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Namibia: National Vocational Training Act, 1994

Keywords

Namibia, vocational, national, training, act, trade, test, apprentice, board, certification, establishment, power, function, standard, train, contract, person

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Namibia

Act No. 18.1994 NATIONAL VOCATIONAL TRAINING ACT, 1994

An act to make provision for the regulation of the training of apprentices and vocational trainees; to provide for the establishment, powers and functions of a Vocational Training Board and trade advisory committees; to provide for the establishment and approval of vocational standards and the designation of trades and the establishment and approval of training schemes in respect of such trades; to provide for the establishment of a National Trade Testing and Certification Centre and trade testing and certification of apprentices; to provide for the registration of vocational training centres; to provide for the imposition of training levels and the establishment of a Vocational Training Fund; and to provide for matters incidental thereto.

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

PART I

INTRODUCTORY PROVISIONS

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

"apprentice" means any person employed in terms of a contract of apprenticeship registered or deemed to be registered in terms of the provisions of this Act;

"approved vocational standards", in relation to any trade, means the vocational standards framed and approved in terms of the provisions of section 13,

"Board" means the Vocational Training Board established by section 5;

"Chief Inspector" means the Chief Inspector of Apprenticeships appointed under section 3 (1)(a)(i);

"collective agreement" means a collective agreement as defined in section 1 of the Labour Act, 1992 (Act 6 of 1992);

"committee" means a trade advisory committee established in terms of section 10 by the Board

"designated trade", in relation to a scheme, means any trade designated or deemed to have been designated in terms of the provisions of this Act or, if the Minister has defined any trade in terms of the provisions of section 14(1)(a), that trade as so defined;

"educational institution" means any institution the primary purpose of which is to provide education, but which does not include vocational training;

"employee" means any natural person

(a) who is employed by, or working for, any employer and who is receiving, or entitled to receive, any remuneration; or

(b) who in any manner assists in the carrying on or the conducting of the business of an employer.

and "employed" and "employment" shall have corresponding meanings;

"employer" means any person (including, except for the purposes of Part IX, the State)

(a) who employs, or provides work for, any person and who remunerates or expressly or tacitly undertakes to remunerate him or her;

(b) who permits any person to assist him or her in any manner in the carrying on, or conducting of, his or her business,

and "employ" and "employment" shall have corresponding meanings;

"Fund" means the Vocational Training Fund established by section 44;

"Industry" includes any class of undertaking or activity, any division or part of an industry or any group of industries, as well as work in private households;

"inspector" means any inspector appointed under section 3(1Xa)(ii);

"Minister" means the Minister of Labour and Human Resources Development;

"Ministry" means the Ministry of Labour and Human Resources Development;

"Permanent Secretary" means the Permanent Secretary: Labour and Human Resources Development;

"premises" includes land or any building or structure or part thereof;

"prescribed" means prescribed by regulation;

"Registrar" means the Registrar of Vocational Training Centres appointed under section 35;

"regulation" means any regulation made or in force under this Act;

"remuneration" means any payment in money made or owing to any person by virtue of his or her employment, excluding

(a) any payment made or owing to such person by way of compensation for travelling and subsistence expenses incurred by such person in the course of his or her employment;

(b) and payment made or owing to such by, virtue of such person's retirement from the employment of such employer or the termination of such person's employment,

and "remunerate" shall have a corresponding meaning.

"Secretary" means the secretary of the Board referred to in section,

"this Act includes any order or regulation made or in force thereunder,

"trade" includes any branch of a trade, or any group of trades or branches of trades;

"training scheme", in relation to any designated trade, means a training scheme established and approved in terms of the provisions of section 14 as a training scheme, and "scheme" shall have a corresponding meaning;

"vocational trainee" means any person to whom training is provided all terms of the provisions of section 29;

"vocational training" or -training- means any training which has as special aim the improvement of the functional skills of any person totally work performed in, or in connection with, any industry or any trade in an industry or occupation;

"vocational training centre" means a centre which has in terms of section 38 been registered as a vocational training centre or is deemed to have been registered as such under this Act:

"wage order" means a wage order as defined in section 1 of the said Labour Act 1992.

2. The provisions of this Act shall not apply in respect of

(a) any person who is a student or a pupil registered at any educational institution as such and who is not-

(i) an apprentice;

(ii) a vocational trainee; or

(iii) a person who is receiving training which has been approved for the purposes of any provision of this Act or which is provided in terms of such a provision.

(b) any work performed in or in connection with any educational institution as part of the education or training of the persons performing it;

(c) any person who, after having obtained a degree, diploma or certificate at any educational institution, performs work in a designated trade in order to gain practical experience; or

(d) service or training in the Namibian Defence Force and the Namibian Police Force.

PART II

ADMINISTRATION OF ACT

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3. The Minister may, subject to the laws governing the public service

(i) appoint an officer in the Ministry as the Chief Inspector of Apprenticeships who shall, subject to the control and written directions of the Minister, exercise the powers conferred upon and perform the functions assigned to the Chief Inspector by this Act or any other law and perform such other functions as the Minister may from time to time assign to the Chief Inspector; and

(ii) appoint such other officers in the Ministry as inspectors who shall, subject to the control and directions of the Chief Inspector, assist the Chief Inspector in all matters relating to apprentices and vocational trainees.

(b) When the Chief Inspector is for any reason unable to perform his or her functions, the Minister may appoint any inspector as acting Chief Inspector and such inspector may during the period for which he or she so acts, perform all the functions and exercise all the powers of the Chief Inspector.

(2) An inspector shall at the time of his or her appointment be furnished with a certificate signed by the Permanent Secretary stating that he or she has been appointed as a secretary.

4. (1) The Permanent Secretary, the Chief Inspector, an inspect or or any other office employed in the Ministry, whether or not engaged in carrying out the provisions of this Act, any other person engaged in carrying out any provision of this Act, and any member, alternate member or additional member of the Board or any trade advisory committee or other committee thereof and any person permitted to be present at any meeting of the Board or such committee or at any investigation order this Act shall preserve and aid in preserving secrecy in relation to any information in respect of the financial or business affairs of any person, firm or business that may come to his or her knowledge in the exercise of

any power or the performance of any duty and function in terms of this Act or as the result of his or her attendance at such a meeting or investigation, as the case may be, and shall not communicate any such information to any other person or permit any other person to have access to any documents in his or her possession or custody relating to such financial or business affairs, except in so far as any such communication.

(a) is required by, or may be made in terms of, this Act or any other law, or is required by an order of a competent court;

(b) is effected with the prior permission in writing of the person concerned, or of the Chief Inspector granted in respect of any matter which in the opinion of the Chief Inspector is of a general nature and may in the public interest.

(2) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$4000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

PART III

VOCATIONAL TRAINING BOARD AND TRADE ADVISORY COMMITTEES

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5. (1) There is hereby established a board to be known as the Vocational Training Board.

(2) The Board shall subject to the provisions of subsection (3), consist of the following members, namely

(a) two members, appointed by the Minister, of whom one shall be designated by the Minister as the chairperson and the other shall be the vice chairperson, of the Board;

(b) twelve members appointed by the Minister of whom

(i) three are, in the opinion of the Minister, representative of the interests of the State;

(ii) three are, in the opinion of the Minister, representative of the interests of employers;

(iii) three are, in the opinion of the Minister, representative of the interests of employees,

(iv) three are, in the opinion of the Minister, representative of the interests of vocational training centres;

(c) three other members appointed by the Minister who possess, in the opinion of the Minister, special knowledge or experience of vocational training or development and of whom two shall be so appointed in consultation with the Minister of Youth and Sport.

(3) At least one member of each category of members referred to in subparagraphs (i), (ii) and (iii) of paragraph (b), respectively, shall be a female person.

(4) The Minister shall prior to the appointment by him or her of members of the Board in terms of the provisions of subsection (2)(b) consult with any organisation or body which in his or her opinion represents the interests of the State, employers, employees or vocational training centres referred to in that subsection.

(5) Subject to the provisions of section 7, a member of the Board shall hold office for a period of three years, but such member may be re-appointed at the expiration of that period.

