

REPUBLIC OF SOUTH AFRICA

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# SKILLS DEVELOPMENT AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 75) (explanatory summary of  
Bill published in Gazette No. 34435 of 6 July 2011)  
(The English text is the official text of the Bill)*

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(MINISTER OF HIGHER EDUCATION AND TRAINING)

[B 16—2011]

ISBN 978-1-77037-890-2

No. of copies printed ..... 1 800

## GENERAL EXPLANATORY NOTE:

[                      ]      Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_      Words underlined with a solid line indicate insertions in existing enactments.

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# BILL

To amend the Skills Development Act, 1998, so as to define certain words or expressions and to delete certain obsolete definitions; to amend provisions relating to the establishment, amalgamation and dissolution of SETAs; to provide for the incorporation of a subsector of one SETA into another SETA; to provide for the composition of an Accounting Authority for each SETA; to regulate the eligibility to become a member of an Accounting Authority; to provide for the approval of a constitution for every SETA; to regulate the conduct of a member of an Accounting Authority, or of a member of the staff, of a SETA when engaging in business with the SETA; to require members of Accounting Authorities to disclose any conflict of interest with the relevant SETA; and to repeal certain provisions which became obsolete as a result of the transfer of the administration of the said Act to the Minister of Higher Education and Training; and to provide for matters connected therewith.

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

**Amendment of section 1 of Act 97 of 1998, as amended by section 23 of Act 9 of 1999, section 1 of Act 31 of 2003, section 1 of Act 37 of 2008 and section 4 of Act 26 of 2010**

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1. Section 1 of the Skills Development Act, 1998 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion before the definition of “apprenticeship” of the following definition:

“**‘Accounting Authority’** means the Accounting Authority of a SETA contemplated in section 11;”;

(b) by the insertion after the definition of “artisan” of the following definition:

“**‘Chairperson’** means the Chairperson of the Accounting Authority;”;

(c) by the deletion of the definition “employment services”;

(d) by the substitution for the definition of “National Qualifications Framework” of the following definition:

“**‘National Qualifications Framework’** means the National Qualifications Framework contemplated by the [National Qualifications Framework Act, 2008] NQF Act;”;

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- (e) by the insertion after the definition of “NEDLAC” of the following definition:  
     “**‘NQF Act’** means the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);”;
- (f) by the insertion after the definition of “Occupational Qualifications Framework” of the following definition:  
     “**‘organised employers’**—  
     (a) means any employers’ organisation in the sector in question that is registered in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other association of employers in that sector that represents the interests of its members as employers; and  
     (b) includes a State Department referred to in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), as an employer in that sector;”;
- (g) by the insertion after the definition of “SETA” of the following definition:  
     “**‘SIC Code’** means a code contained in the Standard Industrial Classification of all Economic Activities published by Statistics South Africa;”;
- (h) by the substitution for the definition of “South African Qualifications Authority” of the following definition:  
     “**‘South African Qualifications Authority’** means the South African Qualifications Authority [established by section 3 of the South African Qualifications Authority Act] referred to in section 10 of the NQF Act;”;
- (i) by the deletion of the definition of “South African Qualifications Authority Act”.

**Amendment of section 2 of Act 97 of 1998, as amended by section 23 of Act 9 of 1999 and section 2 of Act 37 of 2008**

2. Section 2 of the principal Act is hereby amended—  
     (a) by the deletion in subsection (1) of paragraphs (g) and (h);  
     (b) by the deletion in subsection (2)(a) of subparagraphs (v) and (vi); and  
     (c) by the insertion in subsection (2)(a) of the word “and” at the end of subparagraph (x), the deletion in that subsection of the word “and” at the end of subparagraph (xi) and the deletion in that subsection of subparagraph (xii).

**Amendment of section 3 of Act 97 of 1998**

3. Section 3 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:  
     “(b) the objects of the [South African Qualifications Authority Act] NQF Act.”.

**Amendment of section 5 of Act 97 of 1998, as amended by section 2 of Act 31 of 2003 and section 3 of Act 37 of 2008**

4. Section 5 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:  
     “(4) Subsection (1)(a)(iv) does not apply to regulations in respect of which the Minister is required to consult with the QCTO [or Productivity South Africa].”.

**Amendment of section 9 of Act 97 1998, as amended by section 4 of Act 31 of 2004**

5. Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:  
     “(1) (a) The Minister may, [in the prescribed manner] by notice in the *Gazette* and for a period specified in the notice, establish a sector education and training authority with a constitution contemplated in section 13 for any national economic sector, having regard to any relevant SIC Code.  
     (b) The Minister may in the manner contemplated in paragraph (a) re-establish the sector education and training authority contemplated in that paragraph when the period contemplated in that paragraph has lapsed.”.

**Amendment of section 9A of Act 97 of 1998, as inserted by section 5 of Act 31 of 2005**

**6. Section 9A of the principal Act is hereby amended—**

- (a) by the substitution for subsection (2) of the following subsection:

“(2) The Minister must approve a constitution contemplated in section 13 for the amalgamated SETA.”; and

- (b) by the addition of the following subsections:

“(9) Subject to sections 197 and 197A of the Labour Relations Act, 1995 (Act No. 66 of 1995), the contracts of employment between the SETAs (herein referred to as ‘the old employer’) and its employees are automatically transferred to the amalgamated single SETA (herein referred to as ‘the new employer’) as from the date of the amalgamation contemplated in subsection (1), but any redeployment of an employee as a consequence of the amalgamation or dissolution is subject to applicable labour legislation.

(10) If two or more SETAs are amalgamated into a single SETA in terms of subsection (1), all the rights and obligations between the old employers and each employee at the time of the amalgamation continue in force as if they were rights and obligations between the new employer and each employee and anything done before the amalgamation by or in relation to the old employers must be regarded as having been done by or in relation to the new employer.

(11) An amalgamation contemplated in subsection (1) does not interrupt the employee’s continuity of employment.

(12) The provisions of subsections (1) to (6) do not affect the liability of any person to be disciplined for, prosecuted for, convicted of and sentenced for any offence or misconduct.

(13) An employee is subject to the disciplinary codes and rules applicable to the new single amalgamated SETA as from the date of the amalgamation contemplated in subsection (1), but if any enquiry into incapacity or any proceedings in respect of a charge of misconduct had been instituted or commenced against any employee before the date of the amalgamation, such enquiry or proceedings continue in terms of the codes and rules applicable to the relevant SETA immediately prior to the amalgamation.

(14) Notwithstanding subsection (13), until the new single SETA has made disciplinary codes or rules, the disciplinary codes and rules of the respective old SETAs are applicable to employees.

(15) Notwithstanding subsection (1), the old employer may undertake rationalisation of its workforce according to operational requirements in accordance with section 189 of the Labour Relations Act, 1995 (Act No. 66 of 1995), prior to the date of the amalgamation contemplated in subsection (1).”.

**Insertion of section 9B in Act 97 of 1998**

7. The following section is hereby inserted in the principal Act after section 9A:

**“Incorporation of subsector into SETA**

**9B.** (1) Subject to sections 197 and 197A of the Labour Relations Act, 1995 (Act No. 66 of 1995), the Minister may, after consultation with the National Skills Authority and by notice in the *Gazette*, incorporate a SIC Code of one SETA into another SETA.

(2) The assets, liabilities, rights and obligations of the SETA in respect of a subsector relating to the SIC Code in question devolve upon the SETA into which the SIC Code has been incorporated—

- (a) in a manner agreed to by the Accounting Authorities of the SETAs concerned; or
- (b) if no agreement can be reached, in the manner determined by the Minister.”.

**Amendment of section 10A of Act 97 of 1998, as inserted by section 7 of Act 31 of 3002**

8. Section 10A of the principal Act is hereby amended by the deletion in subsection (1) of the word “and” at the end of paragraph (b), the insertion in that subsection of the word “and” at the end of paragraph (c) and the addition of the following paragraph: 5

“(d) any assistance that the SETA is to provide in terms of this Act to assist the Minister in complying with his or her responsibility in accordance with the policy determined by the President of the Republic relating to service delivery and relating to the functions of the relevant SETA.”.

**Substitution of section 11 of Act 97 of 1998** 10

9. The following section is hereby substituted for section 11 of the principal Act:

**“Composition of Accounting Authority of SETA**

11. (1) (a) Subject to paragraph (b), the Minister must appoint the Chairperson of the Accounting Authority of a SETA after consultation with the National Skills Authority. 15

(b) The Minister must by notice in the *Gazette* invite nominations for the position of Chairperson of an Accounting Authority from interested parties in the relevant sector.

(2) (a) Subject to paragraph (b) and section 13(2), the Minister must appoint 14 persons as members of the Accounting Authority of a SETA. 20

(b) The members referred to in paragraph (a) must include—

(i) six persons who must be nominated by organised labour;

(ii) six persons who must be nominated by organised employers; and

(iii) two persons who must be nominated by—

(aa) any government department that has an interest in the relevant sector and that is not an organised employer; 25

(bb) any interested professional body;

(cc) any bargaining council with jurisdiction in the sector in question; or

(dd) any organisation in a community that has an identifiable interest in skills development in the sector in question. 30

(3) (a) The members referred to in subsection (2) have full voting rights and, subject to paragraph (b), the Chairperson has no voting rights.

(b) In the case of an equality of votes, the chairperson has a casting vote.

(4) In appointing the members of contemplated in subsection (2), the Minister must ensure, in so far as is practicably possible, that the membership of the Accounting Authority in question— 35

(a) represents the interest identified in the national skills development strategy contemplated in section 5(1)(a)(ii);

(b) taken as a whole, achieves— 40

(i) gender representation;

(ii) demographic representation;

(iii) representation of disadvantaged persons or communities which have been prejudiced by past racial and gender discrimination in relation to access to skills development programmes; and 45

(iv) a blend of knowledge, skills and experience required for the effective functioning of the SETA in question; and

(c) is drawn from the ranks of senior officials in the organisations in question. 50

(5) The Minister must at least three months before the end of the period contemplated in section 9(1)(a) request the Chief Executive Officer of the relevant SETA contemplated in section 13B to invite nominations from organised labour, organised employers, government departments, professional bodies, bargaining councils and organisations contemplated in subsection (2) and listed in Annexure 4 to the constitution of the relevant SETA.”. 55

## Insertion of sections 11A and 11B in Act 97 of 1998

10. The following sections are hereby inserted in the principal Act after section 11:

### “Eligibility to become member of Accounting Authority

- 11A.** A person does not qualify for appointment to an Accounting Authority—
- (a) unless he or she is a citizen of and is permanently residing in the Republic;
  - (b) if he or she is subject to an order of a competent court declaring such person to be mentally ill or disordered;
  - (c) if he or she is convicted, after the commencement of the Skills Development Amendment Act, 2011, whether in the Republic or elsewhere, of any offence for which such person is sentenced to imprisonment without the option of a fine;
  - (d) if he or she, at any time prior to the commencement of the Skills Development Amendment Act, 2011, was convicted, or at any time after such commencement, is convicted—
    - (i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury, or an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), or Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);
    - (ii) elsewhere, of any offence corresponding materially with any offence contemplated in subparagraph (i); and
    - (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty; or
  - (e) if he or she has been convicted of an offence under this Act.

