

Mining Qualifications Authority
7 Anerley Road
Parktown, Johannesburg, 2193
Private Bag X118, Marshalltown, 2107
Tel: 011 547 2600
Email: info@mqa.org.za



**SKILLS DEVELOPMENT FACILITATORS AND SKILLS
DEVELOPMENT COMMITTEES (SDF-SDC) GUIDELINE
REVISED 2019**

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1. INTRODUCTION

Skills Development Facilitators (SDFs) and Skills Development Committees (SDCs), formerly known as Training Committees, have become an established practice in the mining and mineral sector. SDFs and SDCs, as in-house consultation forums, continue to play an important role in relation to skills development. This guideline should be implemented by the employers and employees within the mining and minerals sector (MMS) in the role of the Skills Development Facilitators and Skills Development Committees and give guidance with regards to workplace consultations on workplace skills plans and annual training reports. The guideline should be read in conjunction with MQA Mandatory Grant Policy.

2. THE SKILLS DEVELOPMENT FACILTATOR

2.1 What is a Skills Development Facilitator

A Skills Development Facilitator (SDF) is an individual nominated by an organisation to be responsible for ensuring that various issues related to the implementation of the skills development legislation take place. This includes being the liaison between the organisation and the MQA. The SDF is a person who will ensure that the organisation's Workplace Skills Plan / Implementation Report is developed and implemented and also serves as a liaison person between the organisation/s and the MQA. The SDF can be appointed from within the organisation/s, usually a person within the training division and/or human resources division.

An independent (external) SDF can also be used to assist the organisation with the implementation of skills development at the workplace.

2.2 The role and responsibilities of the Skills Development Facilitator

The role of the SDF is to amongst others:

- Set up and manage the skills development committee.
- Advise on alignment of human resource policies of the organisation in relation to skills development.
- Facilitating the process of identifying key organisational skills needs to meet its mandate.
- Monitor and evaluate skill development in the organisation relative to these needs and report it to the MQA through the annual training report.
- Serve as a contact person between the organisation and the MQA.
- Advise the organisation on uptake of learnerships, skills development programme and other skills development interventions initiated through the MQA.

- Ensure that the organisation's data management system is updated with relevant skills development data.
- Assist the organisation in developing a Workplace Skills Plan which complies with required legislation and MQA requirements.
- Submit an MQA compliant Workplace Skills Plan to the MQA.
- Advise the organisation on the implementation of the Workplace Skills Plan.
- Advise the organisation on quality assurance requirements as set by the MQA.
- The SDF should communicate MQA initiatives with regards to the MQA strategic plan and advocate the benefits to the organisation.

The appointed SDF will be responsible for the registration of the organisation SDL number and they will be the liaison person between the organisation and MQA. Additional users can be granted access to view information on the system depending on approval by the organisation and MQA.

2.3 Nomination of SDFs

The appointment of a suitably qualified SDF who is competent and at the appropriate level in the organisation is the responsibility of the organisation.

In the case of medium and large organisations (with 50 or more employees) the organisation should appoint the SDF in consultation with the Skills Development Committee, except in instances where the appointment process is followed in accordance with the organisation's recruitment policy and procedure.

In the case of small organisations (who employ 49 or less employees), who are unable to nominate an employee or contract an independent SDF to perform the role, may request the assistance from the MQA and MQA will allocate a resource to play the SDF role for the organisation.

2.4 Who can serve as a Skills Development Facilitator

Based on the criteria for the nomination of an SDF (2.3 above) an SDF can be:

- An employee of the organisation; or
- A person that is formally contracted to the organisation to perform this role.

2.5 Training of SDFs

It is the responsibility of the organisation's to ensure that the appointed SDF has the necessary training to perform their role effectively. This includes both appointed SDFs.

2.6 Support of SDFs

The MQA will provide support to registered SDFs in the form of updated skills development information and toolkits and guidelines on key topics in terms of their roles as an SDF such as the Organising Framework for Occupations (OFO), SDC Training and WSP-ATR.

All registered SDFs should have access to the following data of the organisation on the MQA management information system:

- Organisation information page – including details from SARS/Department of Higher Education and Training (DHET);
- Levy-grant history;
- Workplace Skills Plan (WSP) - Annual Training Report (ATR) status history.

2.7 Registration of SDFs with MQA

The SDF is required to register with the MQA by completing the online SDF registration form and ensuring that the form is submitted to MQA with the necessary organisation signatures. Following validation of the application, the SDF will be notified in writing by the MQA if the application has been approved.