(6) The ministry may-

(a) if he or she decides it expedient, for a particular purpose and on such condition, and for such period as he or she may determine, appoint any person as an additional member of the Board;

(b) for every member of the Board appointed in terms of subsection (2)(b), appoint an alternate member in the same manner as such member, and an alternate member so appointed shall fill the place of the member for whom he or she has been appointed as alternate member during such member's absence or inability to act as a member of the Board.

(7) There shall be paid to the chairperson and vice-chairperson and any other member, including an additional member and an alternate member of the board, so are not in the full-time employment of the State, the remuneration determined from time to time by the minister, with the concurrence of the minister of finance, as well as the allowances, if any, so determined.

6. The powers, duties and functions of the Board shall be-

(a) to advise the Minister generally or in respect of any particular case, in relation to-

(i) matters arising from, or connected with the application of the provisions of this Act;

(ii) any matter which is connected with or affecting vocational training;

(b) to establish minimum standards of vocational training with a view to regulating and promoting the efficiency of such training, including the development of vocational standards, trade testing procedures and certification arrangements;

(c) to co-ordinate, encourage, facilitate and promote vocational training activities by private or public institutions in respect of agriculture, industry and commerce at all levels of vocational qualifications;

(d) to assess vocational training needs and undertake such research and conduct such investigations relating to vocational training and the design, planning and adaptation of training schemes in order to keep abreast of developments and trends in the field of vocational training on the international labour front;

(c) consult with any body or organisation involved in vocational training; and

(f) to exercise and perform the other powers, duties and functions conferred upon, or assigned to, the Board by this Act or the Minister, as the case may be.

(2) For the purposes of the performance of any of its functions or for the rendering of any services, the Board may, with the approval of the Minister and the concurrence of the Minister of Finance, enter into any agreement on such conditions and at such remuneration as may be agreed upon, with any person who is in the opinion of the Board fit to perform such functions or to render such services.

(3) For the purposes of conducting any contemplated in paragraph (d) of subsection (1), the Board may by notice summon any person who in its opinion may be able to furnish it with any relevant information regarding any matter which is being investigated, or who it suspects has any book, document or thing relating to the matter which is being investigated in his or her possession or custody or under his or her control, to appear as a witness before the Board at the time and the place specified in the notice, to be questioned or to produce such book, document or thing: Provided that in the event of his or her convincing the Board that there are reasonable grounds to believe that any other person is capable of furnishing the Board with such information or of producing such book, document or thing in his or her possession or custody or under his or her control, the Board shall, where the identity of such other person is known, so summon that person as a witness.

(4) A notice referred to in subsection shall be signed by the chairperson or the Board or by an officer authorised thereto by the chairperson, and shall be served in the prescribed manner on any witness.

(5) At proceedings contemplated in subsection (3) the chairperson, the vice-chairperson or any other member of the Board present may

(a) administer an oath to or accept an affirmation from any person summoned as a witness or any other person who is present and who is willing to give evidence; and

(b) thereafter put any reasonable question to such person.

(6) (a) Any person who has been summoned under subsection (3) as a witness and who without reasonable cause fails to attend at the time and place stated in the summons shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(b) Any person to whom an oath has been administered or from whom an affirmation has been taken under subsection (5)(a) and who, when lawfully required to do so, refuses or fails to answer fully and satisfactorily to the best of his or her knowledge and belief all lawful and reasonable questions put to him or her or to produce any book, document or thing in his or her possession or custody or under his or her control, or who fails to remain in attendance until excused from further attendance by the Board, shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment: Provided that, the rules of law relating to privilege as applicable to a witness subpoenaed to give evidence or to produce any book, document or thing before a court of law shall apply in connection with the questioning of any such person or the production of any such book, document or thing.

(7) Any person summoned to appear before the Board may, if the Board is satisfied that he or she has by reason of his or her appearance suffered any pecuniary loss or has been put to any expense, be paid from moneys appropriated by Parliament such allowances as the Minister may, with the concurrence of the Minister of Finance, from time to time determine or the amount of such loss and expense, whichever is the lesser: Provided that if the person summoned is in the full-time employment of the State the allowances or the amount payable to him or her shall be determined in accordance with the laws governing the public service.

(8) (a) The Board shall as soon as possible after 31 March of each year furnish the Minister with a report in respect of its activities during the year ending on that date, and the general state of affairs as regards vocational training in Namibia as at that date.

(b) The Minister shall table such report in the National Assembly.

7. (1) A member of the Board shall vacate his or her office, if -

(a) he or she is by reason of his or her physical or mental illness or for any other reason incapable of acting as member of the Board;

(b) he or she is convicted of an offence and sentenced to imprisonment without the option of a fine;

(c) he or she in writing resigns from the Board after giving the Minister at least one month's written notice of his or her intention to do so;

(d) he or she has absented himself or herself from three consecutive meetings of the Board without permission of the chairperson or vice-chairperson of the Board;

(c) in the case of an alternate member, the member in respect of whom he or she has been appointed as an alternate member, dies or vacates his or her office.

(2) If a member of the Board dies or vacates his or her office, the vacancy shall be filled for the unexpired portion of the period of office of that member in the manner contemplated in section 5(2)

8. (1) The Minister may, subject to the laws governing the public service, establish a component in the Ministry to be known as the Secretariat to the Board, consisting of

(a) in office of the Ministry designated by the Minister to head the Secretariat and who shall be the secretary of the Board and

(b) such other officers of the Ministry as the Minister may determine who shall perform such functions as may be imposed upon any such officer by the secretary.

(2) The functions of the Secretariat shall be

(a) to provide all the required administration and assistance to the Board and any committee; and

(h) to provide all technical support required by the Board or any committee.

(3) (a) The secretary shall attend the meetings of the Board but shall have no right to vote on any matter before the Board.

(b) If the secretary is unable to attend any meeting of the Board or to act as secretary, the Minister shall designate any other officer in the Secretariat to act in the place of the secretary, and such officer so designated may perform all the functions and exercise all the powers of the secretary.

9. (1) (a) The first meeting of the Board shall be held at such place and time as the chairperson of the Board may determine and any meeting of the Board thereafter shall be held at such time and place as the Board may determine.

(b) If the Board has determined the time and place of a meeting and there cannot for any reason be a meeting held at that time and place, the secretary of the Board shall, after consultation with the members of the Board, determine the time and place of the next meeting of the Board.

(2) The majority of the members of the Board shall form a quorum for any meeting of the Board.

(3) The chairperson of the Board or, in the absence of the chairperson, the vice-chairperson, shall preside at all meetings of the Board at which he or she is present and if both the chairperson and the vice-chairperson of the Board are absent from any meeting, the members present shall elect one of their number to preside at that meeting, and the member so elected may during that meeting perform all the functions and exercise all the powers of the chairperson.

(4) The decision of the majority of the members present at any meeting of the Board shall constitute a decision of the Board, and in the event of an equality of votes the person presiding shall have a casting vote in addition to his or her deliberative vote.

(5) No decision taken by the Board or act performed under authority of the Board shall be invalid by reason only of any vacancy on the Board or of the fact that a person who is not entitled to sit as a member of the Board sat as a member at the time when the decision was taken or the act was authorized, if the decision was taken or that act was authorized by the requisite majority of the members or the Board who were present at the time and entitled to sit as members.

(6) The Board shall cause a record to be kept of the proceedings at meetings of the Board.

10. (1) The Board may establish committees in respect of an industry or any trade in an industry determined by the Board, to be known as trade advisory committees to assist the Board in the performance of its functions and may, with a view to the proper representation of the interests of the State, employers, employees and training centres, respectively, relating to vocational training in such industry or trade, appoint such number of persons as may be determined by the Board as members of such committees

(a) who are not an apprentice or a member of the Board, and

(b) of whom such number as the Board may determine, shall be persons appointed by virtue of their special knowledge or experience.

(2) The Board shall designate a member of the committee -a,; chairperson of the committee.

(3) The provisions of section 5(4) shall mutatis mutandis apply in relation to the appointment of members of a Committee referred to in subsection (1) of this section.

