
- (a) the administration and management of Supported Employment Enterprises, subject to the direction of the Minister;
  - (b) the compilation of a business and financial plan and reports in terms of the Public Finance Management Act, 1999 (Act No 1 of 1999), for approval by the Minister; 10
  - (c) the appointment of members of staff of Supported Employment Enterprises; and
  - (d) control of, and maintenance of discipline over, members of staff of Supported Employment Enterprises. 15

(2) The head of Supported Employment Enterprises is accountable to the Minister and must, when requested to do so, report to the Minister on the activities of Supported Employment Enterprises.

(3) If the Chief Executive Officer of Supported Employment Enterprises is for any reason unable to perform any of his or her functions, or if the post of the Chief Executive Officer is vacant, the Minister must, in writing, appoint another person as acting Chief Executive Officer until the Chief Executive Officer is able to resume those functions, or until the Minister appoints a new Chief Executive Officer. 20

(4) (a) The head of Supported Employment Enterprises may, in writing and on such conditions as he or she may determine, delegate any power or duty of the head of Supported Employment Enterprises to a senior member of Supported Employment Enterprises, unless the Minister prohibits a specific delegation. 25

(b) The power of the head of Supported Employment Enterprises to delegate includes the power to sub-delegate. 30

(5) A delegation made under subsection (4) does not—

- (a) divest the Chief Executive Officer of the responsibility or accountability concerning the performance of the function in question; or
- (b) prohibit the performance of the function in question by the Chief Executive Officer. 35

(6) A delegation made under subsection (4) may be repealed, withdrawn or amended, but the repeal, withdrawal or amendment does not affect any right which may have accrued to a person as a result of the function performed before the delegation was repealed, withdrawn or amended.

(7) The Minister may override any decision taken by the head of Supported Employment Enterprises, subject to any rights that may have vested as a consequence of the delegation. 40

### **Staff of Supported Employment Enterprises**

46. The Minister may create the post structures necessary for the functioning of Supported Employment Enterprises, after consultation with the Minister of Finance. 45

### **Finances of Supported Employment Enterprises**

47. Supported Employment Enterprises are financed from—
- (a) money appropriated by Parliament for this purpose;
  - (b) income earned from services rendered by it;
  - (c) grants or donations made to it; and
  - (d) money received from any other source. 50

## CHAPTER 7

## GENERAL PROVISIONS

**Jurisdiction of Labour Court**

48. (1) Except as otherwise provided in this Act and subject to the jurisdiction of the Labour Appeal Court, the Labour Court has exclusive jurisdiction in respect of all matters, excluding the prosecution of criminal offences, arising from this Act. 5

(2) The Labour Court may review any administrative action in terms of this Act on any grounds permissible in law.

(3) If proceedings concerning any matter arising from this Act are instituted in a court that does not have jurisdiction in respect of that matter, that court may at any stage during proceedings refer the matter to the Labour Court. 10

**Monitoring and enforcement**

49. (1) Chapter 10 of and Schedule II to the Basic Conditions of Employment Act apply with the necessary changes required by the context to—

(a) the monitoring and enforcement of this Act; and 15

(b) any legal proceedings concerning a contravention of this Act.

(2) The Labour Court may, on application by the Director-General, impose a fine not exceeding R50 000 on an employer that contravenes any of the provisions listed in Schedule 3.

(3) The Minister may, by notice in the *Gazette*, amend the maximum amount of the fine referred to in subsection (2) in order to counter the effect of inflation. 20

**Offences and penalties**

50. (1) It is an offence to—

(a) obtain or attempt to obtain any prescribed document by means of fraud, false pretences or submitting a false or forged prescribed document; 25

(b) furnish false information in any prescribed document knowing that the information is false;

(c) obstruct or attempt to influence improperly a person who is performing a function in terms of this Act; and

(d) operate a private employment agency without being duly registered or in violation of its registration. 30

(2) A court that convicts a person of an offence contemplated in subsection (1)(a), (b) or (c) may impose a term of imprisonment not exceeding 12 months or such fine as is permitted by the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or both such fine and imprisonment. 35

(3) A court that convicts a person of an offence contemplated in subsection (1)(d) may impose a term of imprisonment not exceeding 24 months or such fine as is permitted by the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or both such fine and imprisonment.

(4) Any employer who contravenes section 8(1) shall be guilty of an offence and liable on conviction to a fine or imprisonment as contemplated in section 49(3) of the Immigration Act. 40

(5) Any employer who contravenes section 9 shall be guilty of an offence and liable on conviction to a fine or imprisonment as contemplated in section 49(6) of the Immigration Act. 45

**Delegations**

51. (1) The Minister may delegate to the Director-General any power or duty conferred or imposed on the Minister in terms of this Act, except a power to make regulations and the Minister's powers in terms of sections 21, 23, 28, 33(2) and 39.

