

Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 550

Pretoria, 15 April 2011

No. 34222

IMPORTANT NOTICE

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GENERAL NOTICE

NOTICE 228 OF 2011

DEPARTMENT OF HIGHER EDUCATION AND TRAINING

CALL FOR COMMENTS ON THE FURTHER EDUCATION AND TRAINING COLLEGES AMENDMENT BILL, 2011; THE HIGHER EDUCATION LAWS AMENDMENT BILL, 2011; AND THE SKILLS DEVELOPMENT AMENDMENT BILL, 2011

I, Bonginkosi Emmanuel Nzimande, Minister of Higher Education and Training, after consultation with the Council of Education Ministers in respect of the FETCA Bill, hereby publish the Further Education and Training Colleges Amendment Bill, 2011; the Higher Education Laws Amendment Bill, 2011; and the Skills Development Amendment Bill, 2011, for comment.

All interested persons and organisations are invited to comment on the draft Bills in writing, and to direct their comments to –

The Director-General, Private Bag X174, Pretoria, 0001, for attention: Mr VL Rikhotso, email Rikhotso.v@dhet.gov.za.

Kindly provide the name, address, telephone number, fax number and email address of the person or organisation submitting the comments.

The comments should reach the Department within 21 calendar days after publication of this notice.

**DR BONGINKOSI EMMANUEL NZIMANDE, MP
MINISTER OF HIGHER EDUCATION AND TRAINING
SIGNED 13 APRIL 2011**

**FURTHER EDUCATION AND TRAINING COLLEGES AMENDMENT
BILL, 2011
(Section 76 Bill)**

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.

BILL

To amend the Further Education and Training Colleges Act, 2006, so as to remove all references to provincial authority; to substitute functions previously assigned to the Member of the Executive Council with the Minister; to remove all references to the Head of Department and substitute with the Director-General; to provide for the prohibition of a member of Council or a member of staff to conduct business, directly or indirectly with the public further education and training college which business is in conflict of interest with the concerned public further education and training college; to provide for transitional arrangements with regard to public service posts and educator posts, staff, disciplinary measures; and policy made by the Member of the Executive Council under the principal Act or any provincial law, necessary for the effective governance, management and funding of public further education and training colleges; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: –

Amendment of section 1 of Act 16 of 2006

1. Section 1 of the Further Education and Training Colleges Act, 2006 (hereinafter referred to as the principal Act), is hereby amended by –

- (a) the deletion of the definition of "Head of Department":
"['Head of Department' means the head of a provincial department of education;]";
- (b) the deletion of the definition of "Member of the Executive Council":
"['Member of the Executive Council' means the Member of the Executive Council of a province who is responsible for education in that province;]"; and
- (c) the substitution for the definition of "policy" of the following definition:
"policy' means-
[(a)] policy determined by the Minister in terms of the National Education Policy Act, 1996 (Act 27 of 1996); [or
[(b)] policy determined by the Member of the Executive Council in terms of a provincial law;]";

Amendment of section 3 of Act 16 of 2006

2. Section 3 of the principal Act is hereby amended by the substitution for subsections 1), (3), (4) and (5) of the following subsections:

"(1) The **[Member of the Executive Council]** Minister may, by notice in the *Gazette* and from money appropriated for this purpose **[by the provincial legislature]**, establish a public college."

"(3) Despite subsection (2) but subject to subsection (4), a public college may not, without the concurrence of the **[Member of the Executive Council]** Minister, dispose of or alienate in any manner any movable or immovable property acquired with the financial assistance of the State or grant to any person any real right therein or servitude thereon."

“(4) The **[Member of the Executive Council] Minister** –

- (a) may determine that certain categories of assets below a certain value may be alienated without his or her concurrence; and
- (b) must publish the value contemplated in paragraph (a) by notice in the *Gazette*.”.

“(5) The **[Head of Department] Director-General** may inspect, and must compile an inventory of all **[,]** the assets of a public college.”.