(4) (a) The secretary of the Board shall appoint m officer in the Secretariat to serve as secretary of such a committee.

(b) The provisions of section 8(3) shall apply mutatis mutandis in relation to the secretary of such a committee.

(5) Any -

(a) committee may, with the consent of the chairperson of the Board appoint one or more other persons as additional member or members of such committee for a particular purpose and on such conditions and for such period as it may determine;

(b) member of a committee may-

(i) with the consent of the chairperson of the committee, appoint it person its an alternate member of the committee to act ill his or her place when he or she is for any reason unable to act as a member of the committee concerned;

(ii) after informing the chairperson of the committee ill question of his oi her intention to do so, at any time revoke the appointment of an alternate member.

(6) A member of a committee shall hold office for such period, not exceeding three years, as file Board may determine at the time of appointment of such member, but such member may be re-appointed at the expiration of that period.

(7) A member of a committee shall vacate his or her office, if-

(a) he or she is by reason of his or her physical or mental illness or for any, other reason incapable of acting as member of the committee in question,

(b) he or she is convicted of an offence and sentenced to imprisonment without the option of a fine,

(c) he or she in writing under his or her hand resigns from the committee in question after giving the chairperson of the Board at least one month's written notice of his or her intention to do so;

(d) he or she has absented himself or herself from three consecutive meetings of the committee in question without permission of the chairperson or secretary of that committee:

(e) in the case of an alternate member -

(i) his or her appointment is revoked as contemplated in subsection (5)(b)(ii); or

(ii) the member of the committee in respect of whom he or she has been appointed as an alternate member dies or vacates his or her office.

(8) If a member of any committee dies or for any reason vacates his or her office, the vacancy shall, with due regard to the provision, of this section, be filled for the unexpired portion of the period of office of the member who has died or vacated his or her office.

(9) There shall be paid to the chairperson and any other member of a committee, including all additional member and alternate member of a committee, who are not in the full-time employment of the State, the remuneration determined from time to time by the Minister, with the concurrence of the minister of finance, as well as the allowances, if any so determined.

11. (1) Any meeting of a committee shall be held at such time and place as the chairperson of the committee, after consultation with the secretary of that committee, determines.

(2) The majority of the members of any committee, shall form a quorum for any meeting of a committee.

(3) (a) The chairperson of a committee shall preside at all meetings of the committee at which he or she is present and if the chairperson is absent from any meeting thereof the members present shall elect one of their number to preside at that meeting.

(b) The member elected in terms of paragraph (a) to preside at a meeting may during that meeting perform all the functions and exercise all the Powers of the chairperson.

(4) The decision of a majority of the members of a committee present at a meeting of a committee shall constitute a decision of the committee, and in the event of an equality of votes the person presiding shall have a casting vote in addition to his or her deliberative vote.

(5) The provisions of subsections (5) and (6) of section 9 shall apply *mutatis mutandis* in respect of a decision taken by a committee or any act performed under the authority of a committee and the keeping of records of the proceedings at meetings of a committee, as the case may be.

12. A committee may, in respect of any industry or trade for which it has been established, inquire into and make recommendations to the Board with regard to any matter which in terms of the provisions of this Act falls within the functions of the Board or such other functions which the Board may direct such committee to perform.

PART IV

VOCATIONAL, STANDARDS AND TRAINING SCHEMES

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13. (1) The Board shall frame standards relating to any trade in an industry to which the provisions of this Act apply, to be known as vocational standards so as to define -

(a)(i) the standard of proficiency, including the level of theoretical and practical training, which is required before an apprentice is permitted to undergo any trade test.

(ii) the basis on which recognition, in the form of exemption from a specific module or specific modules provided for in the conditions of apprenticeship of a training scheme concerned and which have already been completed, will be granted

(aa) in the case where a prospective apprentice has attained theoretical or practical experience before entering into a contract of apprenticeship;

(bb) in the case of the termination of an apprentice's contract of apprenticeship or training for any reason whatsoever, before attaining the standard of proficiency which is defined in terms of subparagraph (i) of this paragraph;

(b) the types of work in which an apprentice shall be provided with practical training and the stages during the training at which he or she shall be provided with such training in each type of work;

(c) the level and standard of modular tests, either practical or theoretical or both, as the case may be, as well as trade tests, which an apprentice shall undergo, the stage or stages during the training at which such tests shall be undergone, the repetition of modules or tests failed and the number of modules or tests an apprentice will be entitled to in order to continue with his or her apprenticeship; and

(d) any other matter relating to the standard or level of training of an apprentice which the Board deems necessary, and submit such standards for approval by the Minister.

(2) Upon consideration of any vocational standards submitted in terms of subsection (1), the Minister may grant his or her approval which shall be in accordance with such standards framed in terms of that subsection.

(3) After having granted such approval, the Minister shall cause to be published in the Gazette, a notice stating fact and notifying the public that the vocational standards in question shall at all times during normal office hours be available for inspection and the making of copies or extracts therefrom by any person at such place or places as may be specified in such notice.

(4) The Minister may, on the recommendation of the Board, amend any approved vocational standard by the withdrawal, substitution or alteration of any provision of such standard, or by the addition of any provision thereto, as from a date specified by notice in the Gazette.

14. (1) (a) The Minister may, subject to the provisions of subsections (2) and (4) and on the recommendation of the Board, by notice in the Gazette designate or define, as the case may be, any trade in an industry as a trade in respect of which the provisions of this Act shall apply.

(h) The Minister may, in the same manner withdraw or amend any notice published under paragraph (a).

(2) The Board shall, subject to the provisions of subsection (3), establish training schemes in respect of any designated trade which shall apply as conditions of apprenticeship in that trade,

(3) A scheme in respect of any designated trade shall be based upon and specify the approved vocational standards applicable to that trade, and -

(a) shall determine -

(i) The qualifications, including, with due regard to the provision, of section 42 of the Labour Act, 1992 (Act 6 of 1992), the minimum age and education standard required for the trade.

(ii) the nature of the work and the theoretical and practical training involved in that trade,

(iii) the duration of apprenticeship;

(iv) the syllabi of each theoretical subject or course to be completed, with a breakdown of the number of hours for each subject or course for each year of the duration of apprenticeship;

(v) the particulars of practical training required, with a breakdown of the number of hours and the work to be undertaken for each year of the duration or apprenticeship;

(vi) the particulars of phased performance assessment, trade testing and certification;

(vii) the particulars of any trade test or tests to be undergone and certification on completion of apprenticeship: Provided that no apprentice shall undergo such test or tests unless he or she has, for at least 12 months or for periods which amount in the aggregate to not less than 12 months, performed work which the Board deemed appropriate in that trade; and

(b) may determine -

(i) the circumstances under which and the centre or institution where an apprentice or a prospective apprentice may be provided with full-time training as an apprentice, whether theoretical or practical training or both;

(ii).the rates according to which apprentices shall be paid their remuneration, the circumstances under which those rates may be reduced or shall be increased and the extent of the reduction or increase: Provided that no rate based upon the quantity of work performed shall be so determined: Provided further that the Minister may, before acting in terms of this subparagraph, constitute the Wages Commission established under the said Labour Act, 1992, to submit to him or her a recommendation;

(iii) the conditions, including the payment of extra remuneration, subject to which an employer may require or permit any apprentice to perform any work outside any area or class of areas specified in the scheme or at a place beyond a distance so specified, from the employer's workshop or place of business or from a given point;

(iv) the circumstances under which an employer shall pay additional remuneration to any apprentice in his or her employment and the amount of the additional remuneration or the manner in which it shall be calculated.

(v) the remuneration and other conditions of apprenticeship, in respect of any period during which an apprentice is unable by reason of any condition of apprenticeship or other circumstances so determined to render service to his or her employer during ordinary working hours;

(vi) the maximum number of apprentices to be employed in the industry in question or in any designated trade or by any employer, or in lieu of a specific number, the authority by whom or the methods by which or the principles in accordance of which any such number shall be determined by such authority;

(vii) the number or proportion of apprentices employed in the industry in question or in any designated trade or by any employer, to whom there shall have been issued prior to their employment as apprentices, by an authority specified in the scheme, a certificate of satisfactory completion of a preparatory course of training so specified.