(2) The Director-General must exercise any power or duty that has been delegated in terms of subsection (1), subject to any conditions that the Minister considers necessary. 50

(3) Any delegation in terms of subsection (1)—

(a) must be in writing;

- (b) does not prevent the Minister from exercising the power or performing the duty so delegated; and
- (c) may at any time be withdrawn in writing by the Minister, subject to any rights that may have vested as a consequence of the delegation.

## Regulations

5

**52.** (1) The Minister may, after consultation with the Board, make regulations relating to—

- (a) the categories of employment in respect of which vacancies and new positions must be reported, including—
  - (i) job descriptions; 10
  - (ii) qualifications;
  - (iii) remuneration levels; and
  - (iv) the format and manner in which vacancies and filling of positions must be reported;
- (b) the recording of the names and prescribed details of work seekers on a register and their removal from the register; 15
- (c) a procedure and forms in terms of which private employment agencies may apply for registration;
- (d) a procedure for lodging and considering complaints concerning the operation of private employment agencies; 20
- (e) a procedure for considering the cancellation of the registration of a private employment agency;
- (f) regulating the provision of employment services by persons outside of the public administration; or
- (g) any other matter relating to the provision of public employment services or the regulation of private employment agencies. 25

(2) The Minister may, after consulting the Board of Productivity South Africa, make regulations regarding any improvements in workplace productivity and competitiveness which are necessary or expedient to enable the Board to perform its functions under this Act. 30

## Repeal of laws and transitional provisions

**53.** (1) The law specified in Schedule 1 is hereby repealed to the extent specified in that Schedule.

(2) The repeal of the law referred to in subsection (1) is subject to the transitional provisions contemplated in Schedule 2. 35

## Short title and commencement

**54.** This Act is called the Employment Services Act, 2014, and comes into operation on a date determined by the President by proclamation in the *Gazette*.



**SCHEDULE 1**

**LAW REPEALED  
(Section 53)**

<b>No. and Year of Law</b>	<b>Short title</b>	<b>Extent of repeal</b>	
Act No. 97 of 1998	Skills Development Act, 1998	<p>1. The deletion of the definition of “<b>employment services</b>”.</p> <p>2. Sections 2(1)(g) and (h), (2)(a)(v), (vi) and (xii), 5(4) in so far as it relates to Productivity South Africa, 22(1), 23(1)(a) and (d), (2) and (3), 24, 25, 26, 26K, 26L, 26M, 26N, 32(1) and (2), 33 and 36(a), (o), (p) and (q).</p> <p>3. Item 7 of Schedule 2A and Schedule 4.</p> <p>4. Any other provisions in so far as it relates to “employment services” or Productivity South Africa, as established by section 26K.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p>

## SCHEDULE 2

### TRANSITIONAL PROVISIONS

#### Definitions

1. In this schedule—
- “**Productivity South Africa**” means Productivity South Africa established in terms of section 26K of the Skills Development Act; 5
  - “**Service Product Factories**” means the 12 Service Product Factories established by Cabinet in 1948 employing persons with disabilities who are unable to obtain or retain employment in the open labour market;
  - “**Skills Development Act**” means the Skills Development Act, 1998 (Act No. 97 of 1998); and 10
  - “**this Act**” means the Employment Services Act, 2014.

#### Private Employment Agencies

2. (1) Any private employment agency registered in terms of section 24(1) of the Skills Development Act is deemed to be registered as a private employment agency in terms of section 13 of this Act. 15
- (2) A private employment agency contemplated in subitem (1) must apply for registration under section 13 of this Act—
- (a) within two years of this Act coming into effect, if it provides temporary employment services; 20
  - (b) within three years of this Act coming into effect, if it does not provide temporary employment services.
- (3) The registrar appointed in terms of section 13(3) of this Act may deal with any application for the registration of a private employment services agency in terms of section 24(1) of the Skills Development Act, or deal with any matter in respect of which the Director-General is considering the withdrawal of registration in accordance with section 24(5) of the Skills Development Act, which the Director-General is considering at the time this Act comes into effect, in accordance with the provisions of this Act. 25
- (4) Until such time as the Minister issues a notice in terms of section 15(2) of this Act, a private employment agency is entitled to charge a work seeker those fees permitted in terms of Regulation 5(8) of the Regulations with regard to private employment agencies published in terms of the Skills Development Act. 30

#### Productivity South Africa

3. (1) Productivity South Africa established in terms of the Skills Development Act remains in force until repealed by this Act. 35
- (2) Anything done under the repealed provisions of the Skills Development Act relating to Productivity South Africa is deemed to have been done in terms of this Act.