Amendment of section 4 of Act 16 of 2006

3. Section 4 of the principal Act is hereby amended by the substitution for subsections (1) and (3) of the following subsections:

“(1) The **[Member of the Executive Council] Minister** may, by notice in the *Gazette*, declare any institution providing further education and training as a public college.”.

“(3) The **[Member of the Executive Council] Minister** may act in terms of subsection (1) only –

- (a) (i) after consulting the **[Minister and the]** council of the institution, if it is a public institution;
- (ii) with the concurrence of the responsible Minister**[, Member of the Executive Council]** or authority of the institution, if the institution is administered, controlled or funded by an organ of State other than the **[provincial] [d]Department [of education]**; or
- (iii) with the concurrence of the owner and the relevant Member of the Executive Council responsible for finance, if it is a private institution; and“.

Amendment of section 5 of Act 16 of 2006

4. Section 5 of the principal Act is hereby amended by the substitution for subsections (6) and (7) of the following subsections:

“(6) The **[Member of the Executive Council] Minister** must in the notice contemplated in section 3(1) establish an interim council for the public college for a period not exceeding six months to perform the functions relating to the governance of the college until a council is established in terms of section 9(1).”.

“(7) The **[Member of the Executive Council] Minister** may extend the period referred to in subsection (6) once or for a further period not exceeding six months.”.

Amendment of section 6 of Act 16 of 2006

5. Section 6 of the principal Act is hereby amended by the substitution for subsections (1), (2), (5) and (7) of the following subsections:

“(1) Subject to subsection (2), the **[Member of the Executive Council] Minister** may **[, in consultation with the Minister and]** by notice in the *Gazette*, merge two or more public colleges into a single college.”.

“(2) Before merging two or more public colleges the **[Member of the Executive Council] Minister** must –

- (a) give written notice to the colleges in question of the intention to merge them;
- (b) publish a notice giving the reasons for the proposed merger in one or two newspapers circulating in the area in which the colleges in question are situated;

- (c) give the councils of the colleges in question and any other interested persons an opportunity to make representations within at least 90 days from the date of the notice referred to in paragraph (b); and
- (d) consider such representations.”.

“(5) The **[Member of the Executive Council] Minister** must, after consultation with the councils of the public colleges that are to be merged, determine by notice contemplated in subsection (1)–

- (a) the date of establishment of the college;
- (b) the name of the college; and
- (c) the physical location and official address of the college.”.

“(7) The **[Member of the Executive Council] Minister** may extend the period referred to in subsection (6) once for a further period not exceeding six months.”.

Amendment of section 7 of Act 16 of 2006

6. Section 7 of the principal Act is hereby amended by the substitution for subsections (1), (2), and (3) of the following subsections:

“(1) The **[Member of the Executive Council] Minister** may determine that the governance of two or more colleges must vest in a single council if –

- (a) it is in the best interests of education and the colleges;
- (b) it is in the public interest; or
- (c) he or she was so requested by the councils of those colleges.”.

“(2) The **[Member of the Executive Council] Minister** may not act in terms of subsection (1) unless he or she has –

- (a) given written notice to the colleges in question of the intention to merge them;
- (b) given notice in the Gazette of his or her intention so to act;

- (c) given the councils of the colleges in question and interested parties an opportunity to make written submissions to him or her within a period of not less than 90 days; and
- (d) considered all such submissions.”.

“(3) The **[Member of the Executive Council]** Minister must, by notice in the *Gazette*, determine the composition of the single council in a manner that ensures that –

- (a) each public college is equitably represented; and
- (b) it complies with section 10 (6), (7) and (9).”.

Amendment of section 8 of Act 16 of 2006

7. Section 8 of the principal Act is hereby amended by the substitution for subsections (1), (2), and (3) of the following subsections:

“(1) The **[Member of the Executive Council]** Minister may by notice in the *Gazette*, close a public college.”.

“(2) The **[Member of the Executive Council]** Minister may not act in terms of subsection (1) unless he or she has –

- (a) **[consulted with the Minister; (b)]** given written notice to the college in question of the intention to close it;
- [(c)](b)** given notice in the *Gazette* of his or her intention so to act;
- [(d)](c)** given the council of the college in question and interested parties an opportunity to make written representations within a period of not less than 90 days; and
- [(e)](d)** considered those representations.”.