(viii) the fees payable in respect of any test determined in terms of this subsection, and the persons by whom such fees shall be paid;

(ix) the circumstances under which employers shall pay the whole or any portion of the fees payable in respect of any subject or courses determined under the scheme in question, or the refund to their apprentices of the whole or any portion of any such fees paid by them;

(x) the maximum number of ordinary working hours which apprentices may be required or permitted to work during any week or on any day, and the days on which, the hours on any day before or after which and the intervals during which no apprentice may be required or permitted to work;

(xi) the maximum period of overtime which apprentices may be required or permitted to work during any period so determined and the rates according to which they shall be remunerated in respect of overtime;

(xii) the number of paid holidays to be allowed to apprentices during any year of their training, and the rates according to which they shall be remunerated in respect of such holidays;

(xiii) the group or category of employers and persons employed or to be employed by such employers in the capacity of apprentices in that trade, to which the provisions and conditions of such scheme shall apply;

(xiv) any other condition of apprenticeship, of whatsoever nature, which the Board may deem expedient to determine.

(4) Different conditions of apprenticeship may be determined under this section in respect of different designated trades and in determining such different conditions the Board may apply any method of differentiation it may deem expedient.

15. (1) After a scheme has been established by the Board, the Board shall submit such scheme to the Minister for his or her approval.

(2) (a) Before approving a scheme, the Minister shall publish once in the *Gazette* and twice, with an interval of not more than 21 days between each publication, in a newspaper published and circulating in Namibia, a notice of his or her intention to approve such scheme.

(b) The notice referred to in paragraph (a) shall specify a place or places where that scheme or copies thereof, may be inspected by the public during normal office hours and a period, which shall not be less than 30 days after the first publication in the newspaper referred to in that paragraph, within which any objection to such scheme may be submitted to the Board.

(3) Any objection referred to in subsection (2)(b) shall be in writing and shall state

(a) the specific grounds of objection and

(b) the deletions from, or additions or modifications (if any) to, the scheme proposed by the objector, and the Board shall consider any such objection made by or on behalf of any person who appears to be affected by such scheme, and the Board may consider any other objection which it decides appropriate.

(4) At the expiration of the period referred to in subsection (2)(b) the Board may, after consideration of all objection, which it is by virtue of subsection (3) required or empowered to consider-

(a) withdraw the said scheme by causing to be published in the Gazette a notice stating that fact;

(b) submit the said scheme to the Minister for approval; or

(c) submit the said scheme to the Minister for his or her approval subject to such deletions from or additions or modifications to it as the **Board may** deem appropriate.

(5) (a) A notice in the *Gazette* under subsection (2) of this section relating to a scheme may be

published simultaneously with, or at any time after, the publication of a notice under subsection (1)(a) of section 14 relating to the designation or definition of the trade in question.

(b) When a scheme has been withdrawn as contemplated in paragraph (i) of subsection (4) of this section, a notice under subsection (1)(a) of section 14 relating to the designation or definition of the trade in question shall, for all purposes, be deemed to have been withdrawn

(6) When the Minister approves a scheme, he or she shall cause to be published in the Gazette a notice stating that fact and specify the place or places where such scheme or copies thereof may be inspected during normal office hours by the public.

(7) The provisions and conditions of a scheme in respect of a designated trade, duly approved by the Minister, and of which a notice has been published as contemplated in subsection (6), shall, with effect from a date specified in that notice, be binding upon all employers and persons employed or to be employed in the capacity of apprentices in that trade, or upon any group or category of which and persons determined in terms of any provision or condition of such scheme.

(8) Notwithstanding anything to the contrary contained in any law, the provision., of any wage order or collective agreement shall, in so far as they are not inconsistent with any provision or condition of a scheme or a contract of apprenticeship registered or deemed to be registered in accordance with the provisions of this Act and which applies to any employer or apprentice, apply in respect of such employer or apprentice, as the case may be.

16.(1) A scheme may, by the withdrawal, substitution or alteration of any provision or condition of- that scheme, or by the addition of any provision or condition thereto, be amended, by a subsequent scheme established and approved mutatis mutandis in accordance with the provisions of section 15.

(2) Any provision or condition of a scheme amended as contemplated in subsection (1) shall, in so far as such provision or condition is not less favourable than any provision or condition to which the training of apprentices under that scheme, before it was so amended, is subject, apply in respect of such apprentices.

PART V

EMPLOYMENT AND TRAINING OF APPRENTICES

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17. (1) No person shall, after the commencement of this Act, employ in terms of a contract of apprenticeship any person as an apprentice in a designated trade for which a scheme has been approved without having first been granted the written approval of the Chief Inspector to do so and except in accordance with the provisions of this Act or any other law.

(2) Before granting any approval referred to in subsection (1), the Chief Inspector shall satisfy himself or herself that

(a) the prospective apprentice

(i) has, in relation to the designated trade in question the qualifications, including the minimum age and educational qualifications determined under the scheme in question; and

(ii) has been certified as being physically fit to perform the work relating to the trade in question as contemplated in subsection (3);

(b) the prospective employer referred to in subsection (1) complies with any requirement relating to the maximum number of apprentices to be employed in the industry or trade in question, determined under the scheme in question; and

(c) any other matter has been complied with as may be determined under the scheme in question.

(3) Any person who intends to employ any person as an apprentice shall, for the purposes of the approval referred to in subsection (1) obtain at his or her expense a medical certificate stating that such last-mentioned person has been medically examined by a medical practitioner and he or she is physically fit to perform the work relating to the trade in question.

(4) Any person who employs any person as an apprentice in contravention of the provisions of this section shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

18. (1) Any person in respect of whom an approval under section 17(1) has been granted may, by entering into a contract of apprenticeship, bind himself or herself as an apprentice in any designated trade for which a scheme has been approved under this Act.

(2) If any such person is a minor, he or she shall be assisted by his or her parent or guardian or, if there is no parent or guardian, by the magistrate of the district in which the contract of apprenticeship is to be executed.

19. (1) Every contract of apprenticeship entered into after the date of commencement of this Act shall -

(a) be in such form as may be prescribed; and

(b) be signed by or on behalf of the employer and by the person to be employed as an apprentice and, in the case of such person who is a minor, by any of his or her parents or guardian or, if there is no parent or guardian, the magistrate of the district in which such contract is to be executed, as the case may be.

(2) An employer who enters into a contract of apprenticeship referred to in subsection (1) with any person shall, within a period of 15 days after the date on which it was so entered into, lodge the contract of apprenticeship, in such manner as may be prescribed, with the Chief Inspector for registration.

(3) Any employer who fails to comply with the provisions of subsection (2) shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$4

000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(4) No contract of apprenticeship entered into after the date of commencement of this Act shall be binding unless it has been registered by the Chief Inspector.

(5) When the Chief Inspector registers a contract of apprenticeship under this Act, he or she shall

(a) endorse the said contract to that effect, and return such contract and a duplicate thereof, so endorsed, to the employer: and

(b) keep a copy thereof, so endorsed, for his or her records.

(6) The employer shall deliver the duplicate or the contract referred to in subsection (5)(a) to the apprentice concerned for him or her to keep.

20. (1) The rights and obligations of an employer under any contract of apprenticeship may, with the prior approval of the apprentice concerned and of the Chief Inspector, be transferred to any other employer.

(2) The Inspector may grant the approval referred to in subsection (1), subject to such conditions as he or she may deem necessary in the interest of the apprentice concerned.

(3) Subject to the provisions of subsection (5), no transfer of the rights and obligation of an employer under any contract of apprenticeship shall have any effect, unless the transfer

(a) has been in writing and has been signed -

(i) by or on behalf of the employer transferring such rights and obligations,

(ii) by or on behalf of the employer to whom such rights and obligations are being transferred; and

(iii) by the apprentice, and where such apprentice is a minor, also by his or her parent or guardian or, if he or she has no parent or guardian, by the magistrate of the district in which the contract of apprenticeship in respect of which the rights and obligations are to be transferred, was executed; and

(b) has been registered by the Chief Inspector in accordance with the provisions of subsection (4).