3. THE SKILLS DEVELOPMENT COMMITTEE (SDC)

3.1 What is a Skills Development Committee

A SDC is a forum established by the employer to consult employees (representative trade unions where they exist and/or representatives nominated by employees where they do not) on skills development matters.

The purpose of consultation is that parties should engage in a thorough and meaningful joint consensus-seeking process. Consultation does not mean “negotiate” which implies bargaining in order to reach an agreement.

3.2 The proposed standard template for SDC terms of reference

The SDC should have a guideline, constitution or terms of reference that will guide the forum, which includes but not limited to the below:

1. Purpose of the guideline/constitution/ terms of reference.
2. Objectives of the SDC with respect to skills development and training are to consider and give input into:
 - 2.1 Details on composition and functioning of the Meeting
 - 2.2 The number of members, forming quorum and meeting procedures
 - 2.3 Election of SDC representatives, as well as the number and distribution of seats
 - 2.4 Roles and responsibilities of representatives
 - 2.5 The code of conduct of members
 - 2.6 Standard agenda points
 - 2.7 WSP-ATR consultation process
 - 2.8 Confidentiality and disclosure of information
 - 2.9 Processing of decisions
 - 2.10 Dispute resolution procedures
 - 2.11 Amendments of the terms of reference/constitution/guideline process
 - 2.12 Approval of the constitution

3.3 When should a Skills Development Committee be established

It is the employer’s responsibility to establish and convene the SDC. A SDC should be established when an organisation employs more than 50 people (i.e. is a medium or large organisation). Smalls organisations are encouraged to still consult employees on skills development issues as a matter of good organisational practice. An existing forum can be utilised for consultation on skills development.

3.4 What should be the composition of a Skills Development Committee

The forum should be represented by all stakeholders (equal representation from management and employees/ Labour):

- A appointed skills development facilitator/s (SDFs)
- Finance representative
- Other Human Resources Development staff that have a responsibility for skills development within the organisation
- Union representatives (all representative Unions should also participate) and / or other employee representatives
- Senior management representing the employer.

3.5 The role of the Skills Development/ Training Committee

The role of the training committee is to:

- Consult on training priorities and needs and agree on interventions that addresses these priorities and needs.
- To represent, communicate with and gather feedback from employees and other stakeholders on skills development matters.
- To focus on the statutory objectives, particularly those embodied in the Skills Development Act, and not attempt to use the committee as a forum to address the interests of individuals or other parties.

Specific functions and responsibilities should include:

- Develop Terms of Reference for the SDC
- Providing input into a skills development policy in support of the organisation's business plan
- Promoting the alignment of workplace skills planning to the employment equity plan
- Informing fellow employees about training policy and implementation
- Making input into the workplace skills plan
- Signing off that the SDC was consulted on the Workplace Skills Plan
- Implementation and the monitoring of the Workplace Skills Plan
- Advise of issues related to discretionary grants and monitor progress
- Monitoring the payments of grants and levies
- Providing input into the Annual Training Report

4. CONSULTATION REQUIREMENTS FOR WORKPLACE SKILLS PLANS AND ANNUAL TRAINING REPORTS

4.1 Who should be consulted

- Employee representatives or trade union should be consulted in Skills Development matters. Consultation does not only happen in medium and large organisation, With small entity/ies (less than 50 employees), it is recommended that consultation take place with employee representatives in the compilation of the WSP/ATR to ensure buy in from the workforce and good practise of the organisation.

4.2 When should consultation commence

- Consultations should commence as early as possible in the process of preparing a workplace skills plan or annual training report.

4.3 What forum should be used for consultations

- A consultative forum, such as a Training Committee or Skills Development Committee, should be established or an existing forum utilised.
- The forum should include employee representatives reflecting the interests of employees.
- Representative trade unions, where these exist, or representatives nominated by such trade unions should be included in the consultation process.
- The employer should be represented by one or more members of senior management.

4.4 What standards should consultation meet

Stakeholder consultation means that concerned parties must engage in a thorough and meaningful joint consensus seeking process.

1. It is the responsibility of the employer to establish a Training/ Skills Development Committee (SDC) to oversee the training committed and training done.
2. A SDC is a forum established by the employer to consult employees (representative trade unions where they exist and/or representatives nominated by employees where they do not) on skills development matters.
3. It is recommended that the employer should at least conduct the SDC meetings quarterly and consultation should commence as early as possible in the process of preparing for the workplace skills plan or annual training report submission.