### Disclosure of conflict of interests

- 11B.** (1) A person may not be appointed on an Accounting Authority, unless the necessary disclosure has been made that such person—
- (a) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the SETA in question; or
  - (b) his or her spouse, partner or associate holds an office in or is employed by any SETA, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (a).
- (2) If at any stage during the course of any proceedings before the Accounting Authority it appears that any Accounting Authority member has or may have an interest which may cause such conflict of interest to arise on his or her part—
- (a) such Accounting Authority member must forthwith fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining Accounting Authority members to discuss the matter and determine whether such Accounting Authority member is precluded from participating in such meeting by reason of a conflict of interest; and
  - (b) such disclosure, and the decision taken by the remaining Accounting Authority members regarding such determination, must be recorded in the minutes of the meeting in question.
- (3) If any Accounting Authority member fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting of the Accounting Authority is held or in any manner whatsoever participates in the proceedings of the Accounting Authority, the relevant proceedings of the Accounting Authority shall be null and void.”.

**Substitution of section 13 in Act 97 of 1998, as amended by section 8 of Act 31 of 2003**

11. The following section is hereby substituted for section 13 of the principal Act:

**“Constitution of SETA**

**13.** (1) The Minister must approve a constitution for every SETA which, subject to this Act, must be in line with the standard constitution contained in Schedule 5. 5

(2) A SETA may apply to the Minister in writing for a deviation from the standard constitution contained in Schedule 5.

(3) The application contemplated in subsection (2) must set out the extent of the deviation requested and must be accompanied by a detailed motivation to justify the requested deviation. 10

(4) The Minister may approve the deviation contemplated in subsection (2) if the deviation—

(a) is unique to the functions and operation of the SETA in question; 15  
(b) is justified within the framework of the national skills development strategy; and

(c) is recommended by the National Skills Authority as an essential deviation required by the operational needs of the SETA in question.”.

**Insertion of sections 13A and 13B in Act 97 of 1998**

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12. The following sections are hereby inserted in the principal Act after section 13:

**“Conduct of Accounting Authority member or staff member**

**13A.** (1) Any member of an Accounting Authority, or any member of the staff, of a SETA—

(a) (i) must, before he or she assumes office, declare any business, commercial or financial activities undertaken for financial gain that may raise a possible conflict of interest with the SETA in question; 25

(ii) may not conduct business, directly or indirectly, with the SETA which constitutes a conflict of interest with the SETA; 30

(b) (i) may not have a conflict of interest with the SETA in question; 30  
(ii) may not have a direct or indirect financial, personal or other interest in any matter to be discussed at a meeting and which entails or may entail a conflict or possible conflict of interest with the SETA in question; 35

(iii) must, before the meeting and in writing, inform the chairperson of that meeting of that conflict or possible conflict of interest.

(2) The business referred to in subsection (1)(a) relates to conduct that is aimed at receiving any direct or indirect financial personal gain that does not form part of the employment relationship. 40

(3) (a) Any person may, in writing, inform the chairperson of a meeting, before the meeting, of a conflict or possible conflict of interest of a member contemplated in subsection (1) with the SETA in question of which such person may be aware. 45

(b) A member referred to in paragraph (a) is obliged to recuse himself or herself from the meeting during the discussion of the matter and the voting thereon.

**Appointment of Chief Executive Officer**

**13B.** (1) The members of an Accounting Authority must within six months of their appointment, after following a transparent process, submit a list of names of three persons who have experience in accounting, financial and senior management matters to the Minister. 50

(2) The Minister must appoint one of the persons contemplated in subsection (1) as Chief Executive Officer of the SETA in question.

(3) The Chief Executive Officer must be appointed for a term of office that corresponds with the terms of office of the members of the Accounting Authority concerned, but must stay in office for a period of six months if the SETA in question has been re-established in terms of section 9(1)(b).

(4) The Minister must, after consultation with the National Skills Authority, make regulations regarding—

(a) the process that an Accounting Authority must follow for the purposes of subsection (1), including regarding—

- (i) the advertising of the post;
- (ii) the criteria and method of recruitment; and
- (iii) the shortlisting and selection;

(b) the salary level of the Chief Executive Officer; and

(c) the criteria and process to enable an Accounting Authority to determine other conditions of service of the Chief Executive Officer.

(5) The Minister may make regulations regarding the performance by a Chief Executive Officer of his or her functions in terms of this Act in order to ensure that the SETA performs its functions contemplated in section 10A(1)(a) effectively.”.

**Amendment of section 20 of Act 97 of 1998, as amended by section 14 of Act 31 of 2003**

**13.** Section 20 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) when completed, will constitute a credit towards a qualification registered in terms of the National Qualifications Framework [as defined in section 1 of the South African Qualifications Authority Act] contemplated in Chapter 2 of the NQF Act;”.

**Amendment of section 22 of Act 97 of 1998, as substituted by section 9 of Act 37 of 2008**

**14.** Section 22 of the principal Act is hereby amended by the deletion of subsection (1).

**Amendment of sections 23 of Act 97 of 1998**

**15.** Section 23 of the principal Act is hereby amended—

- (a) by the deletion of subsection (1)(a);
- (b) by the deletion of subsection (1)(d); and
- (c) by the deletion of subsections (2) and (3).

**Repeal of section 24 of Act 97 of 1998**

**16.** Section 24 of the principal Act is hereby repealed.

**Repeal of section 25 of Act 97 of 1998**

**17.** Section 25 of the principal Act is hereby repealed.

**Repeal of section 26 of Act 97 of 1998**

**18.** Section 26 of the principal Act is hereby repealed.

**Amendment of section 26H of Act 97 of 1998, as inserted by section 11 of Act 37 of 2008**

**19.** Section 26H of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The QCTO must perform its functions in terms of this Act and the [National Qualifications Framework Act, 2008] NQF Act.”.



**Repeal of section 26K of Act 97 of 1998**

20. Section 26K of the principal Act is hereby repealed.

**Repeal of section 26L of Act 97 of 1998**

21. Section 26L of the principal Act is hereby repealed.

**Repeal of section 26M of Act 97 of 1998**

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22. Section 26M of the principal Act is hereby repealed.

**Repeal of section 26N of Act 97 of 1998**

23. Section 26N of the principal Act is hereby repealed.

**Amendment of section 32 of Act 97 of 1998, as substituted by section 22 of Act 31 of 2003**

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24. Section 32 of the principal Act is hereby amended by the deletion of subsection (2).

**Amendment of section 36 of Act 97 of 1998, as substituted by section 24 of Act 31 of 2004 and amended by section 14 of Act 37 of 2008**

25. Section 36 of the principal Act is hereby amended by the deletion of paragraphs (o), (p) and (q). 15

**Amendment of Schedule 2A to Act 97 of 1998**

26. Schedule 2A to the principal Act is hereby amended—

(a) by the substitution in item 1 for the definition of “ETQA” of the following definition: 20

“‘**ETQA**’ means an Education and Training Quality Assurance Body accredited in terms of section 5(1)(a)(ii) of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), responsible for monitoring and auditing achievements in terms of national standards or qualifications, and to which specific functions relating to the monitoring and auditing of national standards or qualifications have been assigned in terms of section 5(1)(b)(i) of that Act;” and 25

(b) by the substitution in item 6(1) for paragraphs (b) and (c) of the following paragraphs, respectively:

“(b) continue to perform all ETQA functions prescribed by the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); and 30

(c) have any matter concerning the performance of ETQA functions by a SETA dealt with in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).” 35

**Repeal of Schedule 4 to Act 97 of 1998**

27. Schedule 4 to the principal Act is hereby repealed.

**Addition of Schedule 5 to Act 97 of 1998**

28. The principal Act is hereby amended by the addition of Schedule 5 contained in the Schedule to this Act. 40

**Amendment of long title of Act 97 of 1998, as amended by section 23 of Act 9 of 1999**

29. The long title of the principal Act is hereby amended by the substitution for the expression “South African Qualifications Authority Act, 1995” of the expression “National Qualifications Framework Act, 2008”.

### Transitional provisions

- 30.** (1) Any person appointed as a member of the Accounting Authority of a SETA in accordance with its constitution, remains so appointed if—
- (a) that constitution was approved by the Minister and the constitution was effective immediately before section 12 of this Act takes effect; and 5
  - (b) the number of members according to the respective categories of membership are consistent with section 11 of the principal Act, as amended by this Act.
- (2) The members contemplated in subsection (1) must be regarded as having been appointed in terms of section 11 of the principal Act, as amended by this Act.
- (3) If the constitution of a SETA was effective immediately before section 12 of this Act takes effect, and if the constitution is not in line with the standard constitution contained in Schedule 5 to the principal Act, as amended by this Act, the Minister must consider a deviation from the standard constitution in terms of section 13(2) of the principal Act, as amended by this Act. 10
- (4) If the Minister— 15
- (a) approves a deviation in terms of the said section 13(2), the Minister must inform the SETA in question accordingly in writing; or
  - (b) cannot approve a deviation in terms of the said section 13(2), the Minister must direct the SETA in question to align its constitution in line with the standard constitution contemplated in section 13(1) of the principal Act, as amended by this Act. 20
- (5) The Minister must notify the SETA in question in writing of his or her direction in terms of subsection (4)(b), and must instruct the SETA to invite nominations from the categories of roleplayers referred to in section 11 of the principal Act, as amended by this Act, within the timeframes set by the Minister in the notice. 25
- (6) The Minister must approve the constitution of the SETA contemplated in subsection (4) in terms of section 13(1) of the principal Act, as amended by this Act, within six months of the date of the notice referred to in subsection (4).