(4) (a) An employer to whom the rights and obligations under a contract of apprenticeship has been transferred as contemplated in subsection (1), shall, within a period of 30 days after the date on which such transfer has been signed

by all the parties referred to in subsection (3)(a), lodge in such manner as may be prescribed, such transfer with the Chief Inspector for registration.

(b) An employer who fails to comply with the provisions of paragraph (a) shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(5) (a) When under any contract of apprenticeship, an apprentice is employed by two or more persons in partnership, the contract of apprenticeship shall, unless the apprentice otherwise elects, not be terminated by reason only of the death or retirement of any partner if the business of the partnership is continued by the surviving or continuing partner or partners whether alone or jointly with another person or other persons, and the rights and obligations of the employer under such contract shall be deemed to be transferred to the person or partnership continuing the business.

(b) The person or partnership referred to in paragraph (a), continuing the business, shall, within a period of 30 days after the date of such death or retirement, lodge the contract in the prescribed manner with the Chief Inspector for registration who shall certify on that contract that the rights and obligations under that contract have been transferred to such person or partnership under this section.

21. (1) If an employer is satisfied that an apprentice bound to him or her by contract in terms of this Act has committed a serious breach of the terms of such contract or of any condition of apprenticeship, such employer may after giving such apprentice the opportunity to be heard, suspend the apprentice in his or her service for such period, not exceeding 30 days, as he or she may determine.

(2) An employer who has so suspended an apprentice shall report the matter in writing to the Chief Inspector within three days of the suspension and the Chief Inspector shall inquire into such suspension and may by order confirm or set aside the suspension of the apprentice or alter the period of such suspension.

(3) (a) Whether or not a report referred to in subsection (2) has been lodged by the employer, the Chief Inspector may, if an apprentice has acted in any manner justifying his or her suspension in terms of subsection (1) and such apprentice has not been suspended by the employer concerned, by written notice order the suspension of such apprentice in the service of the employer concerned for such period, not exceeding 30 days, as the chief Inspector may determine pending any inquiry by him or her.

(b) When the Chief Inspector has ordered the suspension of an apprentice as contemplated in paragraph (a), he or she shall report the suspension to the Board.

(4) If the Chief Inspector alters or sets aside the suspension of an apprentice in terms of subsection (2), the employer shall pay to the apprentice such remuneration as may have been withheld from the apprentice during the period of suspension, and such order shall have the effect of and may be executed as if it were a civil judgement in favour of the State, and the Chief Inspector shall, to the extent that any amount has been recovered from the employer by virtue of such order, pay such amount to the apprentice concerned.

(5) Any employer who fails to report the suspension or an apprentice as contemplated in subsection (2) shall be guilty of an offence and on conviction he liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

22. (1) Notwithstanding anything to the contrary contained in any other law, but subject to the provisions of section 23 of- this Act, no contract of apprenticeship shall be terminated, except

(a) by agreement of the parties thereto,

(b) by the Chief Inspector at the instance of any party thereto if the Chief Inspector is satisfied that the requirements of section 17(2) are no longer being complied with in respect of the apprentice or employer concerned; or

(c) by the Chief Inspector at the instance of the Board.

(2) The employer concerned shall give notice to the Chief inspector of any termination under subsection (1)(a) and any employer who fails to give such notice within a period of 30 days after the date of such termination shall be guilty of an offence and on conviction he liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(3) The Chief Inspector shall not exercise the powers conferred upon him or her by subsection (1)(b) and (c), unless the Chief Inspector has given both parties to the contract an opportunity to be heard by, or to make representations to, him or her in relation to such termination.

(4) The fact of termination shall be endorsed by the Chief Inspector on the registered copy of the contract of apprenticeship kept in the office of the Chief Inspector.

(5) A contract terminated under this section shall, for all purposes be deemed to be duly terminated, but without prejudice to any right of action which may have accrued before the date of such termination.

23. (1) Notwithstanding the provisions of section 22, the first four weeks of employment in terms of every contract of apprenticeship shall be a period of

probation during or at the expiration of which the contract may be terminated with at least one working day's written notice by either party, and any agreement to the contrary, whether expressed or implied, shall be void without affecting the validity of any other provision or condition of that contract.

(2) The employer concerned shall give notice to the Chief Inspector of the termination of any contract under subsection (1) and any employer who fails to give such notice within a period of 30 days after the date of such termination shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

24. Any person who induces or attempts to induce an apprentice to terminate his or her service with his or her employer or who employs a person whom he or she knows to be bound by a contract of apprenticeship to another employer shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

25. (1) (a) Any person who employs any apprentice shall keep in respect of every such apprentice records of the remuneration paid to, and of the time worked by, every such apprentice and such other particulars as may be prescribed.

(b) Such records shall be kept in such form and manner as may be prescribed.

(2) Any person who employs or has employed any apprentice shall retain any record made in accordance with the provisions of subsection (I) for a period of five years after the date of the last entry in the record.

(3) Any employer who fails to keep the required records in the form and manner prescribed and any employer or former employer who fails to retain any records made in accordance with the provisions of this section for the required period shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

26. Notwithstanding any provision to the contrary contained in any other law, any provision of a contract of apprenticeship which provides that the whole or any part of the remuneration of an apprentice shall be based upon the quantity of work done by such apprentice shall be void, but shall not affect the validity of any other provision of that contract.

27. (1) Notwithstanding any provision to the contrary contained in this Act or any condition of apprenticeship under this Act, if any apprentice is during a period of one year for 21 working days or more absent from work, the Chief Inspector may extend the period of his or her apprenticeship by the number of working days exceeding 20 which he or she was absent from work.

(2) Notwithstanding any provision to the contrary contained in this Act or any condition of apprenticeship under this Act, when it is proved to the satisfaction of- the Board that a person has undergone previous technical training relevant to the trade in which he or she desires to be trained as an apprentice, the Board may authorise the Chief Inspector to reduce the period of apprenticeship to be served by such person to such period as may be determined by it.

28. (1) Any person who employs any apprentice shall

(a) from among his or her employees, who are not apprentices, appoint a person responsible for supervising generally the training of the apprentices under the provisions of this Act and of any relevant scheme; and

(b) at any premises or worksite where 25 or more apprentices are regularly employed for a period of not less than three months, from among his or her employees, who are not apprentices, appoint an apprentice trainee supervisor who shall be responsible for the guidance of apprentices concerning instruction in any trade for which they are being trained.

(2) An employer shall in writing and within a period of 14 days from the date of appointment or any person referred to in subsection (1), submit the name and such other particulars as may be prescribed, of any person so appointed to the Chief Inspector for his or her approval.

(3) The Chief Inspector may, by written notice to the employer, refuse to grant his or her approval to any appointment referred to in subsection (1), if he or she is of the opinion that such person is not suitably qualified for such appointment, and may in such notice require such person to undergo for such purpose the training or courses determined by the Chief Inspector.

(4) Where apprentices are employed at any premises or worksite referred to in subsection (1)(b), the apprentice trainee supervisor referred to in that subsection shall devote his or her time during normal working hours mainly to the guidance of apprentices as contemplated in that subsection.

(5) Any person who -

(a) refuses or fails to make any appointment required by subsection (1);

(b) fails to submit any appointment within the period referred to in subsection (2) for the approval of the Chief Inspector under that subsection;

(c) refuses or fails to comply with the provisions of subsection (4);

(d) hinders or obstructs any person appointed under subsection (1) in the exercise of his or her functions; or

(e) falsely holds himself- or herself out to be it person appointed under subsection (1),

shall be guilty of an offence and on conviction be liable fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

PART VI

TRAINING OF VOCATIONAL TRAINEES

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29. (1) The Minister may, on the recommendation of the Board, make such arrangements as he or she may deem expedient to provide for the training in the course of employment in a particular trade or occupation of persons who are not apprentices, and he or she may for that purpose by notice in the Gazette in respect of such trade or occupation

(a) issue or cause to be issued such directives as he or she may deem necessary for the registration and training of such persons;

(b) establish or cause to be established such programmes as he or she deems necessary for the training of such persons;

(c) provide or cause to be provided such training courses, whether theoretical or practical or both, to such persons as he or she deems necessary for such training, including the procedures relating to the testing or certification for qualification of such persons on completion of such courses by them;

(d) declare that any provision of this Act or any provision or condition of a scheme under this Act as he or she deems necessary for such training, shall, with effect from a date specified in such notice, apply in respect of such trade or occupation, so specified, with such modification or modifications as he or she may determine.