4. An employer with 50 or more employees must submit a signed off WSP, PTP, ATR and PTR by the labour representative appointed by the union/union or an employee representative where labour is absent on or before the submission deadline.
5. In the case where the union/employee rep does not want to sign, the employer must provide proof of consultation on or before the submission deadline. What should be part of the proof of consultation pack?
 - Signed attendance registers by the SDC members.
 - Signed minutes of the consultation meeting by the chairperson and union/employee representative/s
 - Proof that WSP, ATR, PTP, PTR was discussed on the consultation meeting with a clear way forward or decision.
6. Should the union/employee representative fail to sign the WSP, ATR, PTP, PTR due to a reason/s not related to the aforementioned reports, it will be at the MQAs discretion to approve the submitted document should it meet the MQA requirements.
7. Should a dispute based on the WSP-ATR submission arise, the party disputing should notify the MQA of this within 30 days of WSP-ATR submission date. Late dispute submissions will not be considered. The MQA has a dispute resolution procedure to address WSP-ATR submission disputes refer to the SDF-SDC guideline.

Consultations should include –

- The opportunity to meet and report back to the Skills Development Committee/ Training committee;
- Reasonable opportunity for recognised union/employee representatives to meet with the employer;
- To request, receipt and consideration of relevant information; and
- Determine the current employee skills and/or competencies profile by conducting a skills analysis;
- Identify the gaps between current and required future skills profiles and develop the skills priorities for the entity;
- Align your entity's skills priorities to sector priorities.
- Organised labour and employers will provide support to monitor the achievements of the MQA targets as per the Strategic Plan and Annual Performance Plan.

In a case where consultation could not take place due to either (employer or labour/employee representatives) party/ies refusing to be consulted section 4.7 will be used to determine the outcome of the submission.

4.5 How often should consultations take place

To ensure an informed and constructive consultation process, structured regular meetings of the consultative forum or forums should be held at least quarterly to give feedback and discuss any matters.

4.6 What information should employers disclose

The disclosure of relevant information by employers is necessary for meaningful consultation to take place. Relevant information is information that is vital for the successful development and implementation of a workplace skills plan and for the preparation of an annual training report.

4.7 What if the SDC Member/s refuse to participate in consultations

Where SDC members refuse to take part in a consultation process, the employer should record the circumstances, in writing, including those steps that the employer has taken to communicate and initiate the consultation process. The documents should be provided in a form of meeting request and any other form which will serve to prove attempts to consult and should be recorded by the party concerned. A copy of these documents and evidence should be provided to the MQA and to the employee representatives or trade unions concerned.

4.8 Evidence in a case where union/ employee refuse to sign the WSP-ATR

By completing the MQA's workplace skills plan/annual training report template, employers must provide sufficient information regarding the process of consultation followed. Employee representatives should sign confirmation that they were consulted by the employer on the workplace skills plan and annual training report and include documents referred to in section 4.4 and 4.7.

5. WSP-ATR Dispute Process

5.1 When can a dispute be lodged

Where employee representatives/ trade union disputes the WSP-ATR submitted for the below reasons:

- Inadequate consultation process in line with the agreed committee terms of reference within any organisation
- Incorrect reporting by the organisation/s (the applicant to provide evidence of such)
- Incorrect plan reported to the MQA
- Any other matter related to the Workplace Skills Plan and Annual Training Report

5.2 Who can lodge a dispute

Any member of the skills development committee/ training committee or a representative of the organised labour.

5.3 Dispute resolution process

- The applicant will send a signed dispute letter to the MQA no later than 30 days after the WSP–ATR submissions deadline.
- The MQA will notify the organisation concerned in writing.

In a case of lack of consultation dispute:

- The MQA will request the organisation to engage the Skills Development Committee/Training committee including the applicant in good faith to resolve the dispute.
- The respondent will be requested to revert back to the MQA with progress made on consultation process within 14 days.
- The respondent and applicant should convene a meeting to address issues raised by the applicant.
- Upon resolving the dispute, a joint letter signed by both employer and applicant must be submitted to the MQA and a sign-off WSP-ATR within 7 days of receipt of the letter.

In a case where the dispute is more than just the consultation process, the applicant will follow the below MQA Mediation Process.