### Short title and commencement

- 31.** (1) This Act is called the Skills Development Amendment Act, 2011, and takes effect on a date determined by the Minister by notice in the *Gazette*. 30
- (2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.
- (3) Notwithstanding subsection (1), the Minister may not determine a date on which sections 1(d), 2, 4, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25 and 27 take effect, unless the Minister of Labour has approved such determination. 35

**SCHEDULE**

*(Section 28)*

**SCHEDULE 5**

[Insert SETA logo]

**CONSTITUTION**

5

of the

[insert name]

SECTOR EDUCATION AND TRAINING

AUTHORITY

[“insert SETA acronym”]

10

**Date** [insert date]

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## 1. DEFINITIONS

In this constitution, any word or expression to which a meaning has been assigned in the Act, bears that meaning and, unless the context indicates otherwise—

- (a) **“Accounting Authority”** means the Accounting Authority of the SETA;
- (b) **“alternate”** means a person contemplated in item 8(8); 5
- (c) **“Chairperson”** means the Chairperson of the Accounting Authority contemplated in item 14;
- (d) **“Chief Executive Officer”** means the Chief Executive Officer of the SETA contemplated in item 16;
- (e) **“committee”** means any permanent, *ad hoc* or subcommittee of the SETA 10 established by the Accounting Authority in terms of this constitution;
- (f) **“constituency”** means organised labour, organised employers, government departments, professional bodies, bargaining councils and organisations contemplated in section 11(2) of the Act and listed in Annexure 4;
- (g) **“constitution”** includes the Annexures to this constitution; 15
- (h) **“designated groups”** means black people, women and people with disabilities;
- (i) **“Executive Authority”** means the Minister of Higher Education and Training who, in terms of the Act, is accountable to Parliament for skills development; 20
- (j) **“Executive Committee”** means the Executive Committee established in terms of item 9;
- (k) **“member”** means a natural person appointed as a member of the Accounting Authority or any of its chambers or committees;
- (l) **“NQF Act”** means the National Qualification Framework Act, 2008 (Act No. 25 67 of 2008);
- (m) **“NSA”** means the National Skills Authority established by section 4 of the Act;
- (n) **“NSDS”** means the national skills development strategy referred to in section 5(1)(a)(ii) of the Act; 30
- (o) **“organised employers”**—
  - (i) means any employers’ organisation in the Sector that is registered in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other association of employers in that Sector that represents the interests of its members as employers; and 35
  - (ii) includes a State Department referred to in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), as an employer in that Sector;
- (p) **“organised labour”** means any trade union or federation of trade unions in the Sector that is registered in terms of the Labour Relations Act, 1995 (Act 40 No. 66 of 1995), and any other association of employees in the Sector that represents the interests of its members as employees;
- (q) **“PFMA”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (r) **“SDLA”** means the Skills Development Levies Act, 1999 (Act No. 9 of 45 1999);
- (s) **“Sector”** means the [insert name] Sector determined by the Minister in terms of section 9(2) of the Act;
- (t) **“SETA”** means the [insert name] Sector Education and Training Authority, established by the Minister in terms of section 9(1)(a) of the Act or re-established by the Minister in terms of section 9(1)(b) of the Act and referred to in item 4(1); 50
- (u) **“SLA”** means the service level agreement contemplated in section 10A of the Act;
- (v) **“the Act”** means the Skills Development Act, 1998 (Act No. 97 of 1998). 55

## 2. BACKGROUND AND PURPOSE OF CONSTITUTION

(1) The Act makes provision for the establishment or re-establishment of SETAs for each national economic sector. The Minister determined the discrete Sector of the [insert name] Sector Education and Training Authority [insert acronym of the SETA] in terms of section 9 of the Act. 60

(2) This constitution was drawn up in accordance with the requirements of the Act and provides an institutional framework for the SETA to develop and implement national, sectoral and workplace strategies in order to develop and improve the skills of the South African workforce.

(3) The SETA pursues the development of a skilled workforce in order to provide an improved service to the people of South Africa. The SETA is inspired by the vision of an appropriately skilled workforce, who is empowered to render quality services, which are comparable with world-class standards. 5

### 3. EXECUTIVE AUTHORITY

(1) The Executive Authority must exercise its powers and responsibilities in order to ensure that the implementation of the objectives and execution of the functions of the SETA comply with both the Act and the policies of the Executive Authority. 10

(2) In executing its accountability and responsibility functions, the Executive Authority must exercise its powers in terms of the Act, the PFMA, this constitution and any other relevant legislation. 15

### 4. IDENTIFICATION OF SETA

#### (1) Name

The name of this SETA is the [insert name] Sector Education and Training Authority, situated at [insert physical and postal address] and referred to in this constitution as the SETA. 20

#### (2) Scope of coverage

The national economic sector for which the SETA is established is the [insert name of Sector] Sector. Its scope of coverage, determined by the Minister in terms of section 9(2) of the Act, is recorded in Annexure 1, as amended from time to time.

#### (3) Constituencies in Sector 25

Organised labour, organised employers, government departments, professional bodies, bargaining councils and organisations contemplated in section 11(2) of the Act are listed in Annexure 4.

#### (4) Legal status

- (a) The SETA is a statutory body and a juristic person. 30
- (b) The SETA, through the Accounting Authority, may authorise any person or persons to act on its behalf, to sign all documents and to take all steps that may be necessary in connection with any legal proceedings brought by or against the Authority. 35
- (c) The SETA and its Accounting Authority are governed by the Act, the PFMA, the SDLA, this constitution and any other relevant legislation.

### 5. OBJECTIVES OF SETA

In performing its functions contemplated in the Act and in this constitution, the SETA must seek to promote the objectives contemplated in subitems (1) to (3). 40

#### (1) General objectives

The general objectives of the SETA are to—

- (a) facilitate, coordinate and monitor the implementation of the NSDS in the Sector;
- (b) identify skills shortages in the Sector; 45
- (c) support the development of the skills of employees in the Sector;
- (d) support the improvement of the quality of life and labour market prospects of employees in the Sector;

- (e) strengthen the institutional capacity of the SETA, in order to improve productivity and the quality of the services it provides to its stakeholders;
- (f) through the skills development levy, increase the levels of investment in skills development and improve returns on such investment;
- (g) support improved performance and productivity in the workplaces in the Sector, as well as the competitiveness of employers; 5
- (h) support the improvement of the employment prospects of persons previously disadvantaged by unfair discrimination;
- (i) in liaison with employment services, assist work seekers to gain access to work experience; 10
- (j) in liaison with employment services, assist retrenched workers to re-enter the labour market;
- (k) liaise with employers in respect of skills development programmes;
- (l) promote the development of skills aimed at self-employment;
- (m) support skills development in the informal sector, cooperatives and other income-generating initiatives for the unemployed; 15
- (n) support and promote the development of artisans, technicians, professionals and persons in other categories;
- (o) support, facilitate and promote the quality of occupation-based learning in the Sector; 20
- (p) promote effective communication between, and participation by, bodies involved in skills development, both inside and outside the Sector;
- (q) cooperate with and support the QCTO in matters relating to QCTO functions and operations referred to in section 10 of the Act; and
- (r) cooperate with and support the functions of other agencies in matters related to skills development. 25

## **(2) Objectives in relation to employers in Sector**

The objectives of the SETA in relation to employers are to encourage them to—

- (a) identify skills needs in the workplace;
- (b) provide employees with opportunities to acquire new skills; 30
- (c) use their workplaces and facilities to create active learning environments;
- (d) develop their capacity to manage and provide occupation-based learning;
- (e) facilitate new entrants to the labour market by providing them with opportunities to learn through exposure to work experience during learnerships, internships, apprenticeships and other programmes that provide learning in the workplace; 35
- (f) support occupation-based learning interventions, linked to the objectives and mechanisms of the Employment Equity Act, 1998 (Act No. 55 of 1998);
- (g) ensure occupation-based learning of quality in the workplace; and
- (h) to develop appropriate partnerships with other public, private and non-governmental organisations in promoting skills development. 40

## **(3) Objectives in relation to employees in Sector**

The objectives of the SETA in relation to employees are to encourage them to—

- (a) participate in learnerships, apprenticeships, professional training, skills development programmes and other learning programmes; 45
- (b) take responsibility for their learning by utilising the learning opportunities offered to them; and
- (c) provide input in and feedback on occupation-based learning programmes that they undertake.

## **6. POWERS AND FUNCTIONS OF SETA 50**

### **(1) SETA functions**

The SETA must perform its functions in accordance with the Act, the SDLA, the PFMA, any other relevant legislation and this constitution.

The SETA must, in accordance with any prescribed requirements—

- (a) develop a Sector Skills Plan within the NSDS framework; 55
- (b) implement its Sector Skills Plan by—



- (i) establishing learning programmes;
- (ii) approving workplace skills plans and annual training reports;
- (iii) allocating grants, in the prescribed manner and in accordance with any prescribed standards and criteria, to employers, skills development providers and workers; and 5
- (iv) monitoring the quality of occupation-based learning in the Sector;
- (c) promote occupation-based learning programmes that include work experience by—
  - (i) identifying workplaces for practical work experience;
  - (ii) supporting the development of learning materials; 10
  - (iii) improving the facilitation and assessment of learning; and
  - (iv) assisting with conclusion of agreements for learning programmes;
- (d) perform any function delegated to it by the QCTO in terms of section 26I of the Act;
- (e) support and form partnerships with other agencies on matters related to skills development; 15
- (f) when required to do so, as contemplated in section 7(1) of the SDLA, collect and disburse the skills development levies, allocated to it in terms of sections 8 and 9 of the SDLA, in its Sector;
- (g) liaise with the National Skills Authority on— 20
  - (i) the national skills development policy;
  - (ii) the national skills development strategy; and
  - (iii) its sector skills plan;
- (h) liaise with the provincial offices of the Department, the provincial skills development forums and any relevant education bodies, established in terms of any law regulating education and training in the Republic, to improve information about placement opportunities and between skills development providers and the labour market; 25
- (i) formulate policies and procedures of the SETA;
- (j) appoint the employees necessary for the performance of its functions; 30
- (k) promote the national standard, established in terms of section 30B of the Act; and
- (l) perform any other functions—
  - (i) imposed on it by the Act, the SDLA, any other relevant legislation and this constitution; or 35
  - (ii) that are consistent with the purposes of the Act, the SDLA, any other relevant legislation and this constitution.

## (2) SETA powers

The SETA has all the powers referred to in section 10(2) of the Act and such other powers conferred on the SETA by the SDLA and this constitution. 40

## 7. SERVICE LEVEL AGREEMENT AND STRATEGIC PLAN OF SETA

- (1) The SETA must conclude an SLA for every financial year with the Director-General in accordance with section 10A of the Act, concerning—
  - (a) the SETA's performance of its functions in terms of the Act and the NSDS;
  - (b) the SETA's annual Strategic Plan; 45
  - (c) any assistance that the Director-General is to provide to the SETA in order to enable it to perform its functions;
  - (d) any assistance that the SETA is to provide in terms of the Act to assist the Minister in complying with his or her responsibility in accordance with the policy determined by the President relating to service delivery and relating to the functions of the relevant SETA; and 50
  - (e) any other prescribed matters.
- (2) The SLA must be concluded in the prescribed manner and within the prescribed period.
- (3) If the SETA and the Director-General are unable to agree on the contents of the SLA within the prescribed period, the Minister must determine the contents of the SLA after consulting the NSA. 55
- (4) The SETA must submit a Strategic Plan in terms of Regulation 30 of the Treasury Regulations.

## 8. ACCOUNTING AUTHORITY

### (1) Duties of Accounting Authority

The Accounting Authority must—

- (a) govern and manage the SETA in accordance with the PFMA, the Act and any other applicable legislation; 5
- (b) ensure that the SETA achieves the objectives contemplated in item 5 and performs the functions contemplated in item 6;
- (c) provide effective leadership and ensure that the SETA implements the goals of the NSDS and the SLA with the Minister;
- (d) provide a strategic direction for the SETA; 10
- (e) liaise with stakeholders;
- (f) ensure that the SETA complies with the relevant statutory requirements and the requirements of this constitution;
- (g) manage institutional risk;
- (h) monitor the performance of the SETA; 15
- (i) ensure that its members and the members of the committees established by it, comply with the Code of Conduct set out in Annexure 2.