(2) The Minister may, on the recommendation of the Board, in a like manner amend or withdraw any notice referred to in subsection (1).

(3) The Minister may, for the purpose of any training under this section, at any time consult with any such organizations or other bodies as in his or her opinion adequately represent the interests of employers or employees affected by such training or with the training centres concerned.

PART VII

TRADE TESTING AND CERTIFICATION

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(30). (1) The Minister shall establish a component in the Ministry to be known as the National Trade Testing and Certification Centre, consisting of-

(a) an officer in the Ministry appointed by the Minister, subject to the laws governing the public service, as Chief Trade testing officer to head such Centre and to perform the other functions assigned to him or her under this Act;

(b) such other officers of the Ministry appointed by the Minister, subject to the said laws, in respect of a particular designated trade or trades as trade testing officers who are qualified and experienced in such trade or trades to conduct trade tests therein and to perform such other functions as the Chief Trade Testing Officer may from time to time assign to such officers.

(2) (a) The Minister may, if in his or her opinion the number of applicants to undergo trade testing in a designated trade does not justify the appointment of a full-time trade testing officer as contemplated in subsection (1), appoint any qualified and experienced person in that trade as a trade testing officer on a temporary basis.

(b) A temporary trade testing officer referred to in paragraph (a) shall receive such remuneration and such allowances (if any) as the Minister may, with the concurrence of the Minister of Finance, determine.

30. The functions of the National Trade Testing and Certification Centre shall be -

(a) to establish, with the concurrence of the Board, a system for the governing and controlling of trade testing;

(b) the conducting of trade tests in accordance with the standards based on the approved vocational standard in respect of the designated trade in question;

(c) the evaluation of trade qualifications obtained outside Namibia;

(d) the receipt and processing of applications for trade testing in the manner and form as may be determined by the Chief Trade Testing Officer;

(e) the issuing of certificates to persons who have successfully concluded any trade test and the keeping of records regarding certificates issued by it and the furnishing from time to time, as the Minister may determine, of trade testing statistics to the Minister;

(f) the keeping abreast of new developments in the field of vocational training it) so far as it relates to trade testing and certification under this Part;

(g) the making available of training in the principles and techniques of evaluation to trade testing officers and all persons evaluating training and conducting the testing of apprentices;

(h) the upgrading of the work proficiencies of qualified artisans;

(i) the performance of any other function which the Minister or the Board deems it necessary to perform in relation to trade testing and certification under this Part.

32. (1) The Minister may, on the recommendation of the Board, approve, on application of any person or body of persons, a centre to be a trade testing centre in respect of a particular designated trade or category of such trades or in general for the purposes of this Act, and may make such approval subject to such conditions and the issuing of such directives as the Minister may deem necessary in the interest of vocational training under this Act.

(2) The Minister may, on the recommendation of the Board, withdraw his or her approval referred to in subsection (1), if any person or body, so referred to therein, fails to comply with any condition subject to which such approval has been granted or any directive issued under that subsection.

33. (1) A certificate shall be issued by the National Trade Testing and Certification Centre to each person having successfully completed a trade test to the required standard

(2) The form and contents of the certificate referred to in subsection (1) shall be determined by the Chief Trade Testing Officer with the concurrence of the Board

PART VIII

REGISTRATION OF VOCATIONAL TRAINING CENTRES

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34. (1) The provisions of this Part shall apply to such types of training centres and their owners, managers and training staff as the Minister may from time to time by notice in the Gazette declare as vocational training centres for purposes of this Act.

(2) Nothing in this Part shall apply to any person or body of persons providing instruction or training in any skill, trade or occupation for his or her or its own employees.

35. The Minister may appoint an officer in the Ministry to be known as the Registrar of Vocational Training Centres who shall exercise the powers and perform the duties and functions conferred upon or assigned to him or her in terms of this Act.

36. Any person who, after the expiration of a period of 90 days from the date of publication of a notice referred to in section 34(1), provides training in or at a vocational training centre to which the provisions of this Part apply, which is not registered or exempted from registration under this Part, shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$4 000 or to imprisonment or a period not exceeding 12 months or to both such fine and such imprisonment.

37. (1) Any person who provides or intends to provide training in or at a vocational training centre to which the provisions of this Part apply, shall, in the form and manner determined by the Board, apply to the Registrar for registration of such centre.

(2) Every application referred to in subsection (1) shall be accompanied by the particulars required by the Board, which particulars may include

(a) the training and related instruction in particular trades and the standards thereof to be provided by the centre,

(b) the syllabi of courses to be provided by the centre;

(c) the qualifications required for the instructors of the centre to provide training at that centre, and the maximum number of apprentices who will be allocated to an instructor to be trained at any time or during any course provided by the centre,

(d) subject to the provisions of any other law, the measures to be taken to ensure the health and safety of any person during training at the centre;

(e) the fees to be charged for any training provided by the centre; and

(f) any other particulars which the Board deems necessary for the purposes of the registration of such a centre.

38. (1) Upon an application made under section 37, the Registrar may, subject to the provisions of subsection (2) of this section

(a) (i) register that centre as a vocational training centre on such terms and subject to such conditions as may be determined by the Registrar;

(ii) notify the applicant in writing of that fact and the terms on which and the conditions subject to which (if any) the centre is registered; or

(b) refuse the application and notify the applicant in writing of that fact and the reasons for such refusal,

(2) No vocational training centre to which the provisions of this Act apply, shall be registered by the Registrar, unless the Registrar is satisfied that-

(a) the premises of the proposed centre or any part of such premises are suitable for the training for which it has been established and complies, subject to the provisions of any other law, with any requirement ensuring the health and safety of persons receiving or providing training at that centre;

(b) subject to the provisions of this Act and the provisions and conditions determined under any scheme in respect of a designated trade

(i) every instructor of such centre is duly qualified in relation to the level and standard of training to be provided by him or her at such centre, and that he or she is a fit and proper person to be an instructor at such centre;

(ii) the number of apprentices to be instructed by an instructor does not exceed the maximum number so determined in that trade;

(iii) the level and standard of training at that centre will provide apprentices with the necessary skills and knowledge for gainful employment or self-employment in that trade;

(iv) the training courses and training facilities at that centre make due provision for the implementation of a level and standard of training so determined; and

(v) the fees to be charged for training to be provided by the centre are not unreasonable, having regard to the cost of maintaining and operating the proposed centre and the standard of training to be provided.

(3) The Registrar shall keep a register in which shall be entered

(a) the name of every vocational training centre registered under this Part and (if any) the terms on which and the conditions subject to which it is so registered;

(b) the names and addresses of the owner or the manager of every such centre; and

(c) such other particulars as the Registrar may from time to time deem necessary to so enter in such register.

(4) Any term or condition imposed by the Registrar under subsection (1)(a) may relate to any matter referred to in subsection (2) if the Registrar is of the opinion that, notwithstanding the fact that he or she has not been satisfied in respect of such matter as contemplated in the said subsection (2), the centre in question can be duly operated until such time as such term or condition has been complied with by the owner or manager of that centre.

39. When a vocational training centre has been registered under section 38(1)(a), the Registrar shall issue to the owner or manager thereof a certificate of registration in such form as may be determined by the Board.