5.4 MQA Mediation Process

The mediation process will be applicable immediately:

- Where the 14 days given to the respondent lapse without reverting back to the MQA;
- Where the applicant raised issues above the consultation process of the organisation.
- When the above Dispute Process is exhausted
- Where both parties do not reach an agreement to resolve the query. Either party can approach the MQA to mediate the dispute resolution process.
 - Both parties should ensure that they agree on a meeting date, time and place.
 - Both Parties should submit evidence to their case to the MQA 5 days before the mediated meeting date.
 - MQA shall attend the meeting as a mediator and to offer guidance on this process.
 - Based on the evidence delivered at the mediated meeting; the MQA shall make a recommendation on the WSP-ATRs.

- A report on the meeting resolutions shall be sent to the applicant and organisation for noting, only in cases where consensus is not reached.
- MQA shall make a decision on Approving or Not Approving of the WSP-ATR based on the evidence provided by both parties in relation to the WSP-ATR. (Only evidence submitted to the MQA before mediated meeting shall be considered).

6. SYSTEM DISPUTES

This process is only applicable to system related errors or queries and not applicable for human errors.

- The applicant will send a written dispute to the relevant department within the MQA, the dispute should be resolved within 5 working days. The matter can be escalated to the Manager to resolve should a need arise.
- Should the complainant not receive feedback within 7 working days from the Manager, the matter can be escalated to the MQA Chief Operating Officer for deliberation also refer to the MQA Funding Policy dispute resolution process.

7. LEGISLATIONS

7.1 Mine Health and Safety Act

The objective of the Act is:

- to protect the health and safety of persons at mines;
- to require employers and employees to identify hazards and eliminate, control and minimise the risks relating to health and safety at mines;
- to give effect to the public international law obligations of the Republic that concern health and safety at mines;
- to provide for employee participation in matters of health and safety through health and safety representatives and the health and safety committees at mines;
- to provide for effective monitoring of health and safety conditions at mines;
- to provide for enforcement of health and safety measures at mines;
- to provide for investigations and inquiries to improve health and safety at mines; and
- to promote-
 - i. a culture of health and safety in the mining industry;
 - ii. training in health and safety in the mining industry; and
 - iii. co-operation and consultation on health and safety between the State, employers, employees and their representatives.

The Mine Health and Safety Act, 1996 (Act No. 29 of 1996) as amended, provides for the protection of the health and safety of employees and other persons affected by the South African mining industry. The Act also makes provision for the promotion of a health and safety culture and the enforcement of health and safety measures or legislation. The activities of the Mine Health and Safety Inspectorate are geared towards achieving the following strategic objectives:

- Actively contribute to sustainable development and growth;
- Regulate the mining and minerals sector;
- Promote health and safety in the mining and minerals sector;
- Provide efficient and effective service delivery;
- Promote culture, systems and people; and
- Ensure financial stewardship.

The main functions of the Mine Health and Safety Inspectorate are the:

- Provision of policy inputs for the establishment and application of mine safety standards at mining operations and promote the application thereof
- Policy inputs towards the establishment and application of mine equipment safety standards at mining operations, and promote their application
- The establishment and application of mine health standards at mining operations and the promotion of these applications; and ensuring an effective support and inspection service.
- Promoting, monitoring and enforcing legislation
- Initiating prosecution in terms of the Mine Health and Safety Act of 1996 (Act No. 29 of 1996); and ensuring compliance and where necessary apply penalties.

The Mining Qualifications Authority is responsible for:

- Addressing the education and training needs of the mining and minerals sector.
- Advise the Minister of Mineral Resources about generating and monitoring education and training standards and qualifications for the mining industry, as part of the National Qualification Framework (NQF).
- Sub-section (4) “The employer must keep a record of all formal training provided in respect of each employee”
- Section 10 (5) of the Mine Health and Safety Act states that **“All mines must submit a workplace skills plan and the annual training report to the Mining Qualifications Authority.**

Based on the above mentioned, all mining rights holders must submit a Workplace Skills Plan and Annual Training Report to the Mining Qualifications Authority by 30 April annually. The penalty clause will apply to any mine which did not comply with Section 10 (5) of the Mine Health and Safety Act 74 of 2008.

7.2 Skills Development Act

The objectives of the Skills Development Act are to:

- Strategically stimulate investment in education and training in and for the workplace;
- Increase the supply of skills and knowledge needed by the labour market;
- Link learning to the demands of the world of work;
- Develop the skills and knowledge of existing workers and enable employers to become more productive and competitive;
- Increase the levels of investment in education and training in the labour market;
- Provide opportunities for new entrants to the labour market to gain work experience;
- Improve the employment prospects of persons previously disadvantaged to redress those disadvantages through training and education; and
- Provide and regulate employment services.