#### Service Product Factories

4. All assets, rights, liabilities and obligations of the Service Product Factories established by Cabinet in 1948 are transferred to Supported Employment Enterprises established in terms of section 42 of this Act, with effect from the date determined by the Minister by notice in the *Gazette*. 40

**SCHEDULE 3****OFFENCES FOR WHICH A FINE CAN BE IMPOSED BY  
LABOUR COURT IN TERMS OF SECTION 49(2)**

Failing to display a certificate of registration in a conspicuous place on the premises (section 13(8))	5
Contravening section 14(a) to (d).	
Charging a fee to any individual work seeker for employment services (section 15(1)), except in accordance with section 15(2).	
Deducting any amount from an employee's remuneration in respect of the placing of that employee in employment (section 15(4)).	10
Requiring or permitting an employee to pay any amount in respect of the placement of that employee (section 15(4)).	
Failing to keep up to date records (section 16).	
Compromising the confidentiality of information (section 17).	15

## MEMORANDUM ON THE OBJECTS OF THE EMPLOYMENT SERVICES BILL, 2012

### 1. BACKGROUND

- 1.1 The Employment Services Bill (the Bill) seeks to repeal all the employment services provisions contained in the Skills Development Act, 1998 (Act No.97 of 1998), as well as those provisions establishing Productivity South Africa. These provisions are incorporated into the Bill and strengthened in order to provide a re-invigorated legal basis for the provision of public employment services.
- 1.2 The Department of Labour (Department) conducted a review of its programmes to determine their effectiveness and to make appropriate adjustments, with the assistance of the International Labour Organisation (ILO). A comparative study was also conducted across Ministries of Labour/Labour and Social Affairs/Labour and Employment with similar characteristics and in countries having similar economic conditions with South Africa. The outcome of these discussions resulted in the Department prioritising the following three areas: Inspection and Enforcement Services, Labour Policy and Industrial Relations and Public Employment Services, inclusive of the Unemployment Insurance Fund and the Compensation Fund. All of these programmes are supported by the programme administration. The Bill seeks to allow for the re-organisation of public employment services in line with these priorities.
- 1.3 The Bill seeks to contribute to the government's objectives of "More jobs, decent work and sustainable livelihoods". The Bill repositions public employment services to play a major role in employment promotion and employment preservation and will also assist employers and workers to adapt to changing labour market conditions.
- 1.4 The Bill seeks to, amongst other things, contribute towards—
  - reducing unemployment and inequalities and poverty eradication;
  - promoting and preserving employment;
  - reducing work seeker reliance on the Unemployment Insurance Fund or Social Security grants, and reliance of rehabilitated workers injured on duty on the Compensation Fund;
  - accelerating employment creation; and
  - employment growth and productivity promotion.
- 1.5 The strategic objectives will be achieved through institutional arrangements that the Department will further establish to provide free services to citizens such as registration of job seekers, registering of placement opportunities, matching services, referral to training, and careers information. The private employment agencies will be entitled to charge employers for providing similar services, in accordance with regulations and ILO Conventions.
- 1.6 In addition, the Bill allows the Minister to issue regulations requiring employers to register vacancies in specified categories of work. The Bill further permits the Minister to introduce schemes to promote the employment of unemployed work seekers, to assist employees facing retrenchments to remain in employment, and to promote the rehabilitation and re-entry into employment of employees injured on duty or who have contracted an occupational disease.

- 1.7 The Minister can also introduce regulations dealing with the employment of foreign nationals so as to protect the conditions of employment of South African citizen and permanent residents, in case of employment of foreign workers. The Department will collaborate with a number of players and bodies already functioning within employment services to achieve its objectives.

## **2. CLAUSE BY CLAUSE ANALYSIS**

### **CHAPTER 1: DEFINITIONS, PURPOSE, INTERPRETATION AND ADMINISTRATION OF THE ACT**

#### **2.1 Clause 1**

Provides for definitions.

#### **2.2 Clause 2**

Outlines the purposes of the Act and specifies the measures and institutional frameworks that will be used to achieve its purpose.

#### **2.3 Clause 3**

Provides for the interpretation of the Act to give effect to its purpose, the Constitution and applicable international treaties on employment services.

#### **2.4 Clause 4**

Provides for the administration of the Act by the Director-General and requires that the Department maintain adequately resourced labour centres to enable the public to access public employment services.