“(3) If a public college is closed under subsection (1) –

- (a) all assets and liabilities of such college must, after such closure, be dealt with according to law by the **[Member of the Executive Council] Minister**; and
- (b) any assets, remaining after payment of all liabilities, vest in the **[Member of the Executive Council] Minister**.”.

Amendment of section 10 of Act 16 of 2006

8. Section 10 of the principal Act is hereby amended by –

- (a) the substitution for subparagraph (iv) of paragraph (a) of subsection (2) of the following subparagraph:
“(iv) be approved by the **[Member of the Executive Council] Minister**.”;
- (b) the substitution for paragraph (b) of subsection (2) of the following paragraph:
“(b) determine the language policy of the public college, subject to the approval of the **[Member of the Executive Council] Minister**; and “;
- (c) the substitution of paragraph (b) of subsection (4) of the following paragraph:
“(b) five external persons appointed by the **[Member of the Executive Council] Minister**.”;
- (d) the substitution for subsection (6) of the following subsection:
“(6) The council must, in consultation with the **[Member of the Executive Council] Minister**, appoint four additional external persons with financial, human resources and legal skills as members of the council.”.
- (e) the substitution for subsection (7) of the following subsection:
“(7) The manner in which the members of the council contemplated in subsection (4) (c) to (g) are to be elected, must, where applicable, be determined by the **[Member of the Executive Council] Minister** by notice in

the Gazette **[or in terms of a provincial law]** and must, in so far as it is practically possible, ensure that –

- “(a) the functions of the council or interim council are performed according to the highest professional standards;
- “(b) the council or interim council is broadly representative of the further education and training system and related interests;
- “(c) the members have a thorough knowledge and understanding of the further education and training sector;
- “(d) the members appreciate the role of further education and training in reconstruction and development; and
- “(e) the council is broadly representative of the community served by the public college in respect of race, gender and disability.”.

- (f) the substitution for paragraph (b) of subsection (8) of the following paragraph:
“(b) employed by the **[Member of the Executive Council] Minister;**”;
- (g) the substitution for subsection (9) of the following subsection:

“(9) **[The] A** member**[s]** of a council-

- (a) must be a person[s] with knowledge and experience relevant to the objects and governance of the public higher education institution concerned; [and]
- (b) must participate in the deliberations of the council in the best interests of the public higher education institution concerned; and
- (c) must declare any business, commercial or financial activities undertaken for financial gain that may raise a possible conflict of interest;
- (d) may not place him or her under any financial or other obligation to outside individual or organization that might seek to influence performance and function of the council;
- (e) (i) may not have a conflict of interest with the institution;

- (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 must, before or during such meeting, declare the interest;
 - (iii) must in writing, inform the chairperson of a meeting, before a meeting, of a conflict or possible conflict of interest of a council member of which such person may be aware;
 - (iv) is obliged to excuse him or herself from the meeting during the discussion of the matter and the voting thereof.”.
- (h) the substitution for subsection (10) of the following subsection:
“(10) The **[Member of the Executive Council]** Minister must- “.
- (a) by notice by notice in the Gazette, or by any other reasonably practicable means, invite nominations for the appointment of the members contemplated in subsection (4) (b); and
 - (b) consider the nominations and appoint the members with due regard to the criteria contemplated in this section.”.

Amendment of section 14 of Act 16 of 2006

9. Section 14 of the principal Act is hereby amended by the substitution for the following section:

“The establishment, composition, manner of election, term of office, functions and privileges of the student representative council of a public college must be determined by the council after consultation with the students of the college, subject to policy determined by the **[Member of the Executive Council]** Minister.”.

Amendment of section 17 of Act 16 of 2006

10. Section 17 of the principal Act is hereby amended by the substitution for subsections (1) and (3) of the following subsections:

“(1) Subject to applicable policy determined by the Minister, the council of a public college determines the admission policy of the college, after consulting the academic board and with the approval of the **[Member of the Executive Council] Minister**.”.

