SKILLS DEVELOPMENT ACT REVIEW
The dawn of the South African democracy in 1994 ushered in a number of revolutionary/fundamental legislative landscape/changes that sought to be undo/redress the legacy of apartheid.

Since education, training and skills developed was seen as critical in preparing the citizens for better life legislation in the form of skills development act as promulgated in 1998, follows by the skills development levies act in 1999. The conclusion of the above legislated development landscape marked a new era of a deep noted negotiated settlement (or consensus mechanism) highly influenced by government, labour and business pact of funding and managing skills training for economic development in the main.
Although the 1993 ANC resolution (as reflected in the Yellow Book) on education and training preferred an integrated and inclusive education and training, the end result was that skills development was made the competency of the Department of Labour and Education and Training mandate remained in the Department of Education.

The separation of the education and training (skills) mandate posed serious challenges in the sense that the roll-out and implementation process never converged and thereby resulting in serious challenges of mobility, progression, quality, assurance, terminology, etc.
The establishment of the Department of Higher Education and Training through a proclamation in Government Gazette by the President in 2009 was aimed to fundamentally rectify not only this disjuncture and counter – productive practices but primarily to revolutionize education and training by building a capable workforce for an inclusive growth path.

Given the brief background on the evolution of the skills development regime since 1994 which is in no way exhaustive, it is prudent to highlight some of the crucial areas that may assist in the reformation of the new skills development legislative dispensation, namely:
DISCUSSION

- The distinction between educational institutions and skills providers (or training providers as they are called in s. 20(1)(c)) has manifested itself in the confusion that has dogged the registration of private educational institutions and the accreditation of skills providers respectively.

- Ordained by s, 29(3) of the Constitution, the legislation on educational institutions has required that private institutions must register with the appropriate department. A condition of registration is that a private institution and its programmes must be accredited by the appropriate quality assurance body (Umalusi or the Higher Education Quality Committee (HEQC)).
DISCUSSION

- By contrast the SDA requires only that a skills provider must be accredited (by the QCTO). In the diverse world of private providers the question of institutional identity often arises. When is a provider an educational institution in terms of education legislation (and required to register as well as be accredited) and when is a provider a skills provider in terms of the SDA (and not required to register but only be accredited)? What if a provider offers both educational qualifications certified by Umalusi or the HEQC and occupational qualifications certified by the QCTO? Is such a provider, of which there may be many, both an educational institution and a skills provider? As an interim measure, the DHET, SAQA and the QCs have issued a communiqué to clarify the current legal situation.
Both SAQA and the DHET have acquired legal opinion on the scope of the term “education” in order to clarify whether the constitutional requirement that a private education institution must register with the state applies equally to skills providers. Section 29(3) of the Constitution states:

Everyone has the right to establish and maintain at their own expense independent educational institutions that-

(a) do not discriminate on the basis of race;
(b) are registered with the state; and
(c) maintain standards that are not inferior to standards at comparable public educational institutions.

(4) Subsection (3) does not preclude state subsidies for independent educational institutions.
Both opinions concur that the meaning of “education” in s. 29 of the Constitution includes “skills development”. Both opinions concur that private skills providers are therefore required to register with the state. The legal opinion for SAQA leaves open the question whether accreditation by a QC might be construed as meeting the registration requirement.

It follows from the legal opinions that private skills providers must “maintain standards that are not inferior to standards at comparable public educational institutions” (Constitution, s29(3)(c)).
The term “standards” referred to in the Constitution cannot mean the standards of learner performance (that is attainment) at comparable public educational institutions, since such standards vary from institution to institution and within institutions. In the case of workplace-based skills provision it would be difficult to find public skills providers to match with private providers across the whole diverse range of occupational preparation.
In this context the term “standards” must mean the benchmark standard of performance that is established by the relevant public authority (the QCTO) for the achievement of the relevant qualification, whether the candidate for the qualification is learning in a public or a private programme.