### (2) Powers of Accounting Authority

The Accounting Authority may—

- (a) exercise all the powers necessary in order to enable it to perform its functions in terms of the Act, this constitution and any other relevant legislation; 20
- (b) exercise any other powers conferred on it by the Act, the PFMA, the SDLA, any other relevant legislation and this constitution;
- (c) take decisions on any matter related to the performance of its functions in terms of the Act and this constitution; 25
- (d) establish committees of the SETA to assist it in performing its functions; and
- (e) establish chambers of the SETA contemplated in section 12 of the Act.

### (3) Delegation of functions

- (a) The Accounting Authority may delegate any of its functions to— 30
  - (i) the Executive Committee;
  - (ii) the Chief Executive Officer; or
  - (iii) any other committee or chamber of the SETA.
- (b) A delegation by the Accounting Authority is subject to such conditions as the Accounting Authority may impose and must be in writing, must state the terms and conditions of the delegation and must be recorded. 35
- (c) Subject to any rights that may have vested as a consequence of the delegation, a delegation under paragraph (a)—
  - (i) does not divest the Accounting Authority of the function delegated, and the Accounting Authority may at any time review, amend or set aside any decision made under the delegation; 40
  - (ii) does not prevent the performance of the function by the Accounting Authority itself; and
  - (iii) may be revoked by the Accounting Authority at any time.

### (4) Size of Accounting Authority 45

- (a) Except if the Minister approved a deviation from the number of members in accordance with section 13 of the Act, the composition of the Accounting Authority may not exceed 15 persons.
- (b) The Accounting Authority consists of a chairperson and 14 members. 50

### (5) Composition of Accounting Authority

- (a) (i) The Minister, after consultation with the NSA, must appoint a person as Chairperson of the Accounting Authority of the SETA.
- (ii) The Chairperson has no voting rights, but in the case of an equality of votes the Chairperson has a casting vote. 55

- (b) (i) Subject to subparagraph (ii) and section 13(2) of the Act, the Minister must appoint 14 persons as members of the Accounting Authority of the SETA.
- (ii) The members referred to in subparagraph (i) have full voting rights and must include— 5
  - (aa) six persons nominated by organised labour;
  - (bb) six persons nominated by organised employers, including small business or government departments that are employers; and
  - (cc) two persons nominated by— 10
    - (A) any government department that has an interest in the sector and that is not an organised employer;
    - (B) any interested professional body;
    - (C) any bargaining council with jurisdiction in the sector; or
    - (D) any organisation in a community which has an identifiable interest in skills development in the sector. 15
- (c) Each constituency represented on the Accounting Authority must be represented by persons who are sufficiently representative of designated groups.
- (d) The members of the SETA are listed in item 2(4) of Annexure 4.
- (e) The Accounting Authority may, on good cause shown, recommend to the 20 Minister the removal of any trade union or employer organisation listed in item 2(4) of Annexure 4.

#### **(6) Nomination and appointment of members of Accounting Authority**

- (a) At least three months before the expiry of the term of office of the members of the Accounting Authority, the Chief Executive Officer must invite nominations for members for the forthcoming term of office, from organised labour, organised employers and the categories of roleplayers referred to in section 11(2)(b) of the Act within the Sector. 25
- (b) Any person nominating another person for appointment as a member of the Accounting Authority must take into account the provisions of section 11(4) of the Act set out in item 3 of Annexure 4. 30
- (c) The Minister must by notice in the *Gazette* invite nominations for the position of Chairperson of the Accounting Authority of the SETA from interested parties in the Sector. 35
- (d) The Chief Executive Officer must provide members appointed to the Accounting Authority by the Minister in terms of section 11 of the Act with formal letters of appointment on the SETA letterhead and must set out in the letter the duties and responsibilities of the members.
- (e) Members must accept their appointment and declare in writing that they 40 accept, and will be bound by, the Code of Conduct of the SETA on or before the induction date referred to in subitem (10).

#### **(7) Consultation on proportional representation**

- (a) Organised employers must, by means of consultation, endeavour to reach agreement on the proportional division of members to represent the organised employer on the Accounting Authority. 45
- (b) Organised labour must, by means of consultation, endeavour to reach agreement on the proportional division of members to represent organised labour on the Accounting Authority. 50
- (c) If organisations cannot reach agreement on the proportional allocation of members, the principle of proportionality must be applied on the basis of the formula provided in item 4 of Annexure 4.

#### **(8) Alternates for members of Accounting Authority**

- (a) The organisations contemplated in subitem (5)(b) may nominate an alternate for each member in the same manner as nominations for members. 55
- (b) The number of alternates at any meeting may be no more than one third of the number of members contemplated in Annexure 4.
- (c) A member and his or her alternate may not attend the same meeting. 60

- (d) An alternate for a member has voting rights in the absence of the member he or she represents.
- (e) A SETA may nominate the alternate members contemplated in paragraph (a) by nominating—
  - (i) one alternate for each member; or 5
  - (ii) such number of alternates per category of members contemplated in section 11(3)(a) to (c) of the Act as the SETA may determine and any of the alternates identified in a specified category may represent any member in that category who cannot attend a meeting.

**(9) Term of office of members of Accounting Authority** 10

- (a) Subject to subitem (13), the term of office of a member of the Accounting Authority is five years.
- (b) A member is eligible for reappointment upon expiry of that member's term of office but the number of reappointed members may not exceed one third of the members of the Accounting Authority in any one term. 15

**(10) Induction and capacity building of members and alternates**

The Accounting Authority must ensure that—

- (a) within one month of taking office, the appointed members and alternates of the Accounting Authority attend an induction session that covers the purpose, mandate, management structures and processes, operations and governance practices of the Accounting Authority; 20
- (b) within three months of taking office, members attend a training session that covers the role and responsibilities of—
  - (i) the Accounting Authority; and 25
  - (ii) members, and of how to discharge their duties;
- (c) members receive training on an ongoing basis to enhance or update their understanding of the operations of the Accounting Authority and matters relevant thereto.

**(11) First meeting at each new term of office of Accounting Authority** 30

- (a) The Chief Executive Officer must set a date for the first meeting of the term of office of a new Accounting Authority, which must be convened within two months of the establishment of the Accounting Authority.
- (b) The Chief Executive Officer must notify the members of the Accounting Authority, in writing, of the date, time, venue and agenda of the first meeting. 35
- (c) At that meeting, the members must—
  - (i) set the dates for forthcoming meetings during that year; and
  - (ii) take such other decisions as are necessary in order to ensure the prompt and effective functioning of the SETA. 40
- (d) In the event that the Chairperson has not yet been appointed, the Chief Executive Officer presides over the first meeting of the Accounting Authority, whereafter the members must choose a chairperson from their own ranks for each meeting convened, until such time as the Chairperson has been appointed by the Minister. 45

**(12) Suspension of members of Accounting Authority**

The Accounting Authority may, on reasonable grounds and subject to subitem (13)(c), (d) and (e), recommend to the Minister the suspension of a member.

**(13) Vacation of office by members of Accounting Authority** 50

- (a) A member of the Accounting Authority vacates office if that member—
  - (i) resigns by written notice, addressed to the Accounting Authority and the Minister; 50
  - (ii) no longer satisfies the eligibility requirements contemplated in Annexure 4; or
  - (iii) is removed from office in terms of paragraph (b). 55

- (b) On the recommendation of the Accounting Authority, the Minister may remove a member—
  - (i) upon the written request of the organisation represented by that Member;
  - (ii) who is absent from three consecutive meetings of the Accounting Authority without prior and written permission of the Accounting Authority, unless the member shows good cause why he or she should not be removed; 5
  - (iii) due to permanent incapacity;
  - (iv) for serious misconduct;
  - (v) for failure to comply with any provision in the Code of Conduct contained in Annexure 2; 10
  - (vi) for conduct that undermines the Accounting Authority or brings the Accounting Authority or any of its members into disrepute; or
  - (vii) on good cause shown.
- (c) Before recommending the removal of a member, the Accounting Authority must— 15
  - (i) give notice to that member of its intention to do so;
  - (ii) give reasons for the intention to recommend removal; and
  - (iii) give the member reasonable opportunity under the circumstances to make representations to the Accounting Authority. 20
- (d) The Chairperson must inform the member in writing and in sufficient detail of the allegations against the member, and refer the matter to the Minister for an inquiry.
- (e) The member must be given adequate time to prepare for the inquiry and may be represented at the inquiry by a person of his or her choice. 25

#### **(14) Filling vacancies in Accounting Authority**

- (a) Subject to paragraph (b), if a member of the Accounting Authority dies or vacates office before the expiry of that member's term of office in accordance with subitem (13), the procedure contained in subitem (6) applies with the necessary changes. 30
- (b) The replacement member must be from the same sector of the constituency from which the original member was appointed.

#### **(15) Application to Accounting Authority by new organisation**

- (a) Any organisation that meets the criteria stated in subitem (5)(a) but are not listed in Annexure 4, may apply to the Accounting Authority to be so listed. 35
- (b) The Accounting Authority must list the organisation if the Minister has determined that that organisation belongs in the Sector.

### **9. EXECUTIVE COMMITTEE OF ACCOUNTING AUTHORITY 40**

#### **(1) Establishment of Executive Committee of Accounting Authority**

- (a) The Accounting Authority must establish an Executive Committee with the approval of the Minister.
- (b) The Executive Committee may not consist of not more than five members, and must include the Chairperson. 45

#### **(2) Composition of Executive Committee**

Organised labour and organised employers must have equal representation in the Executive Committee.

#### **(3) Term of office of members of Executive Committee 50**

A member of the Executive Committee holds office for the period of that member's term of office as a member of the Accounting Authority.

#### **(4) Functions of Executive Committee**

- (a) Subject to the directions of the Accounting Authority, the Executive Committee must oversee the management of the SETA.
- (b) Without limiting its functions contemplated in paragraph (a), the Executive Committee must—
  - (i) supervise the proper management of all financial matters;
  - (ii) coordinate and supervise the implementation of the policies of the Accounting Authority;
  - (iii) monitor national policy issues and developments and must make recommendations regarding the adoption of policies by the Accounting Authority;
  - (iv) coordinate the functioning of committees, chambers and structures of the SETA and must monitor their activities in order to ensure that they act within the terms of any powers delegated to them by the Accounting Authority;
  - (v) oversee staff employment issues;
  - (vi) determine budgets and strategic plans;
  - (vii) monitor the relations and interactions of the SETA with other SETAs and other agencies on matters related to skills development; and
  - (viii) perform any other function delegated to it by the Accounting Authority.

### **10. AUDIT COMMITTEE OF SETA**

#### **(1) Establishment, composition and accountability of Audit Committee**

- (a) The Accounting Authority must establish an Audit Committee as an independent committee which reports to the Accounting Authority.
- (b) The Audit Committee must be constituted in terms of section 77 of the PFMA, read with Chapter 9 of the Treasury Regulations made in terms of the PFMA.
- (c) The Accounting Authority must compile written Terms of Reference that describe the membership, authority and duties of the Audit Committee.
- (d) The Audit Committee must be constituted in terms of the requirements of sound corporate governance and it must operate within that framework.
- (e) The chairperson of the Audit Committee must—
  - (i) be an independent person and may not be the Chairperson; and
  - (ii) be knowledgeable about the status of the position and must have the requisite financial, business, leadership and communication skills.
- (f) (i) The majority of the members of the Audit Committee must be independent persons and must be financially literate.
- (ii) One member of the Audit Committee must be nominated by members representing organised employers and one member must be nominated by members representing organised labour.
- (g) The Chairperson, the members of the Executive Committee and the Chief Executive Officer may not be members of the Audit Committee but they may attend Audit Committee meetings by invitation, if this is considered necessary by the chairperson of the Audit Committee.
- (h) The Audit Committee has explicit authority to investigate any matter within its Terms of Reference, and it must be provided with the required resources to access required information.
- (i) The Audit Committee may not perform any management functions or assume any management responsibilities.
- (j) The Accounting Authority must periodically review and evaluate the Audit Committee's decisions and effectiveness and must review and confirm the Audit Committee's Terms of Reference on an annual basis.