“(3) The council may, subject to applicable policy, the approval of the **[Head of Department] Director-General** and after consultation with the academic board-

- (a) determine admission requirements in respect of particular further education and training programmes;
- (b) determine the number of students who may be admitted for a particular further education and training programme and the manner of their selection;
- (c) determine the minimum requirements for readmission to study at the public college in question; and number of students who may be admitted for a particular further education and training programme and the manner of their selection; and
- (d) refuse the readmission of a student who fails to satisfy the minimum requirements for readmission.”.

Amendment of section 19 of Act 16 of 2006

11. Section 19 of the principal Act is hereby repealed.

Amendment of section 20 of Act 16 of 2006

12. Section 20 of the principal Act is hereby amended by the substitution for section 20 of the following section:

[(1) The college is the employer of all lecturers and support staff.

(2) Subject to this Act, the Labour Relations Act, the Basic Conditions of Employment Act, the Employment Equity Act and any other applicable law, the council must establish posts for lecturers and support staff.

(3) The council must appoint and remunerate staff from the funds allocated in accordance with the norms and standards contemplated in section 23 and other income received by the college from other sources.

(4) Despite anything to the contrary in any other law but subject to this section, the Labour Relations Act or any other collective agreement concluded by a bargaining council that has jurisdiction in respect of employees of a public college, the council must determine the functions, conditions of service and privileges of lecturers and support staff.

(5) The lecturers and support staff are accountable to the principal.

(6) When presenting the annual budget contemplated in section 22 the council must provide sufficient details of any posts envisaged in terms of subsection (2), including the estimated cost relating to the employment of lecturers and support staff in such posts and the manner in which it is proposed that such costs will be met.

(7) The lecturers and support staff contemplated in subsection (1) must be employed in compliance with the basic values and principles

referred to in section 195 of the Constitution of the Republic of South Africa, 1996, and factors to be taken into account when making appointments include, but are not limited to-

- (a) the ability of the candidates;
- (b) the principle of equity;
- (c) the need to redress past injustices; and
- (d) the need for representivity.

(8) The council must adopt a Disciplinary Code for lecturers and support staff in accordance with the college statute.]

"20. Appointment of lecturers and support staff

(1) (a) The lecturer establishment of a public college is determined by the allocation of posts by the Director-General from the Department of Higher Education and Training from the post establishment created by the Minister and lecturers appointed in such posts are employed in terms of this Act.

(b) The non-lecturer establishment of a public college is determined in terms of the Public Service Act, 1994 (Proclamation 103 of 1994).

(2) Subject to this Act, the Labour Relations Act, 1995 (Act 66 of 1995), and any other applicable law, a public college may establish posts for lecturers and employ lecturers additional to the establishment referred to in subsection (1) (a).

(3) Subject to this Act, the Labour Relations Act, 1995 (Act 66 of 1995), and any other applicable law, a public college may establish posts for non-lecturers and employ non-lecturer staff additional to the establishment referred to in subsection (1) (b).

(4) (a) The Council must determine the functions, conditions of service and privileges of the staff contemplated in subsections (2) and (3), subject to the applicable labour law and paragraph (b).

(b) The salary payable to a lecturer contemplated in subsection (2) shall not be less than the salary paid to an educator-

(i) contemplated in subsection (1) (a); and

(ii) who performs the same or equivalent work as such lecturer, unless collectively agreed to in a bargaining council established in terms of the Labour Relations Act, 1995 (Act 66 of 1995).

(5) A member of staff may not conduct business directly or indirectly with the public further education and training college which business is in conflict of interest with the public further education and training college concerned.

(6) Business referred in subsection (5) relates to conduct that is aimed at receiving any direct or indirect financial personal gain that does not form part of the employment relationship contemplated in subsection (1).

(7) When presenting the annual budget contemplated in section 22(4) the council must provide sufficient details of any posts envisaged in terms of subsections (2) and (3), including the estimated cost relating to the employment of staff in such posts and the manner in which it is proposed that such cost will be met.