7.3 The Employment Equity Act

The purpose of the Act is to achieve equity in the workplace by:

- Promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
- Implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, to ensure their equitable representation in all occupational categories and levels in the workforce.

Who Must Comply with the Employment Equity Act:

All employers must comply with Chapter 2 the Employment Equity Act 55 of 1998 (EEA) which deals with the prohibition of unfair discrimination. Furthermore, the Employment Equity Act stipulates that all 'designated employers' must comply with Chapter 3 dealing with affirmative action.

'Designated Employers' are defined as:

- A person who employs more than 50 employees;
- A person who employs fewer than 50 employees but has an annual turnover which is equal of above the applicable annual turnover of a small business in terms of Schedule 4 of the EEA;
- A municipality;
- An organ of state; or
- An employer bound by a collective agreement which appoints it as a designated employer.

Every employer with more than 50 employees has to comply with the EEA. Also, even if the employer employs less than 50 employees but its annual turnover is equal or above the established thresholds for their specific sector, that employer has to comply. Compliance in terms of the EEA requires companies to comply with the following:

- To consult with employees as per section 16: Designated employers are required to consult with a representative trade union or alternatively with employees and/or their representatives. The mere election of a committee will therefore not suffice and proof of consultation with employees or their representatives will have to be presented to prove compliance with this section.
- To conduct an analysis as required by section 19: The purpose of an analysis is to identify possible barriers in the workplace, policies or procedures which adversely affect people from designated groups.
- A company may for example identify that certain people do not have access to the internet and that more advertising needs to take place in previously disadvantaged areas such as townships in order to achieve Employment Equity targets and goals. The analysis should also include a profile of the designated employer's workforce in each occupational level to determine the degree of under representation of people from designated groups in that specific level.
- To compile an Employment Equity plan as required by section 20: A designated employer must prepare and implement a plan to achieve employment equity, which must:
 - have objectives for each year of the plan;
 - include affirmative action measures;
 - have numerical goals for achieving equitable representation;
 - have a timetable for each year;
 - have internal monitoring and evaluation procedures, including internal dispute
 - resolution mechanisms; and
 - identify persons, including senior managers, to monitor and implement the plan.
- Submit an annual report as required by section 21: Employers with more than 150 employees must submit a report to the Department of Labour on an annual basis on the first working day of October. Employers with less than 150 employees must submit a report once every two years, also on the first working day of October. The report must include a report on income differentials in terms of Section 27.
- Assign responsibility to one or more senior managers as per section 24: Authority and means to perform all EE functions should formally be assigned in writing to the senior manager responsible for employment equity. The amendments to the EEA furthermore requires the senior manager appointed in terms of section 24 to have key employment equity outcomes incorporated into his/her performance contracts.