#### **(2) Functions of Audit Committee**

- (a) The Audit Committee must perform the functions of an audit committee in terms of the PFMA.
- (b) The Audit Committee must monitor and reinforce the effectiveness of both the internal control system and the internal audit function.

- (c) The Audit Committee must review and make recommendations in respect of—
- (i) the functioning and overall efficiency and effectiveness of the internal control system;
  - (ii) the functioning of the internal Audit Department; 5
  - (iii) the risk areas of the SETA's operations, which are to be covered by the scope of internal and external audits;
  - (iv) the adequacy, reliability and accuracy of the financial information provided to the Accounting Authority;
  - (v) the scope and results of the external audit and its cost-effectiveness, as well as the independence and objectivity of the external auditors; 10
  - (vi) the cooperation and coordination between the internal and external audit functions, and their cooperation and coordination pertaining to the management of the SETA;
  - (vii) any accounting or auditing concerns identified through internal and external audits and by the Auditor-General; 15
  - (viii) the adequacy and effectiveness of the risk management processes followed and the development, maintenance and enhancement of fraud prevention plans;
  - (ix) the effectiveness of the system for monitoring compliance with laws, regulations and policies, and the results of management's investigation and follow-up action (including disciplinary action) of any instance of non-compliance; 20
  - (x) the SETA's compliance with relevant legal and regulatory requirements and its Code of Conduct, and the action taken to address any violations. 25
- (d) The Audit Committee must review the annual financial statements and establish whether the statements have been prepared in accordance with the PFMA and related Treasury Regulations, including the applicable accounting framework.
- (e) The Audit Committee must review and confirm the Internal Audit Department's Charter and the Internal Audit Plan and must review and confirm the resources required to implement such plan. 30
- (f) The Audit Committee must develop a direct, strong and candid relationship with the external auditors, and its communication with the external auditors must facilitate independence from the management of the SETA and encourage the external auditors to speak freely, regularly and confidentially with the Audit Committee. 35
- (g) The Audit Committee must draw up a recommendation for the Accounting Authority regarding the appointment and removal of the internal and external auditors. 40
- (h) The Audit Committee must recommend such measures as may be necessary to ensure the reliability, integrity and objectivity of the SETA.

## 11. FINANCE COMMITTEE

### (1) Establishment and composition of Finance Committee

The Accounting Authority must establish a Finance Committee consisting of a suitable number of persons with the knowledge and skills needed to perform the functions of the Committee. 45

### (2) Functions of Finance Committee

- (a) The Finance Committee must perform all functions delegated to it by the Accounting Authority in order to ensure that the SETA meets the requirements of the Act, the SDLA, PFMA and the Treasury Regulations that relate to finance and the remuneration of the Chief Executive Officer, members, committee members and staff. 50
- (b) The Finance Committee must evaluate and must make recommendations to the Accounting Authority in respect of— 55
  - (i) the budget, cash flow and financial statements of the SETA;
  - (ii) the financial policies of the SETA;

- (iii) actions to implement the recommendations of the Auditor-General's Report and the internal and external audit reports of the SETA;
  - (iv) the execution of the legally mandated financial functions of the SETA; and
  - (v) the financial implications of policies, decisions and changes to the budget and Business Plan of the SETA. 5
- (c) The Finance Committee must present the Audit Committee with quarterly and annual financial statements.

## **12. REMUNERATION COMMITTEE**

### **(1) Establishment and composition of Remuneration Committee 10**

The Accounting Authority must establish a Remuneration Committee consisting of a suitable number of persons with the knowledge and skills needed to perform the functions of the committee.

### **(2) Functions of Remuneration Committee**

- (a) The Remuneration Committee must advise the Accounting Authority on any matter relating to remuneration in order to enable the Accounting Authority to develop consistent, fair and impartial strategies, policies, procedures and processes for the compensation of its members and staff so as to attract, motivate and retain talented people. 15
- (b) The Remuneration Committee must evaluate and must make recommendations to the Accounting Authority in respect of the following issues relating to the remuneration of both the staff and the Chief Executive Officer of the SETA: 20
  - (i) Developing guidelines for, and reviewing the compensation and performance of, staff members of the organisation. 25
  - (ii) Reviewing and approving corporate goals that are relevant to the compensation of the Chief Executive Officer.
  - (iii) Determining the Chief Executive Officer's compensation in accordance with applicable rules and regulations. 30
  - (iv) Evaluating the Chief Executive Officer's performance against the goals and objectives contemplated in this paragraph.
  - (v) Reviewing and reassessing the adequacy of the remuneration policy annually and recommending changes, if any, to the Accounting Authority for approval. 35
  - (vi) Ensuring that the members' and committee members' remuneration is in accordance with the requirements of the PFMA and the Treasury Regulations that relate to finance and the remuneration of those members.
- (c) The Remuneration Committee must present the Audit Committee with quarterly and annual financial statements. 40

## **13. GOVERNANCE AND STRATEGY COMMITTEE**

### **(1) Establishment and composition of Governance and Strategy Committee**

The Accounting Authority must establish a Governance and Strategic Committee consisting of a suitable number of persons with the knowledge and skills needed to perform the functions of the committee. 45

### **(2) Functions of Governance and Strategy Committee**

The Governance and Strategy Committee must—

- (a) development policies, principles, criteria and guidelines that are necessary for the governance and strategy function for the SETA; 50
- (b) promote good governance;
- (c) report to the Accounting Authority on such matters as it deems necessary; and
- (d) develop a skills development strategy for the Sector.



## 14. CHAIRPERSON OF ACCOUNTING AUTHORITY

### (1) Appointment of Chairperson of Accounting Authority

- (a) Only the Minister may appoint the Chairperson.
- (b) The Chairperson may not be a member of the Audit Committee. 5

### (2) Term of office of Chairperson

- (a) The term of office of the Chairperson is five years.
- (b) The person appointed as Chairperson may only serve one term of office in a particular SETA. 10

### (3) Functions of Chairperson

The Chairperson of the Accounting Authority—

- (a) must preside at meetings of both the Accounting Authority and the Executive Committee;
- (b) must conduct such meetings in accordance with item 11; and 15
- (c) may perform such other functions as are generally associated with the position of chairperson.

### (4) Temporary absence or incapacity of Chairperson

If the Chairperson is temporarily absent or incapacitated, a meeting ordinarily presided over by the Chairperson must appoint a person from its own ranks to preside over such meeting. 20

### (5) Vacating of office of Chairperson

- (a) The Chairperson must vacate office if he or she—
  - (i) is removed as a member in terms of item 8(13); 25
  - (ii) is unable to attend meetings or business of the Accounting Authority and Executive Committee for a consecutive period of six months; or
  - (iii) if the Minister, on good cause shown, decides to terminate his or her appointment.
- (b) If the Chairperson has vacated office, the same process followed to appoint the Chairperson applies to the appointment of a new Chairperson. 30

## 15. MEETING PROCEDURES

### (1) Meetings of Accounting Authority

- (a) The Accounting Authority must meet at least once every three months; 35
- (b) The business of the Accounting Authority includes—
  - (i) the discussion of any matter referred to it or arising from the financial statements or reports;
  - (ii) the discussion of any matter of which notice has been given to the Chairperson at least 10 days before the date of notice regarding the meeting; 40
  - (iii) the transaction of such other business as is required to be transacted by the Accounting Authority in terms of the Act, the PFMA, the SDLA or this constitution; and
  - (iv) the delegation of its functions to members, employees or committees. 45
- (c) An Annual General Meeting must be held and must be advertised in the media at least 30 days before the meeting.
- (d) The business of the Accounting Authority at the Annual General Meeting must include consideration of—
  - (i) the annual financial statements of the Accounting Authority; 50
  - (ii) an Annual Report on the Accounting Authority's affairs;
  - (iii) the report of the Auditor-General on the Accounting Authority; and
  - (iv) acceptance, for recommendation to the Director-General, of the SETA's annual budget and strategic plan.

**(2) Meetings of Executive Committee**

- (a) The Executive Committee must meet at least once a month, and may meet more when necessary.
- (b) Meetings of the Executive Committee must comply with the procedures contemplated in item 11. 5

**(3) Special meetings of Accounting Authority, Executive Committee and other committees**

- (a) The Chairperson may, on grounds of urgency, call a special meeting of the Accounting Authority or Executive Committee, giving at least 48 hours' notice, and such meeting may be in the form of a physical meeting or by using any electronic medium. 10
- (b) If the Chairperson receives a request for a meeting, signed by at least 50 per cent of the members of the Accounting Authority or the Executive Committee, the Chairperson must, as soon as is practicable, give notice of a special meeting of the Accounting Authority or the Executive Committee, as the case may be, and that special meeting must be held within 15 working days of receiving such request. 15
- (c) The chairperson of any committee of the Accounting Authority may, on grounds of urgency, call a special meeting, giving at least 48 hours' notice, and such meeting may be in the form of a physical meeting or by using any electronic medium. 20

**(4) Meeting procedures for all committees**

- (a) In respect of meetings of the Executive Committee or any other committee established by the Accounting Authority listed in Annexure 5, whether in the form of a physical meeting or by using any electronic medium, the relevant chairperson must— 25
  - (i) give at least 10 working days' written notice of the proposed meeting to members; and 30
  - (ii) include an agenda with such notice.
- (b) A quorum at a meeting, whether in the form of a physical meeting or by using an electronic medium, consists of at least 50 per cent of the total number of members plus one member, provided that at least 50 per cent of the members representing organised labour and at least 50 per cent of the members representing organised employers are present. 35
- (c) If, within one hour of the time fixed for the meeting, a quorum is not formed—
  - (i) that meeting must stand adjourned to another day; and
  - (ii) the members present at the follow-up meeting held within 14 days thereafter will constitute a quorum for the purposes of that meeting. 40
- (d) When a Member is unable to attend a meeting, that member must inform the relevant chairperson accordingly no later than 48 hours before the meeting takes place, but in unforeseen circumstances the relevant chairperson must be informed as soon as possible. 45
- (e) The voting procedures and decision-making procedures at meetings are as follows:
  - (i) Each member present has a single vote on any matter serving before a meeting for its decision.
  - (ii) Voting by proxy are not allowed. 50
  - (iii) Any decision at a meeting requires the support of at least 50 per cent plus one of the members present.
  - (iv) Decisions must be taken by way of a show of hands or, if at least 50 per cent of the members present so require, by way of a closed ballot.
  - (v) In the event of an equality of votes, the chairperson has a casting vote. 55
- (f) The chairperson must ensure that—
  - (i) the minutes of each meeting are taken;
  - (ii) the minutes are forwarded to the members within two weeks of the meeting;
  - (iii) the minutes are tabled at the next meeting for approval by the members; 60 and

- (iv) the minutes that are approved, are retained in a record system.
- (g) The chairperson must sign the approved minutes as confirmation of their approval.