(8) The staff contemplated in subsections (2) and (3) must be employed in compliance with the basic values and principles referred to in section 195 of the Constitution, and factors to be taken into account when making appointments include but are not limited to-

(a) The ability of the candidates;

(b) The principle of equity;

(c) The need to redress past injustices; and

(d) The need for representation.”.

Amendment of section 22 of Act 16 of 2006

13. Section 22 of the principal Act is hereby amended by –

- (a) the substitution for subsection (1) of the following subsection:

“(1) The **[Member of the Executive Council]** Minister must from money appropriated **[by the provincial legislature]** fund public colleges on a fair, equitable and transparent basis;”;
- (b) the substitution for subsection (2) of the following subsection:

“(2) The **[Member of the Executive Council]** Minister may, subject to the norms and standards determined in terms of section 23, impose-

 - (a) any condition in respect of an allocation of funding contemplated in subsection (1); and
 - (b) different conditions in respect of different public colleges, different further education and training programmes or different allocations, if there is a reasonable basis for such differentiation.”.
 - (c) the substitution for subsection (3) of the following subsection:

“(3) Subject to the requirements in the minimum norms and standards determined in terms of section 23, the **[Member of the Executive Council]** Minister must determine further appropriate measures for the redress of past inequalities.”.
 - (d) the substitution for subsection (4) of the following subsection:

“(4) The **[Member of the Executive Council]** Minister must, on an annual basis, provide sufficient information to public colleges regarding the funding referred to in subsection (1) to enable the colleges to prepare their budgets for the next financial year.”.

Amendment of section 23 of Act 16 of 2006

14. Section 23 of the principal Act is hereby amended by the substitution for the following section:

“Subject to the Constitution and this Act, the Minister must, after consultation with **[the Council of Education Ministers and]** the Minister of Finance, determine minimum norms and standards for the funding of public colleges.”.

Amendment of section 24 of Act 16 of 2006

15. Section 24 of the principal Act is hereby amended by –

(a) the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) money raised by means of loans, subject to the approval of the **[Member of the Executive Council] Minister;**”;

(b) the substitution for subsection (2) of the following subsection:

“(2) A public college may not raise money by means of a loan or overdraft without the approval of the **[Member of the Executive Council] Minister;**”;

(c) the substitution of subsection (3) of the following subsection:

“(3) If a person lends money or grants an overdraft to a public college without the approval of the **[Member of the Executive Council] Minister**, the State and the college are not bound by the contract of lending money or an overdraft agreement.”.

Amendment of section 25 of Act 16 of 2006

16. Section 25 of the principal Act is hereby amended by –

(a) the substitution for subsection (1) of the following subsection:

“(1) the council of a public college must, in a manner determined by the **[Member of the Executive Council] Minister** –

- (a) keep records of all its proceedings;
- (b) keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions of the public college as a whole, of its substructures and of other bodies operating under its auspices; and
- (c) implement internal audit and risk management systems which are not inferior to the standards contained in the Public Finance Management Act, 1999 (Act 1 of 1999).

(b) the substitution for subsection (3) of the following subsection:

“(3) The council of a public college must, in respect of the preceding financial year, and by a date or dates and in the manner determined by the **[Member of the Executive Council] Minister**, provide the **[Member of the Executive Council] Minister** with –

- (a) a report on the overall management and governance of the college;
- (b) a report on the overall performance of students on the programmes offered by the college;
- (c) a duly audited statement of income and expenditure; and
- (d) a balanced sheet and cash flow statement.”; and

(c) the substitution for subsection (4) of the following subsection:

“(4) The council of a public college must provide the **[Member of the Executive Council] Minister** with such additional information as the **[Member of the Executive Council] Minister** may require.”.