40. (1) When the owner or manager of a vocational training centre registered under this Part contravenes or fails to comply with any term or condition determined under section 38(1)(a) or such centre no longer complies with the requirements laid down for registration as such a centre as contemplated in subsection (2) of that section, the Registrar may, subject to the provisions of subsection (2) of this section, by notice in the Gazette withdraw the registration of that centre, and thereupon the certificate of registration issued to such centre shall for all purposes be deemed to have been cancelled with effect from the date of such notice.

(2) The Registrar shall not consider the withdrawal of the registration of a vocational training centre referred to in subsection (1), unless the Registrar

(a) has notified in writing the owner or manager of such centre to that effect and has stated the reasons for the intended withdrawal; and

(b) has afforded the owner or manager of the vocational training centre in question an opportunity to comply, within such period as may be specified in such notification, with any such term, condition or requirement, so specified, or to make, within such period as may be so specified, representations to the Registrar stating the reasons why the registration of that centre should not be withdrawn.

41. (1) For the purposes of carrying out the provisions of this part, the Registrar or any member of the Board duly authorised in writing by the Minister may enter any vocational training centre or any premises reasonably suspected to be used for the purpose of a vocational training centre and examine any documentation relating to the operation of that centre.

(2) Any person exercising or seeking to exercise any of the powers referred to in subsection (1) shall, when required by any person affected thereby to do so, produce the written authorisation referred to in subsection (1) to such person.

42. The Minister may, after consultation with the Board, in writing exempt any vocational training centre to which the provisions of this Part apply from any or all of the provisions thereof.

PART IX

VOCATIONAL TRAINING LEVIES AND ESTABLISHMENT OF VOCATIONAL TRAINING FUND

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43. (1) (a) The Minister may, on the recommendation of the Board and by notice in the Gazette, make an order imposing a training levy payable by employers in general or by any category of employers in respect of a particular trade or category of trades or trades in general.

(b) Such order may contain different provisions in relation to the different employers or categories of employers or different trades or categories of trades.

(c) The Minister may, in the same manner, withdraw or from time to time amend any order made in terms of paragraph (a).

(2) The Minister shall not make an order referred to in subsection (1), unless-

(a) the Minister is satisfied that the imposition of the levy in question is necessary to encourage and facilitate adequate vocational training;

(b) the amount estimated to be payable by any employer affected by such order in respect of his or her employees is not more than one percent of the total remuneration due to those employees in respect of such periods of not less than 30 days as may be specified in the order.

(3) An order referred to in subsection (1) -

(a) shall state the amount and basis of the levy imposed;

(b) shall state the date on which the levy shall be payable and the person or officer to whom payments in respect of the levy shall be made;

(c) may require employers who are liable to pay the levy to keep, for such periods as may be specified in the order, such records and to render for such periods such returns as may be so specified;

(d) may provide for the exemption of any employer or category of employers from the liability to pay such levy, either generally or in respect of a specified industry, trade, area or category of employees;

(e) may provide for any other matter which is necessary or expedient for the effective administration and control of the levy in question; and

(f) may prescribe penalties, not exceeding a fine of N\$2 000 or imprisonment not exceeding a period of six months or both such fine and such imprisonment, for any contravention thereof or failure to comply therewith,

(4) If any person fails to pay any amount payable by him or her under the provisions of an order referred to in subsection (1), a sum equal to one per cent of such amount shall be added for each month or part of a month that the amount remains unpaid, and such payment shall be in addition to and not in substitution for any other penalty provided for under subsection (3)(f), if any.

44. (1) (a) There is hereby established a fund to be known as the Vocational Training Fund,

(b) The Fund shall, for all purposes, be a juristic person.

(2) There shall be paid into the Fund

(a) moneys accruing from the Labour Promotion Fund by virtue of the provisions of section 53(10);

(b) moneys received in terms of any training levy imposed by order under section 43(1), as well as any sum paid in terms of section 43(4);

(c) moneys appropriated by Parliament for the purposes of the Fund;

(d) amounts repaid in respect of loans granted in terms of section 45(1)(b) and (c), as well as interest paid in respect of such loans;

(e) any interest earned in terms of subsection (5); and any other moneys which may accrue to the Fund from any other source.

(3) The secretary of the Board shall, subject to the directions of the Minister and in accordance with rules made by the Minister, with the concurrence of the Minister of Finance, be responsible for the administration of the Fund, including

(a) the collection and recovery, for the benefit of the fund, of all moneys due or accruing to the Fund

(b) the control over payments from the Fund, and the Permanent Secretary shall for the purposes of the State Finance Act, 1991 (Act 31 of 1991), be the accounting officer in relation to the affairs of the Fund.

(4) (a) The financial year of the Fund shall end on 31 March of each year.

(b) The secretary of the Board shall cause proper accounts of the Fund to be kept and shall submit such accounts not later than three months after the end of each financial year to the Auditor General for audit.

(c) The Auditor-General shall submit a report on his or her audit of the Fund to the Minister who shall table the report in the National Assembly.

(5) Any moneys of the Fund which is not required for immediate use may be invested as the Minister, with the concurrence of the Minister of Finance, may direct.

(6) Any unexpended balance in the Fund at the end of any financial year shall be carried forward as a credit in the Fund to the ensuing financial year.

45. (1) The Minister may, after consultation with the Board -

(a) for any of the following purposes make payments out of the Fund to any person or employer in any industry or trade or commerce that is subject to air order imposing a training levy, namely

(i) the payment of maintenance and travelling allowances to persons attending training courses approved by the Board;

(ii) the reimbursement of fees to any person or employer who provides further education in respect of persons receiving such education in connection with their training; and

(iii) the reimbursement to any person or employer of all or part of the costs accrued to him or her in connection with the training of apprentices or vocational trainees, and such other employees as the Board may approve, including fees, instruction costs, costs of materials or equipment, and remuneration or allowances of such persons for any period they are attending training courses in connection with their employment;

(b) make out of the Fund grants or loans to persons, organizations, institutions or employers providing training courses or training facilities approved by the Board and

(c) make payments out of the Fund for the granting of loans to training projects and to persons, organizations, institutions or employers engaged in programmes for training of persons in employment.

(2) The Minister may, with the concurrence of the competent authority, and subject to and on such terms and conditions as he or she deems fit, make State land or land controlled by the State or any facilities thereon available for carrying out any projects or programmes under subsection (1)(c).

(3) No tax or charge on income or stamp d imposed by or under any law shall be payable by the Fund.

(4) The Fund shall not be wound up except by or under the authority of an Act of Parliament.

PART X

POWERS OF INSPECTORS

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(1) The provisions of this section, in so far as they provide for a limitation on the fundamental rights contemplated in Sub-Article (1) of Article 13 of the Namibian Constitution by authorizing interference with the privacy of a person's home, correspondence or communications, are enacted on the authority conferred by that sub-title.

(2) An inspector may, subject to the provisions of subsection (3), for purposes of the administration of this Act -

(a) at any reasonable time enter upon any premises in which he or she has reasonable cause to believe that an apprentice or vocational trainee is or has been trained or employed;

(b) question, with respect to matters under this Act, any person whom he or she finds on the premises referred to in paragraph (a) or whom he or she has reasonable cause to believe to be or to have been trained or employed on such premises and require any such person to be so questioned;

(c) require any apprentice or vocational trainee to appear before him or her at a time and place determined by him or her and then and there question that apprentice or trainee;

(d) require any person who has control over, or custody of any record or document required to be kept under this Act or of any document relating, with respect to matters under this Act, to the operation of any centre or institution where any apprentice or vocational trainee is or was trained or tested or the business of any person who is or was the employer of any apprentice or vocational trainee, to produce such record or document to him or her;

(e) examine and make extracts from or copies of any such record or document;

(f) require a member of the Namibian Police Force, or request any other person, to assist him or her as an interpreter or otherwise in exercising or performing his or her powers, duties and functions under this Act.

(2) When an inspector exercises or performs a power or duty under this Act in the presence of any person affected thereby, the inspector shall on demand by any such person produce to him or her the certificate issued to such inspector in terms of section 3(2).

(3) A member of the Namibian Police Force required, or any other person requested, by an inspector to assist him or her as provided in paragraph (f) of subsection (1), may accompany such inspector in the exercise of his or her powers or the performance of his or her duties or functions under this Act as if such member or person were an inspector.