The question left open by the legal opinion for SAQA deserves to be thoroughly considered. The double requirement of accreditation and registration is costly in time and personnel resources, both on the part of the provider and the state. There would be considerable relief if a single process could be found that would satisfy the registration requirement.
DISCUSSION (Cont)

- Strengthening the skills development institutional mechanism that encompasses vocational education and training

- (The current institutional mechanism does not adequately address the erratic skills planning practices, inability to aggressively absorb the growing numbers of prospective entrants/learners, it also does not inspire public confidence due to the negative perception created over years and the lack of permanency of the SETAs. Ensure that education, learning and skills become enablers and drivers of inclusive and sustainable development)
**DISCUSSION (Cont)**

**Key issue:**

- SA education system still plagued by its apartheid past of misalignment and lack of unity of purpose. Systemic blockages such as: a lack of synergy between the various post-school sub-systems (e.g. universities, FET colleges, SETAs); a lack of clarity in relation to the role expected of the various parts of the skills development system; inefficiency and waste; and the silo mentality which prevents the partnerships and alignments needed to improve effectiveness. The absence of coherent strategies within economic and industrial sectors, compounded by the lack of systematic skills development to support and sustain growth and development.
Promotion of coherent and integrated education and training post school landscape (promoting pathways between the secondary school, vocational education and training, adult community education, and higher education, sectors).

Expansion of access to education and training particularly skills development, formal vocational education and training with a quantitative and qualitative focus on participation on formal learning. (The key challenge remains to ensure that the life-long characteristics of workplace learning are reflected in education and skills strategies and policies.)
Key issue:

- SA is plagued by the inadequate skills levels and poor work readiness of many young people leaving formal secondary and tertiary education and entering the labour market for the first time. This is compounded by inadequate linkages between institutional and workplace learning, thus reducing the employability and work readiness of the successful graduates from FET and HET institutions, not to mention the many who enter the world of work without a formal qualification.
Promote work integrated learning by fostering partnerships and collaboration among stakeholders in order to enhance employability (Increasing employability requires that two dimensions be considered relating to both short and long-term perspectives. The first perspective refers to the capacity of graduates to seize immediate employment opportunities and to address constraints arising from the labour market. The second is the capacity to stay in employment, and to move on in the workplace and more broadly in lifelong learning. A greater emphasis should be placed on knowing how to use the tools for navigating in the world of work and seeking further learning.)
Key issue:

- There is an absence of coherent strategies within economic and industrial sectors, compounded by the lack of systematic skills development to support and sustain growth and development.

- Design a skills development system that is responsive and reliable in addressing the training and education needs of the economy and the community (The legal framework must be able to provide the necessary flexibility to accommodate the evolving educational and training needs)
DISCUSSION (Cont)

Key issue:

- Stakeholder/social partners in skills development do not maximally drive the skills development revolution as initially intended.

- Strengthen the governance and stakeholder role in fast tracking the delivery of skills and promoting healthy relations in the labour market.
The review of the SDA should provide a legal framework that integrates the Post School Education White Paper relating to Skills Development into an Act which the Act must enforce the policy principle of government into the system.

Legislation always have the objective to identify the policy principles that must be enforced by law and the legislation must identify the relevant authority that must perform the specific function and responsibility to implement the policy objective.
Legislation must bring legal certainty to the system by identify the respective roles of the Minister, DG, statutory bodies and the resources needed to implement the policy directives.

The review of the Skills Development Act should be underpinned by concurrence for an integrated and coherent Post School Education and Training system with a specific reference to TVET (integration of higher and further education and skills development in to a single system that promotes partnership between employers, public education institutions – FET colleges, SETAs, universities of technology and strengthening the relationship between institutions and the employers).
Technical Vocational Education and Training (TVET) should be aligned and defined for the South African context and should be geared to help people to get into labour market and to help support economic growth.

The review should help strengthen an integrated and coherent quality management system and policy.
OBJECTIVES OF THE REVIEW (Cont)

- Ensure that inputs made/review of the Skills Development Act influences and interfaces with the White Paper on Post School Education and Training process, the Ministerial Task Team and other research.

- To firmly ground the skills Development Act, the review must consider sections of the constitution referring to education and training as captured in discussion of documents and these are:
  - Establishment of institution (clarity on proliferated private providers)
  - Rights to training (impact on access, funding, etc)
CONCLUSION

- Based on the above exposition it is our view that the Skills Development Act is ripe for radical overhaul if not replacement in order to express better the legislative requirements of workplace-based skills development in an integrated post-school system.

- We, however, propose that the review process be done in two phases. The first phase of the review will deal with the not-so substantive changes (technical).
CONCLUSION (Cont)

- This is also informed by the request from the Leader of Business in Government to the Minister of Higher Education and Training pertaining to the tabling of the Legislative Programme for 2014 in Parliament.

- The second phase will then have to do a more comprehensive review. This will necessarily be informed by the final White Paper on post school Education and Training system, Ministerial Task Teams Report, National Development Plan, Industrial Policy Action Plan and other relevant Government policy positions.
THANK YOU