### **CHAPTER 2: PUBLIC EMPLOYMENT SERVICES**

#### **2.5 Clause 5**

Provides for the functions that the public employment services must provide free of charge. These functions include matching work seekers with available work opportunities, registering work seekers, registering job vacancies and other work opportunities, facilitating the placing of work seekers with employers or in other work opportunities, advising workers on access to social security benefits, providing specialized services to assist vulnerable work seekers including youth, new entrants into the labour market, disabled persons and members of rural communities, facilitating the exchange of information among labour market participants including employers and work seekers, careers counselling, assessment of work seekers to determine suitability and other related life skills necessary to secure employment.

#### **2.6 Clause 6**

Gives powers to the Minister to establish schemes to promote the employment of youth and other unemployed persons and to provide opportunities for self-employment.

#### **2.7 Clause 7**

Gives the Minister power to establish schemes to minimise retrenchments in Supported Employment Enterprises that are in economic distress. This may include providing for turn-around strategies, lay-offs, re-training and alternative employment opportunities.

**2.8 Clauses 8**

Protect the employment conditions and opportunities of South African citizens and permanent residents by prohibiting the employment of foreign nationals without a valid work permit issued in terms of the Immigration Act, 2002 (Act No. 13 of 2002). The Minister is empowered to make regulations setting out the procedures that employers must undertake before employing foreign nationals and, in appropriate cases, requiring the preparation of skills transfer plans for positions in which foreign nationals are engaged. Clause 8 also provides, in line with decisions of the Labour Court, that foreign nationals who are employed without the necessary visas are nevertheless entitled to enforce claims in terms of their contracts of employment or statutes such as the Basic Conditions of Employment Act, 1997 (Act No 75 of 1997).

**2.9 Clause 9**

Prohibits an employer from requiring or permitting a foreign national to perform work for which such foreign national is not authorised to perform in terms of his or her work permit.

**2.10 Clause 10**

Enables the Minister to make regulations for the reporting and registration of existing or new vacancies by employers with the Public Employment Services. This provision is consistent with the current law in terms of the Skills Development Act, 1998 (Act No. 97 of 1998).

**2.11 Clause 11**

Provides for the type of statistical information that the Department may collect to inform the provision of employment service.

**2.12 Clause 12**

Provides for sources of funding that can be utilised to provide employment services in terms of the Bill. It further specifies the purposes for which these funds can be used, including the provision of subsidies to organisations providing work opportunities for vulnerable work seekers, and any other project that promotes the provision of public employment services.

**CHAPTER 3: PRIVATE EMPLOYMENT AGENCIES****2.13 Clause 13**

Provides for the registration of private employment. The Minister, after consulting the Employment Services Board, may prescribe registration criteria which must differentiate between private employment agencies that are registered as temporary employment services (labour brokers) and the other private employment agencies that perform other employment services. Clause 13 also provides for the appointment of a registrar of private employment agencies and the registration procedure.

**2.14 Clause 14**

Prohibits private employment agencies from performing certain acts, including providing false information, performing functions for which they are not registered, falsifying documents or retaining the original documents of work seekers.

**2.15 Clause 15**

Prohibits private employment agencies from charging work seekers any fees for services rendered. However, the Minister may permit the charging of fees for specific categories of employees or for the provision of specialised services. The provision also prevents practices by which employers or agencies may seek to circumvent this prohibition or make deductions from employees' remuneration.

**2.16 Clauses 16 and 17**

Specify the information that private employment agencies are required to keep and safeguard the confidentiality of information relating to work seekers.

**2.17 Clauses 18 and 19**

Provide powers and conditions under which the registrar can cancel a private employment agency's registration and also provides for a review process in case of dissatisfaction with the registrar's decision.

**CHAPTER 4: EMPLOYMENT SERVICES BOARD****2.18 Clauses 20 and 21**

Provide for the establishment of the Employment Services Board and specify its composition. The Employment Services Board consists of an independent chairperson, representatives of the State and representatives of organised labour, organised business, and organisations of community and business development interests, nominated by National Economic, Development and Labour Council (NEDLAC).

**2.19 Clause 22**

Provides for the functions of the Employment Services Board, which are to advise the Minister on a range of issues relating to employment services, including work opportunities, registration and de-registration criteria for private employment agencies, and the development of guidelines and criteria to implement the Act.

**2.20 Clauses 23, 24 25, 27 and 28**

Provide for the Employment Services Board to adopt a constitution, disqualification from membership of Employment Services Board, resignation and removal from office of members of the Employment Services Board, administrative support that has to be provided by the Department to assist the Board to fulfill its functions, and the remuneration of Board members.