## **16. CHIEF EXECUTIVE OFFICER AND OTHER EMPLOYEES**

### **(1) Appointments by Accounting Authority** 5

- (a) The Accounting Authority must—
  - (i) within six months of taking office, after following a transparent process, recommend to the Minister the names of three suitably qualified candidates for appointment to the position of Chief Executive Officer; 10  
and
  - (ii) consider the suitable qualified candidates in accordance with fair and reasonable criteria acknowledged in labour law before making the recommendation in terms of subparagraph (i).
- (b) Subject to paragraph (c), the appointment of the Chief Executive Officer is 15  
linked to the term of office of the Accounting Authority.
- (c) The Chief Executive Officer may be retained for a further six months in the event that the SETA is re-established in accordance with section 9(1)(b) of the Act.

### **(5) Duties of Chief Executive Officer** 20

The Chief Executive Officer must—

- (a) implement the decisions of the Accounting Authority;
- (b) execute the strategic and management operations of the SETA;
- (c) attend the meetings of the Accounting Authority and the Executive Committee; 25
- (d) promote strategic planning and policy development;
- (e) ensure strict and responsible control of the finances of the SETA, in compliance with the financial management requirements of the PFMA;
- (f) supervise and direct the other employees of the SETA; and
- (g) perform such other functions as determined by the Accounting Authority or 30  
the Executive Committee.

## **17. FINANCES**

### **(1) Sources of finance**

The sources of finance for funding the activities of the SETA as set out in section 14(1) of the Act are— 35

- (a) 80 per cent of the skills development levies, interest and penalties collected in respect of the SETA, allocated in terms of sections 8(3)(b) and 9(b) of the SDLA;
- (b) grants, donations and bequests received;
- (c) income earned on surplus money deposited or invested; 40
- (d) income earned on services rendered; and
- (e) money received from any other legitimate source.

### **(2) Investments**

The money received by the SETA in terms of section 14(2) of the Act must be paid into a bank account at any registered bank and may only be invested in— 45

- (a) savings accounts, permanent shares or fixed deposits in any registered bank or other financial institution provided for in terms of the PFMA; and
- (b) any other manner approved by the Minister.

### **(3) Purpose for which funds may be used**

The money received by the SETA may be used only in accordance with section 14(3) of the Act in order to— 50

- (a) fund the performance of its functions; and

- (b) pay for its administration.

#### **(4) Financial records of SETA**

- (a) The Accounting Authority must—
- (i) prepare annual budgets, Annual Reports and financial statements in accordance with Chapter 6 of the PFMA; 5
  - (ii) furnish the Director-General with copies of all budgets, reports and statements contemplated in this constitution and any other information that the Accounting Authority must submit in terms of the PFMA; 10
  - (iii) keep full and proper records of the SETA's financial affairs; 10
  - (iv) prepare financial statements for each financial year in accordance with generally accepted accounting practices and in line with the requirements of the Auditor-General; 15
  - (v) submit the financial statements referred to in item 13(4)(a)(iv) within two months after the end of the financial year to the Auditor-General for auditing; and 15
  - (vi) within five months of the end of a financial year and after adoption by the Accounting Authority, submit to the Minister the Annual Report on its activities during that financial year, the financial statements for that financial year after the statements have been audited and the Auditor-General's report on those statements. 20
- (b) The Annual Report and financial statements referred to in item 13(4)(a)(i) must—
- (i) be a fair representation the SETA's state of affairs, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year in question; 25
  - (ii) include particulars of any—
    - (aa) material losses through criminal conduct or irregular, fruitless or wasteful expenditure, and must reflect criminal proceeding instituted or disciplinary steps taken as a consequence of such losses; 30
    - (bb) losses recovered or written off;
    - (cc) financial assistance received from the State and any commitments made by the State on its behalf; and
    - (dd) any other matters that the Accounting Authority deems necessary to include. 35

#### **(5) Audit of SETA**

- (a) The Auditor-General must—
- (i) audit the accounts, financial statements and financial management of the SETA in terms of the PFMA and other relevant legislation; and 40
  - (ii) report on that audit to the Accounting Authority and to the Minister, and in that report express an opinion as to whether the SETA has complied with the provisions of the PFMA, the Act and this constitution with regard to financial matters.
- (b) Paragraph (a) does not prevent the appointment of an independent auditor by the Minister and the Department to do a forensic audit on the accounts and financial statements of the SETA. 45

#### **(6) Financial responsibility of Executive Committee**

The Executive Committee must ensure that the SETA complies with the financial requirements of the Act, the PFMA, other applicable legislation and this constitution. 50

#### **(7) Signatories to accounts**

- (a) The Accounting Authority must appoint at least three people, including the Chief Executive Officer, as signatories for each account of the SETA.
- (b) At least two of the three signatories, which must include the Chief Executive Officer, must be required to authorise any payment made by the SETA. 55

## 18. CODE OF CONDUCT

(1) Members of the Accounting Authority, committees and chambers established by the Accounting Authority are bound by the Code of Conduct set out in Annexure 2.

(2) The Code of Conduct binds members in the performance and execution of their functions and duties. 5

(3) Serious or continuous neglect of duties or any misconduct may result in a member being removed from office or his or her termination of membership of a committee or chamber of the SETA.

## 19. DISPUTE RESOLUTION

Any dispute concerning the interpretation or application of this constitution must be determined in accordance with Annexure 3. 10

## 20. INDEMNIFICATION

The SETA indemnifies members of the Accounting Authority and its committees, and employees of the Accounting Authority, against any claim that may be made against them that may arise during the course and scope of their employment or the performance of their duties, as long as such claim did not arise as a result of dishonesty, fraud, breach of trust, wilful default or wilful breach of duty, or a contravention of the SETA's Code of Conduct. 15

## 21. AMALGAMATION AND DISSOLUTION OF SETA

(1) The Minister may, after consulting with the NSA and the Accounting Authority, and subject to section 9(2) of the Act, amalgamate the SETA with one or more other SETAs in accordance with section 9A of the Act.

(2) (a) The Minister may, after consultation with the NSA and the Accounting Authority, dissolve the SETA if the SETA is unable to continue performing its functions.

(b) Any assets remaining after all liabilities of the SETA have been met, must be dealt with in terms of section 9A(6) of the Act. 25

## 22. TAKING OVER ADMINISTRATION OF SETA

(1) The Minister may, in terms of section 15 of the Act, after consultation with the NSA and the Accounting Authority, if any, by a notice in the *Gazette*, direct the Director-General to appoint an Administrator to take over the administration of the SETA or to perform the functions of the SETA, if— 30

(a) the SETA fails to perform its functions;

(b) there is mismanagement of the SETA's finances;

(c) the Accounting Authority's membership no longer substantially represents the composition contemplated in section 11 of the Act; 35

(d) the SETA has failed to comply with its SLA; or

(e) the Accounting Authority has failed to comply with an instruction by the Minister in terms of section 14A of the Act.

(2) The Director-General must by notice in the *Gazette* appoint an Administrator, and in that notice the Director-General— 40

(a) must determine the powers and duties of the Administrator, which may include the Administrator's performance of the Accounting Authority's functions in terms of the PFMA;

(b) may suspend or replace one or more of the members of the Accounting Authority for any reason contemplated in subitem (1); 45

(c) may suspend the operation of the SETA's constitution; and

(d) may direct the transfer of all or some of the funds in the SETA's bank accounts to the National Skills Fund.

(3) If a notice is published in the *Gazette* in terms of subitem (2), the Minister may— 50

(a) amend the constitution in question;

(b) reinstate any of the members of the Accounting Authority; and

(c) withdraw or amend any provision of the notice referred to in subitem (2) and may impose such conditions as may be appropriate in order to ensure that the SETA resumes the performance of its functions.

(4) The Minister may act in terms of subitem (1) without consulting the NSA and the Accounting Authority if there is financial mismanagement of the SETA and the delay caused by such consultation would be detrimental to the SETA's capacity to perform its functions.

## **23. AMENDMENT OF CONSTITUTION**

5

(1) Subject to section 13 of the Act and after consultation with the Accounting Authority, the Minister may approve an amendment to the constitution.

(2) The Chairperson must give notice of any proposed deviation from the standard constitution at least 30 days before any meeting of the Accounting Authority is convened to discuss an amendment to the constitution.

10

(3) The Accounting Authority may propose an amendment to the constitution by a resolution supported by at least 75 per cent of its members.

(4) If the Accounting Authority has adopted a resolution proposing an amendment to the constitution, such proposal must be submitted to the Minister for consideration and a decision and must be accompanied by reasons for the proposed amendment.

15

(5) The SETA's Chief Executive Officer must ensure that copies of the text of the proposed amendment, notifications of the meeting and the agenda are dispatched to all members of the Accounting Authority at least 30 days before to the meeting at which the amendment to the constitution is to be proposed and considered.

(6) The full procedure for proposing and effecting amendments to this constitution is described in Annexure 6.

20

(7) For the purposes of this item, any amendment of an Annexure must be regarded as a deviation of this constitution.

**ANNEXURE 1****SCOPE OF AUTHORITY****1. SCOPE OF COVERAGE**

The scope of coverage of the SETA as determined by the Minister is indicated in the table below<sup>1</sup>

5

| SIC Code | Scope of Coverage/Description |
|----------|-------------------------------|
|          |                               |

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1. SETAs must complete their scope of coverage as published in the *Government Gazette*.

## ANNEXURE 2

### CODE OF CONDUCT

#### 1. INTRODUCTION

This document outlines the SETA's Code of Conduct ("the Code").

#### 2. APPLICATION OF CODE

5

(1) All Members of the Accounting Authority, the chambers and any committee established by the Accounting Authority are subject to the Code and are required to comply with both the letter and the spirit of the Code.