(4) An employer, every employee employed by such employer and any other person in charge of any premises in which apprentices or vocational trainees are employed or trained shall at all times furnish such assistance as is reasonably, required by an inspector in order to enable him or her to exercise or perform effectively the powers and duties to be exercised or performed by him or her under this Act or in any premises occupied or used by such an employer or other person.

47. Any person who -

(a) hinders or obstructs an inspector in the exercise of his or her powers or the performance of his or her duties or functions;

(b) refuses or fails to comply to the best of his or her ability with any requirement made by an inspector in the exercise of his or her powers or the performance of his or her duties or functions;

(c) refuses or fails to answer to the best of his or her ability any question which an inspector in the exercise of his or her powers or the performance of his or her duties or functions has put to him or

(d) wilfully furnishes to an inspector information which is false or misleading;

(e) falsely gives himself or herself out as an inspector,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

PART XI

MISCELLANEOUS PROVISIONS

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48. (1) Any person who feels aggrieved by any decision of the Chief Inspector under section 17, 19, 20, 21 or 22 or any decision of the Registrar under section 38 or 40 may, within 30 days after the date of the decision concerned and in such form and manner as may be determined by the Board, appeal against such decision to the Board.

(2) The Board may confirm the decision concerned or set aside the decision or give such decision the opinion of the Board, the Chief Inspector or Registrar, as the case may be, ought to have been given in that matter.

49. (1) The provisions of this Act shall not derogate from

(a) any right which an apprentice may have to institute a civil action, including a complaint as defined in section 1 of the Labour Act, 1992 (Act 6 of 1992), against his or her employer in respect of any contravention of or failure to comply with any provision of a contract of apprenticeship or any condition of apprenticeship;

(b) any right which an employer may have to institute a civil action, including a complaint, as so defined, against an apprentice in respect of any contravention of or failure to comply with any provision of a contract of apprenticeship or any condition of apprenticeship.

50. In the absence of satisfactory proof of age, the age of any person shall be presumed to be that stated by the Chief Inspector or an inspector, as the case may be, to be in his or her opinion the probable age of that person, but any interested person who is dissatisfied with that statement of opinion may, at his or her expense require that a person whose age is in question appear before, and be examined by, a medical practitioner, and a statement contained in a certificate by such medical practitioner who examined that person as to what in his or her opinion is the probable age of that person shall, but only for the purposes of this Act, be conclusive proof of the age of that person

51. (1) When any manager, agent or employee of any employer performs or fails to perform any act which would be an offence in terms of, or a contravention of, or a failure to comply with, any provision of this Act or any provision or condition of a scheme approved under this Act for an employer to so perform or to fail to perform any such act then, unless it is proved

(a) that in performing or failing to perform such act the manager, agent or employee was acting without the connivance or permission of the employer;

(b) that all reasonable steps were taken by the employer to prevent the performance of or failure to perform any such act; and

(c) that it was not under any condition or in any circumstances within the scope of the authority or in the course of the employment of the manager, agent or employee to perform or fail to perform such act,

the employer himself or herself shall be presumed to have performed or failed to perform such act, and shall be liable in respect thereof, and the fact that he or she issued instructions forbidding the performance or failure to perform such act shall not, of itself, be accepted as sufficient proof that he or she took all reasonable steps to prevent such performance or failure.

(2) When any manager, agent or employee of any employer performs or fails to perform any act referred to in subsection (1) he or she shall be liable in respect thereof as if he or she were the employer.

(3) Any manager, agent or employee may be so liable in addition to the employer.

(4) For the purposes of this section, any reference to an employer shall be deemed to include a reference to the owner or manager of any training or trade testing centre registered or deemed to be registered or approved, as the case may be under this Act.

52. (1) The Minister may make regulations by notice in the *Gazette* relating to -

(a) the form of any contract of apprenticeship and the matters for which provision shall be made in such contract;

(b) the manner in which employers may from time to time furnish returns to the Chief Inspector and the period within which those returns shall be so furnished;

(c) the procedure for the registration and transfer of contracts of apprenticeship and for the notification of the expiration or termination of such contracts; and

(d) generally all other matters which are by this Act required or permitted to be prescribed or which are necessary or expedient to be prescribed in order to achieve the purposes of this Act.

(2) Any regulation made under this section may prescribe penalties, not exceeding a fine of N\$2 000 or imprisonment not exceeding a period of six months or to both such fine and such imprisonment, for any contravention thereof or failure to comply therewith.

53. (1) Subject to the provisions of this section, the laws specified in the Schedule are hereby amended or repealed to the extent set out in the third column of that Schedule.

(2) Any rule, regulation, notice or certificate made, published, served or issued or any other steps taken or any other thing done in terms of a provision of a law repealed by subsection (1) shall, in so far as it is not inconsistent with any provision of this Act, be deemed to have been made, published, served, issued or done in terms of the corresponding or allied provision of this Act.

(3) Any trade designated in terms of the provisions of a law repealed by subsection (1), shall be deemed to be a trade designated in terms of the provisions of this Act.

(4) Any contract of apprenticeship registered in terms of the provisions of a law repealed by subsection (1), shall be deemed to be a contract of apprenticeship registered in terms of the provisions of this Act.

(5) Any condition of apprenticeship prescribed in respect of a designated trade in terms of the provisions of a law repealed by subsection (1), shall be deemed to be a condition of apprenticeship determined in accordance with the provisions of a scheme approved in respect of that trade under this Act.

(6) Any apprenticeship committee established in respect of any trade or industry in terms of the provisions of a law repealed by subsection (1) shall be deemed to be established as a trade advisory committee for that trade or industry in terms of the provisions of this Act by the Board.

(7) Any training centre approved or registered as a training centre in terms of the provisions of a law repealed by subsection (1), shall be deemed to be a vocational training centre registered as such in terms of the provisions of this Act as if it were declared in terms of section 34(1) as a vocational training centre for the purposes of this Act.

(8) Any scheme or programme for the training of apprentices or employees in any designated trade or industry which has been recognized or registered in terms of the provisions of a law repealed by subsection (1), shall be deemed to be a training scheme or programme approved as such in terms of the provisions of this Act in respect of that trade or industry, as the case may be.

(9) Any reference in any other law, in any contract of apprenticeship in force at the date of commencement of this Act or in any notice issued under or document produced in the application of any law repealed by subsection (1), to the inspector of apprenticeship or registrar of apprenticeship appointed or deemed to have been appointed under section 3 of the Apprenticeship Ordinance, 1938 (Ordinance 12 of 1938), shall be deemed to be a reference to the Chief Inspector of Apprenticeships appointed under section 3(1)(a)(i) of this Act.

(10) Any moneys which are at the date of commencement of this Act in or due to the Labour Promotion Fund referred to in Proclamation R.69 of 1975, repealed

by subsection (1), shall be paid into the Fund to be utilised for the purposes of the Fund under this Act.

(11) The Chief Inspector or Registrar, as the case may be, shall record in an appropriate register the particulars of a contract of apprenticeship or a vocational training centre which in terms of the provisions of subsections (3) and (7) is deemed to be, respectively, a contract of apprenticeship or a vocational training centre registered, as the case may be, in terms of the provisions of this Act.

54. This Act shall be called the National Vocational Training Act, 1994, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

SCHEDULE

LAW'S REPEALED

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Section 53 (1)

- Ordinance 12 of 1983; apprenticeship ordinance.
- Ordinance 15 of 1948; Apprenticeship amendment ordinance.
- Ordinance 25 of 1957; Apprenticeship amendment ordinance.
- Ordinance 20 of 1959; Apprenticeship amendment ordinance.
- Proclamation R.69 of 1975; Proclamation relating to the Establishment of the Labour Promotion Fund and Administration thereof.
- Proclamation AG. 22 of 1979; Apprenticeship amendment ordinance.
- Act 10 of 1981; Labour Promotion Fund amendment Act, 1981.
- Act 6 of 1992: Labour Act, amends section 8 and 116.