**2.21 Clause 29**

Clause 29 provides that the funds of the Board consist of monies defrayed from the budget vote of the Department and that the Director-General, as the accounting officer of the Department is responsible for these funds.

**2.22 Clause 30**

Deals with the reporting obligation of the Board and provides that the Board must report to the Minister on its activities.

## **CHAPTER 5: PRODUCTIVITY SOUTH AFRICA**

### **2.23 Clause 31 and 32**

Provide for the establishment anew, of Productivity South Africa, which was originally established under the Skills Development Act to promote employment, growth and productivity. The functions of Productivity South Africa are specified.

### **2.24 Clauses 33 and 34**

Provide for the establishment and composition of the Board of Productivity South Africa and for the functions of Productivity South Africa, provide for the matters that the constitution of the Board of Productivity South Africa must address to govern its procedures and business, and provide for the remuneration of members of the Board of Productivity South Africa.

### **2.25 Clause 35**

Among other things, deals with the appointment of a Chief Executive Officer who is the accounting officer of the Board of Productivity South Africa and who is responsible for the administration and the general management and control of the day-to-day functioning of Productivity South Africa.

### **2.26 Clause 36**

Seeks to empower the Minister to dissolve the Board of Productivity South Africa, the procedure for such dissolution and the appointment of an administrator.

### **2.27 Clauses 37 and 38**

Provide for the disqualification from membership of the Board of Productivity South Africa, resignation of and removal from office of members of the Board of Productivity South Africa.

### **2.28 Clauses 39 and 40**

Provides for the remuneration of members of the Board of Productivity South Africa and financing of Productivity South Africa through state grants, self funding and donations.

### **2.29 Clauses 41**

Deals with the reporting obligation of the Board and provides that the Board must report to the Minister on its activities.

## **CHAPTER 6: PROMOTION OF SUPPORTED WORK FOR PERSONS WITH DISABILITIES**

### **2.30 Clauses 42 to 47**

Chapter 6 (clauses 42 to 47) provides for the promotion of employment for persons with disabilities through the establishment of the Supported Employment Enterprises. The Sheltered Employment Factories currently trading as Service Products which were established in 19483 are re-constituted as the Supported Employment Enterprises, which is to operate as a national government component in terms of section 7A of the Public Service Act 103 of 1994. The factories are re-established to promote employment for persons who have long-term physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder their full and effective participation in society on equal basis with others.



The factories are to be managed as viable and sustainable Supported Employment Enterprises that must adapt to changing needs of people with disabilities. Chapter 6 also provides for the functions of the Supported Employment Enterprises, appointment of the head of the Supported Employment Enterprises, powers and functions of the head of Supported Employment Enterprises, staff of the Supported Employment Enterprises and its finances.

## **CHAPTER 7: GENERAL PROVISIONS**

### **2.31 Clause 48**

Provides for the jurisdiction of the Labour Court in respect of matters (other than criminal prosecutions) arising from the Bill.

### **2.32 Clause 49**

Provides for the monitoring and enforcement of the provisions of the Bill in accordance with Chapter 10 and Schedule II of the Basic Conditions of Employment Act and empowers the Labour Court to impose fines for certain breaches of the Act.

### **2.33 Clauses 50**

Provides for offences and penalties for contravention of certain provisions of the Bill.

### **2.34 Clause 51**

Provides procedures that the Minister must follow when delegating functions to the Director General.

### **2.35 Clause 52**

Sets out the issues in respect of which the Minister may make regulations to achieve the purpose of the Act.

### **2.36 Clause 53**

Provides for the repeal of laws and transitional provisions.

### **2.37 Clause 54**

Provides for the short title and commencement.

## **3. SCHEDULES**

### **3.1 SCHEDULE 1**

This Schedule provides for repeal of certain sections of the Skills Development Act.

### **3.2 SCHEDULE 2**

This schedule provides transitional provisions relating to the regulation of private employment agencies, Productivity South Africa and the Supported Employment Enterprises.

### **3.3 SCHEDULE 3**

This schedule sets out the contraventions of the Bill in respect of which fines may be imposed by the Labour Court.

**4. DEPARTMENTS/BODIES/PERSONS CONSULTED**

NEDLAC.

**5. FINANCIAL IMPLICATIONS FOR STATE**

Application has been made to increase the budget of the public employment services component of the Department over the MTEF period to accommodate the impact of the amendments on its operations.

**6. PARLIAMENTARY PROCEDURE**

- 6.1 The State Law Advisers and the Department of Labour are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedures set out in sections 74 or 76 of the Constitution apply.
- 6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.



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