(2) The Members of the Accounting Authority, the chambers and any committee established by the Accounting Authority— 10

- (a) stand in a fiduciary relationship to the SETA;
- (b) must comply with all the applicable laws and regulations that regulate the activities they are engaged in for and on behalf of the SETA;
- (c) must perform their functions fairly, honestly and in good faith, giving full effect to the obligations and spirit of the Act and this constitution; 15
- (d) must protect and promote the reputation of the SETA and promote goodwill towards it;
- (e) must perform their duties conscientiously and in the best interest of the SETA; and
- (f) conduct themselves ethically and in accordance with the principles of good governance. 20

(3) In order to ensure proper execution of its mandate and effective compliance with the applicable legislative and policy framework, the Accounting Authority must ensure that the staff of the SETA and members of all committees and chambers adhere to the following principles of governance: 25

- (a) Effectiveness and efficiency in the execution of their specified mandates, which require clearly formulated purpose statements, objectives, roles and responsibilities.
- (b) Accountability for meeting their specified mandates, which requires effective accountability mechanisms, proper management, control and the safeguarding of finances and resources, as well as regular and accurate performance reviews, assessments and reporting. 30
- (c) Integrity and honesty in the management of finances and resources, which require observing and promoting high standards of ethical conduct, proper execution of fiduciary duties, independence from vested interests and avoiding undue influence and a conflict of interests. 35
- (d) Transparency and openness, which require fair, transparent and accessible rules, processes and procedures; the consistent application of these rules, processes and procedures; transparent and motivated decision-making; and timely and accurate provision of information to a higher authority, stakeholders and the public. 40
- (e) Participation in the development and implementation of public policies, where appropriate, which requires the active involvement of beneficiaries, stakeholders and other affected groups in the formulation of policies and programmes; promoting ownership of policies and programmes; stakeholder commitment to their success; and consultation with and representation on institutional structures. 45
- (f) The capacity and resources to execute their mandate, which require appropriate selection and capacity-building, in order to ensure that Members and staff have the necessary skills, knowledge and experience. 50

#### 3. CONFLICT OF INTERESTS

(1) A person may not be appointed on the Accounting Authority, unless the necessary disclosure has been made that—

- (a) such person, directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the SETA; 55



- (b) such person or his or her spouse, partner or associate, holds an office in or is employed by any SETA, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (a).
- (2) If at any stage during the course of any proceedings before the Accounting Authority it appears that any member of the Accounting Authority has or may have an interest which may cause such conflict of interest to arise on his or her part—
  - (a) such member must forthwith fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining members to discuss the matter and determine whether such member is precluded from participating in such meeting by reason of a conflict of interest; and
  - (b) such disclosure and the decision taken by the remaining members regarding such determination must be recorded in the minutes of the meeting in question.
- (3) If any member fails to disclose any interest required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting of the Accounting Authority is held or in any manner whatsoever participates in the proceedings of the Accounting Authority, the relevant proceedings of the Accounting Authority is null and void.

#### **4. GIFTS AND BENEFITS** 20

- (1) Gifts, hospitality and entertainment may only be offered to a third party if they are consistent with accepted practice, modest in value, not in contravention to the PFMA and where public disclosure thereof would not embarrass the SETA.
- (2) Members should not accept gifts, hospitality or other favours from suppliers of goods or services. 25
- (3) Members may not accept personal favours or other preferential treatment that might place the recipient under any obligation.
- (4) The Accounting Authority must, within six months of taking office, develop or review policy guidelines for inclusion in the Code which are in line with the deviation processes of the constitution. 30

#### **5. SETA RESOURCES**

- (1) Members may not abuse the financial and other resources of the SETA.
- (2) Members must at all times ensure that the SETA's financial and other resources are used for legitimate business purposes only.
- (3) When funds are to be spent, it is the responsibility of Members to use sound judgment and to ensure that appropriate value is received by the SETA for such expenditure. 35
- (4) Members who become aware that the SETA's funds or property have been used, are being used or may be used in a fraudulent or improper manner, must immediately and in confidence advise the Chairperson. 40

#### **6. ACCOUNTING STANDARDS**

- (1) The SETA's financial books and records must reflect all transactions in an accurate and a timely manner and in conformity with generally accepted accounting principles.
- (2) Non-disclosure of revenue, expenses, assets or liabilities is not permitted.
- (3) Members responsible for accounting and record-keeping functions are expected to be diligent in enforcing proper accounting practices. 45

#### **7. SECURITY OF INFORMATION AND INTELLECTUAL PROPERTY RIGHTS**

- (1) (a) Only information necessary for SETA business may be collected, used and retained. 50
- (b) Personal information of members should be obtained directly from the person or organisation in question.
- (c) Only reputable and reliable sources should be used to supplement information contemplated in this subitem.

(2) (a) No privileged or confidential information may be disclosed by any member without prior authorisation by the Executive Committee or the Chairperson, including but not limited to information regarding products, plans, transactions, personal information and salaries.

(b) Such information may only be disclosed if it must be disclosed in terms of the Act, the SDLA, any other applicable law or by an order of the court. 5

(3) Members of the SETA may not copy or reproduce, by any means, confidential or privileged information acquired during the performance of their functions for use other than for the execution of their functions in terms of the Act, the SDA, any other relevant legislation or this constitution. 10

(4) (a) Upon termination of their term of office members must hand over all documents, drawings, plans, electronic records, samples, models and other information to the Chairperson, as well as equipment and accessories in their possession or under their control, which may contain confidential or privileged information, or relate to or are in any way connected to the business and affairs of the SETA. 15

(b) Members are required, free of any consideration, to forthwith disclose to the SETA all discoveries, processes and inventions relating to, or that are useful to, any business conducted by the SETA, that were made or conceived by them in the course and within the scope of their involvement in any of the affairs of the SETA, whether individually or in conjunction with others. 20

## 8. CONTRAVENTION OF CODE

(1) Any contravention of the Code is a serious offence and, depending on the circumstances, may result in criminal charges.

(2) Any member who believes that he or she may have contravened the Code, must advise the Chairperson immediately. 25

(3) In the event that the Chairperson believes that a member has contravened the Code, the Chairperson must immediately advise the Minister and other members of the Accounting Authority in writing of the possible contravention.

(4) Any member who believes that a contravention of the Code by another member has taken place, must report this in writing to the Chairperson, who must maintain confidentiality and must ensure that the matter is investigated impartially. 30

(5) Any member who believes that a contravention of the Code by the Chairperson has taken place, must report this, preferably in writing, to the Minister.

(6) A contravention of the Code may result in disciplinary action being taken, which could result in a member being removed from office or in termination of employment or membership of a committee or chamber of the SETA. 35

## ANNEXURE 3

## DISPUTE RESOLUTION

- (1) Any party to a dispute concerning the interpretation or application of this constitution must refer the dispute to the Chief Executive Officer for forwarding to the Executive Committee. 5
- (2) The referral must—
- (a) be in writing;
  - (b) adequately describe the dispute; and
  - (c) be delivered to every other party to the dispute by the party referring the dispute. 10
- (3) The Chief Executive Officer must, as soon as is reasonably practicable, refer the dispute to the Executive Committee, which must endeavour to resolve the dispute by conciliation as soon as possible, but nevertheless within 30 days of the referral.
- (4) If the Executive Committee fails to resolve the dispute within 30 days of its referral, any party to the dispute may refer it for arbitration by an arbitrator appointed by the Director-General of the Department in terms of the Arbitration Act, 1965 (Act No. 42 of 1965). 15
- (5) Within 14 days of the conclusion of the arbitration proceedings—
- (a) the arbitrator must issue a signed arbitration award with reasons; and
  - (b) the Chief Executive Officer must provide a copy of the award to every party to the dispute. 20
- (6) The costs of the arbitration must be borne equally by the parties to the dispute, but the arbitrator may make a different and appropriate awarding of costs, if—
- (a) a party to the dispute, without reasonable cause, refuses or fails to attend the arbitration proceedings or unduly delays arbitration proceedings; or 25
  - (b) the arbitrator finds that a party pursuing or resisting the dispute did so vexatiously or frivolously, or had no reasonable prospect of succeeding.

## ANNEXURE 4

## REPRESENTATION ON ACCOUNTING AUTHORITY

## 1. CONSTITUENCY IN SECTOR

The labour organisations, employer organisations and category of roleplayers contemplated in section 11(3)(c) of the Act in the Sector are as follows: 5

- (a) Labour organisations;
- (b) Employer organisations; and
- (c) The following categories of roleplayers:
  - (i) Government departments that have an interest in the Sector but that are not an organised employer contemplated in item 2; 10
  - (ii) Interested professional bodies;
  - (iii) Bargaining councils with jurisdiction in the Sector; and
  - (iv) Organisations of communities that have an identifiable interest in skills development in the Sector.

## 2. MEMBERS OF ACCOUNTING AUTHORITY 15

(1) The Accounting Authority consists of—

- (a) a chairperson;
- (b) not more than 14 members, comprising—
  - (i) six members representing organised labour within the scope of the SETA; 20
  - (ii) six members representing organised employers within the scope of the SETA; and
  - (iii) two members representing the roleplayers contemplated in item 1(c) within the scope of the SETA.

(2) The chairperson is appointed by the Minister. 25

(3) Notwithstanding subitem (1)(b), the Minister may approve a deviation from the membership, subject to section 13 of the Act.

(4) The Accounting Authority consists of the following—

- (a) organised employers:

**[Insert the list of the organised employers within the scope of the SETA, represented on the Accounting Authority, and the number of Members whom each organised employer may nominate];** 30

- (b) organised labour:

**[Insert the list of trade unions within the scope of the SETA represented on the Accounting Authority and the number of Members each may nominate];** and 35

- (c) category of roleplayers contemplated in section 11(2)(c) of the Act:

**[Insert the list of relevant government departments, professional bodies, bargaining councils and community organisations within the scope of the SETA, represented on the Accounting Authority].**

## 3. ELIGIBILITY CRITERIA FOR ACCOUNTING AUTHORITY MEMBERS 40

## (1) Minimum requirements for Members of Accounting Authority

- (a) Members of the Accounting Authority must be able to participate in the decision-making processes, understand the consequences of such decisions, and share in the accountability as Members of the Accounting Authority. 45
- (b) Members nominated for the Accounting Authority should comply with the following minimum requirements:
  - (i) They must represent the interest identified in the NSDS;
  - (ii) Taken as a whole, they must achieve—
    - (aa) gender representation; 50
    - (bb) demographic representation; and
    - (cc) representation of disadvantaged persons or communities that have been prejudiced by past racial and gender discrimination in relation to skills development programmes; and
    - (dd) a blend of knowledge, skills and experience required for the 55

effective funding of the SETA.

- (iii) They must be drawn from the ranks of senior officials in the organisation concerned.
- (c) They should have an appropriate blend of knowledge, skills and experience required for the functioning of the SETA.

## **(2) Selection criteria for members of Accounting Authority** 5

- (a) Constituencies must use the criteria listed in paragraph (b) as guidelines when nominating their representatives in order to ensure that those representatives have the competence to make constructive contributions to the Accounting Authority. 10
- (b) Representatives should have knowledge, skills and expertise in the following areas:
  - (i) The functioning of the Accounting Authority in terms of the requirements relating to corporate governance and ethics;
  - (ii) Skills development legislation and the NSDS; 15
  - (iii) The SETA's responsibility in respect of service delivery;
  - (iv) The PFMA and financial management;
  - (v) The Sector and the constituency represented by the member;
  - (vi) The strategic leadership role of the Accounting Authority;
  - (vii) Education, training, skills development and human resources development; 20
  - (viii) Quality assurance of learning provision;
  - (ix) General management and business skills;
  - (x) Communication and marketing role of an entity in relation to its stakeholders; 25
  - (xi) Any other areas of expertise relevant to the Sector.