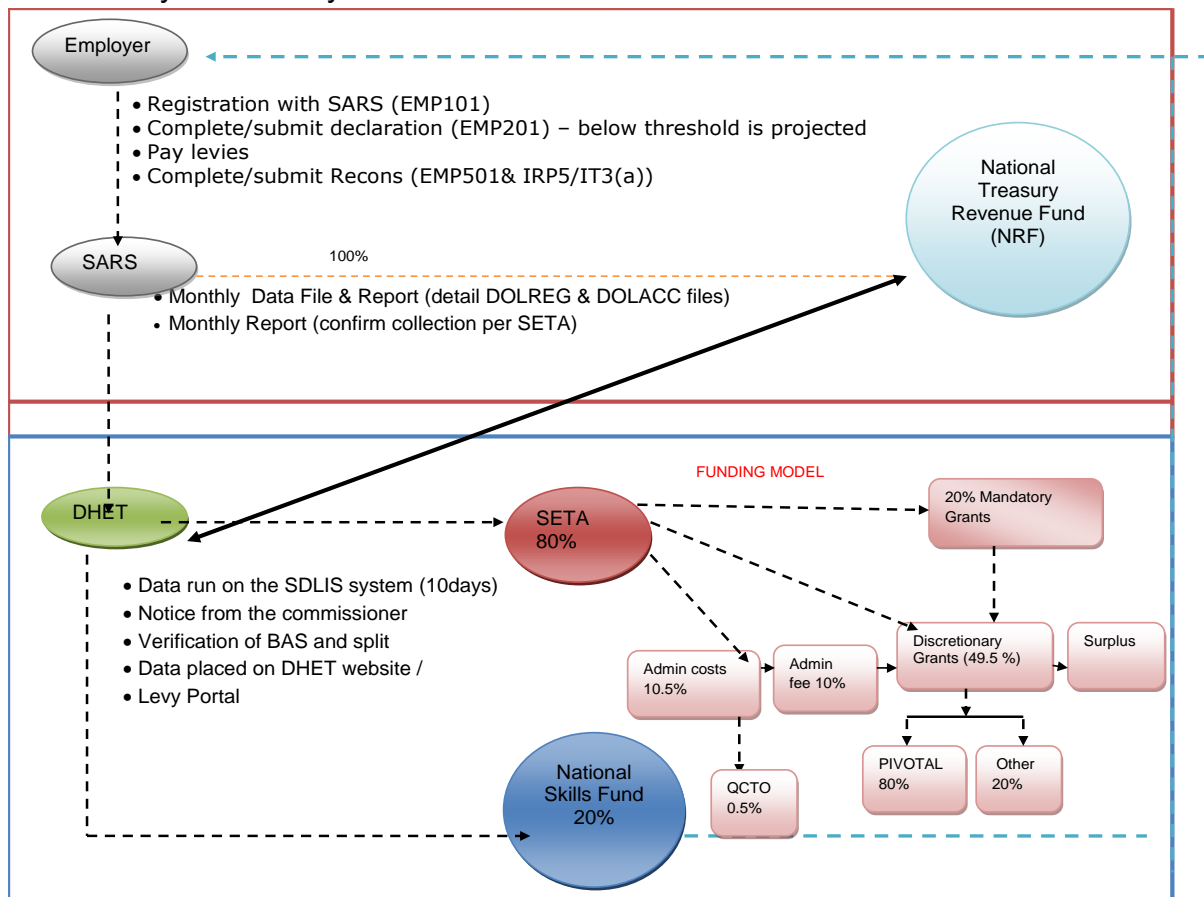
- Inform employees as required by section 25: A copy of the EE plan should be made available to all employees and the relevant Employment equity legislation should be displayed in the workplace.

7.4 The Skills Development Levies Act

All organisations with a payroll of more than R500k per annum are required to pay a Skills Development Levy of 1% of that payroll to SARS as part of their monthly payments and this money is further transferred to the SETA that they are registered with. This levy is payable by employers in respective sectors of the economy in order to fund education and training for socially and economically marginalized groups in South Africa. Payment towards the levy grant scheme is legislated in terms of the Skills Development Levies Act, 1999, as amended. Under this Act every employer in South Africa who:

- Is registered with SARS (South African Revenue Services) for PAYE and
- Has an annual payroll in excess of R500,000;
- Must register with SARS to pay the Skills Development Levy.

The following diagram explains the skills development levy process and what the levy is ultimately used for by the NSF and the MQA.



7.5 The Labour Relations Act – Sectoral Determination 5 (for Learnerships)

The sectoral determination was developed by Department of Labour to establish the condition of employment and rates of allowances for learners in South Africa.

The determination applies to every employer who employs a learner who has completed a learnership but is not employed by the employer who hosted the learnership.

The determination states that an employer who employs such a learner:

- Must pay the learner an allowance in South African rands daily, weekly or monthly either in cash, cheque or directly into the learners' bank account.
- It is excepted to give the learner at least four consecutive months of maternity leave, however the learner is not entitled to receive her allowance during this period.
- Must provide the learner with family responsibility leave for those learners who worked for more than four months and work for at least four days in a week.
- Must provide the learner with a written contract entered into between the employer and learner.
- Must only terminate employment upon termination of the contract, if the learner has completed his/her learnership or if the learner is fairly dismissed.
- Upon termination of service, the learner is entitled to a certificate of service stating the learner's commencement and completion date of employment as well the training received and responsibilities during the employment period.

7.6 The Higher Education and Training Act

The main aim of the Act is to regulate higher education in South Africa, the act is meant to:

- To provide for the establishment, composition and functions of a Council on Higher Education;
- To provide for the establishment, governance and funding of public higher education institutions;
- To provide for the appointment and functions of an independent assessor;
- To provide for the registration of private higher education institutions;
- To provide for quality assurance and quality promotion in higher education; to provide for transitional arrangements and the repeal of certain laws; and to provide for matters connected therewith. This act applies to all Higher Education institutions in South Africa.