## **(3) Disqualifying criteria**

A person is disqualified from serving as a Member of the Accounting Authority if such person—

- (a) is not a citizen and is not a permanently resident in the Republic; 30
- (b) is subject to an order of a competent court declaring such person to be mentally ill or disordered;
- (c) is convicted, whether in the Republic or elsewhere, of any offence for which such person is sentenced to imprisonment without the option of a fine;
- (d) at any time prior to the date of commencement of the Skills Development Amendment Act, 2011, was convicted or, at any time after such commencement, is convicted— 35
  - (i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury, or an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004); 40
  - (ii) elsewhere, of any offence corresponding materially with any offence referred to in subparagraph (i); and 45
  - (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty; or
- (e) has been convicted of an offence under the Act.

## **(4) Ensuring continuity in Accounting Authority**

In nominating members for the Accounting Authority, constituencies must pay due consideration to the need for continuity and renewal in the membership of such Accounting Authority. 50

## **4. FORMULA FOR PROPORTIONAL ALLOCATION OF MEMBERS**

(1) (a) If organisations within a particular constituency cannot reach agreement on the allocation of seats per organisation, then the principle of proportionality must be applied on the basis of the formula provided in subitem (2). 55

(b) The final number is subject to the maximum number of 15 members on the Accounting Authority contemplated in item 8(4)(a).

(2) The formula is:

$$\frac{\mathbf{A}}{\mathbf{B}} \times \frac{\mathbf{C}}{\mathbf{1}} = \mathbf{D} \quad 5$$

(3) **A** represents either—

- (a) the number of employees employed by the members of an employer's organisation listed in item 1; or 10
- (b) the number of members of a trade union listed in item 1.

(4) **B** represents either—

- (a) the total number of employees employed by all the employers who are members of all employers organisations listed in item 1; or
- (b) the total membership of all the trade unions listed in item 1. 15

(5) **C** represents 10.

(6) **D** represents either—

- (a) the number of members which an employer organisation may nominate for the Accounting Authority; or
- (b) the number of members that a trade union may nominate for the Accounting Authority. 20

(7) For example, if there are only two trade unions, one with 600 members and the other with 1 000 members, they would be proportionally represented on the Accounting Authority, as follows:

$$\frac{600}{1,600} \times \frac{10}{1} = 3.75 \quad \frac{1,000}{1,600} \times \frac{10}{1} = 6.25 \quad 25$$

- (a) The trade union with 600 members would nominate 40 per cent of the five 30 members representing organised labour.
- (b) The trade union with 1 000 members would nominate 60 per cent of the five members representing organised labour.

## ANNEXURE 5

### COMMITTEES OF SETA

#### 1. GENERAL GUIDELINES FOR ALL SETA COMMITTEES

- (1) The Accounting Authority has the power to constitute and dissolve any of its committees. 5
- (2) The Accounting Authority has the power to determine, amend or revoke the terms of reference and organisational structures of any of its committees.
- (3) The Accounting Authority must ensure that all members of committees appointed by it act in accordance with the Code of Conduct contemplated in Annexure 2.
- (4) The membership of a committee— 10
  - (a) may comprise an equal number of members representing organised labour and organised employers; and
  - (b) is not restricted to members of the Accounting Authority only.
- (5) Except for the Audit Committee, the chairperson of a committee must be a member of the Accounting Authority. 15
- (6) Members of committees must have knowledge of, and experience in, matters relevant to the functions of the committees on which they serve.
- (7) The Accounting Authority may co-opt additional members, including persons who are not members of the Accounting Authority, who have expertise, knowledge and experience pertaining to matters relevant to the functions of the committee in question. 20
- (8) Meetings of committees established in terms of this constitution must comply with the procedures contemplated in item 11(5).
- (9) All committees must meet as frequently as is reasonably required.
- (10) Committees established by the Accounting Authority must perform the functions identified in their terms of reference. 25

#### 2. COMMITTEES TO BE ESTABLISHED BY SETA

- (1) The Accounting Authority must establish the following committees:
  - (a) An Executive Committee, established in terms of item 9;
  - (b) An Audit Committee, established in terms of section 77 of the PFMA, read with Chapter 9 of the Treasury Regulations made in terms of the PFMA; 30
  - (c) A Finance Committee;
  - (d) A Remuneration Committee; and
  - (e) A Governance and Strategy Committee.
- (2) The Accounting Authority may establish any other committee, including a committee on a temporary basis, that it deems necessary for the effective functioning of the SETA, and it may determine its composition, duties and functions. 35
- (3) Such committees may include—
  - (a) a Skills Planning Committee;
  - (b) a Learnership Committee;
  - (c) a Regional Committee; and 40
  - (d) a Quality Assurance Committee.

## ANNEXURE 6

## CHAMBERS OF SETA

## 1. ESTABLISHMENT OF CHAMBERS

- (1) The SETA, with the approval of the Minister, established the following chambers:  
**[Insert names of chambers]** 5
- (2) The scope of coverage of the chambers is as follows:  
**[Insert scope of coverage of each chamber]**

## 2. MEMBERS OF CHAMBERS

- (1) A chamber—
- (a) must consist of an equal number of members representing organised labour and organised employers; and 10
  - (b) is not restricted to members of the Accounting Authority only.
- (2) The **[insert name]** Chamber consists of the following—
- (a) organised employers:  
**[Insert the list of the organised employers represented on the Chamber and the number of members of the Chamber whom each may nominate];** 15
  - (b) organised labour:  
**[Insert the list of trade unions represented on the Chamber and the number of Members of the Chamber whom each may nominate];**
  - (c) relevant government departments: 20  
**[Insert the list of the relevant government departments represented on the Chamber Authority and the number of Members of the Chamber whom each may nominate];** and
  - (d) additional members:  
**[Insert any additional members of the Chamber determined by the SETA].** 25

## 3. CHAIRPERSON OF CHAMBER

The chairperson of a chamber must be a member of the Accounting Authority.

## 4. FUNCTIONS OF CHAMBER

- (1) The chambers must perform those functions of the SETA delegated to them by the Accounting Authority in terms of item 8(3). 30
- (2) The general guidelines for committees of the SETA contained in item 1 of Annexure 4 also apply to chambers.



## ANNEXURE 7

## PROCEDURE FOR AMENDING CONSTITUTION

## 1. ACCOUNTING AUTHORITY INITIATES AMENDMENT

- (1) If the Accounting Authority of the SETA wishes to amend this constitution it must, in writing, submit the following to the Minister in duplicate: 5
- (a) The text of the proposed amendment to the constitution;
  - (b) a certified copy of its resolution approving the proposed amendments; and
  - (c) a memorandum explaining the rationale for such amendments.
- (2) After considering the submission, after consultation with the Accounting Authority and subject to section 13 of the Act, the Minister may reject, wholly or in part, 10 the amendments proposed by the Accounting Authority.

## 2. MINISTER INITIATES AMENDMENT

- (1) If the Minister wishes to amend the SETA's constitution, the Minister must submit the following to the Accounting Authority: 15
- (a) The text of the proposed amendment; and
  - (b) a memorandum explaining the rationale for such amendment.
- (2) The Minister must allow the Accounting Authority 30 days to make written representations concerning any amendment proposed by the Minister.
- (3) After considering any representation made by the Accounting Authority and subject to section 13 of the Act, the Minister may, wholly or in part, effect the proposed 20 amendment.

## SIGNED FOR AND ON BEHALF OF THE ACCOUNTING AUTHORITY BY:

1. ORGANISED LABOUR \_\_\_\_\_
2. ORGANISED EMPLOYERS \_\_\_\_\_
3. OTHER RELEVANT STAKEHOLDERS \_\_\_\_\_ 25
- \_\_\_\_\_
- \_\_\_\_\_ 30
- \_\_\_\_\_

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Full Names: \_\_\_\_\_  
CHAIRPERSON

## **MEMORANDUM ON THE OBJECTS OF THE SKILLS DEVELOPMENT AMENDMENT BILL, 2011**

### **1. MAIN OBJECT OF BILL**

The Bill seeks to amend the Skills Development Act, 1998 (Act No. 97 of 1998) (the Act).

### **2. MAIN FEATURES OF BILL**

#### **2.1 Clause 1**

This clause seeks to amend section 1 of the Act by the insertion of new definitions that are necessitated by amendments proposed to the Act and by the deletion or amendment of definitions in order to delete redundant references to repealed legislation and the replacement of the references with references to the current and applicable legislation.

#### **2.2 Clauses 2, 4, 14 to 18, 20 to 25 and 27**

These clauses seek to repeal provisions that were assigned by the President by way of Presidential Proclamation No. 56 of 2009 to the Minister of Labour and mainly deal with employment services and Productivity South Africa. In terms of the commencement provision proposed in clause 30 these clauses may not be put in operation unless the Minister of Labour has agreed thereto.

#### **2.3 Clauses 3, 13, 19, 26 and 29**

These clauses propose the replacement of references to redundant legislation with references to current applicable legislation.

#### **2.4 Clauses 5 to 12, 27 and 28**

These clauses propose amendments to sections in the Act that make provision for—

- the establishment and amalgamation of SETAs<sup>1</sup>;
- the incorporation of a subsector of one SETA into another SETA;
- service level agreements between the Director-General and SETAs;
- the composition of the Accounting Authority of a SETA;
- the eligibility of person to become members to an Accounting Authority of a SETA;
- the introduction of a standard constitution for a SETA;
- the conduct of a member of the Accounting Authority, or a member of the staff, of a SETA with regard to engagement in business with the relevant SETA;
- transitional provisions to facilitate a smooth transition if the provisions Bill takes effect.

The need to amend the provisions in question was identified in order to strengthen the relationship between the SETAs and the Minister and to explicitly spell out the responsibilities of the Minister in this regard in order to enhance the effectiveness of the SETAs in the performance of their functions.

2.5 Clause 30 contains the proposed transitional provisions.

### **3. DEPARTMENTS AND BODIES CONSULTED**

3.1 The Bill was published for comment and all interested parties and the public were invited to submit comment.

3.2 During the developmental stages of the Bill, consultation took place by way of a National Skills Summit with NEDLAC<sup>2</sup>, the National Skills Authority and roleplayers

1. In terms of section 1 of the Act, “ ‘SETA’ means a sector education and training authority established in terms of section 9(1);”.

2. In terms of section 1 of the Act, “ ‘NEDLAC’ means the National Economic Development and Labour Council established by section 2 of the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994);”.

in Skills Development. The Minister's efforts to enhance service delivery by SETAs were supported and all parties who attended the National Skills Summit supported the amendment of existing legislation in order to provide for more effective oversight in both the composition of the Accounting Authority and the constitution of the SETAs.

3.3 The Minister engaged Business United South Africa in a meeting where the principles underpinning the need for the amendments to the Act were deliberated.

3.4 The Bill was referred to the Minister of Labour for comments and to seek her approval on the repeal of sections in the Act relating to employment services and Productivity South Africa and to take cognizance of the fact that the repeal of those provisions is subject to her approval.

#### **4. FINANCIAL IMPLICATIONS FOR STATE**

Apart from publication costs, no additional costs are foreseen.

#### **5. PARLIAMENTARY PROCEDURE**

5.1 The State Law Advisers and the Department of Higher Education and Training are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, No. 41 of 2003, seeing that it does not contain provisions pertaining to customary law or to the customs of traditional communities.