Amendment of section 26 of Act 16 of 2006

17. Section 26 of the principal Act is hereby amended by –

- (a) the substitution for subsection (1) of the following subsection:
“(1) If the management staff or council of a public college fails to comply with any provision of this Act under which an allocation **[from money appropriated by the provincial legislature]** is paid to the college, or with any condition subject to which any allocation is paid to the public college, the **[Member of the Executive Council]** Minister may call upon the management staff or council to comply with the provision or condition within a specified period.”.
- (b) the substitution for subsection (2) of the following subsection:
“(2) If the management staff or council thereafter fails to comply with the provision or condition timeously, the **[Member of the Executive Council]** Minister may withhold payment of any portion of any allocation **[appropriated by the provincial legislature]** in respect of the public college concerned.”.
- (c) the substitution for subsection (3) of the following subsection:
“(3) Before taking action under subsection (2), the **[Member of the Executive Council]** Minister must-
- (a) give notice to the management staff or council of the public college concerned of the intention so to act;
 - (b) give such management staff or council a reasonable opportunity to make representations; and
 - (c) consider such representations.”; and

(d) the substitution for subsection (4) of the following subsection:

“(4) If the **[Member of the Executive Council]** Minister acts under subsection (2), a report regarding the action must be tabled **[in the provincial legislature by the Member of the Executive Council]** as soon as reasonably practical after the action.”.

Amendment of section 28 of Act 16 of 2006

18. Section 28 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) registered or recognised as a juristic person in terms of the Companies Act, 1973 (Act 61 of 1973) or the Companies Act, 2008 (Act 71 of 2008), upon enactment; and”.

Amendment of section 31 of Act 16 of 2006

19. Section 31 of the principal Act is hereby amended by the deletion of paragraph (b) of subsection (2):

“(b) **[The registrar must notify the relevant Head of Department of the registration of a private college in that province.(c)]** If the registrar decides not to grant the application, the registrar must advise the applicant in writing of the decision and furnish the applicant with written reasons for the decision.”.

Amendment of section 41B of Act 16 of 2006

20. Section 41B of the principal Act is hereby amended by –

(a) the deletion of subsection (2) and (3):

“**[(2) In determining national policy for education and training at colleges, the Minister shall take into account the competence of the**

provincial legislatures in terms of section 146 of the Constitution, and the relevant provisions of any provincial law relating to education.]

[(3) Subject to the Constitution, national policy shall prevail over the whole or a part of any provincial policy on further education and training if there is a conflict between the national and provincial policies.]”.

Amendment of section 41D of Act 16 of 2006

21. Section 41D of the principal Act is hereby amended by –

(a) the substitution for subsection (1) of the following subsection:

“(1) Policy contemplated in section 41B shall be determined by the Minister [after consultation with the Council of Education Ministers established by section 41H].

Amendment of section 41E of Act 16 of 2006

22. Section 41E of the principal Act is hereby amended by –

(a) the deletion of paragraph (a) of section 41E:

“(a) [the Council of Education Ministers established by section 41H, in respect of further education and training at colleges; and (b)].”.

Amendment of section 41G of Act 16 of 2006

23. Section 41G of the principal Act is hereby amended by –

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

“(2) Each directive issued in terms of subsection (1) shall comply with the provisions of any law establishing a national qualifications framework[, and **shall be formulated after consultation with the Council of Education Ministers referred to in section 41D(1).**].”.

(b) the substitution for subsection (3) of the following subsection:

“(3) The Department shall undertake the monitoring and evaluation contemplated in subsection (1) by analysis of data gathered by means of further education and training management information systems, or by other suitable means[, **in co-operation with provincial departments of education**].”.

(c) the deletion of subsection (5):

“(5) The Department shall prepare and publish a report on the results of each investigation undertaken in terms of subsection (3) [**after providing an opportunity for the relevant provincial education department to comment, which comment shall be published with the report**].”.

(d) the deletion of subsection (6):

“**[(6) If a report prepared in terms of subsection (5) indicates that the standards of further education and training provision, delivery and performance in a province do not comply with the Constitution or with the policy determined in terms of section 41B, the Minister shall inform the provincial political head of education concerned and require the submission, within 90 days, of a plan to remedy the situation.]**”.

(e) the substitution for subsection (7) of the following subsection:

“(3) A plan in compliance with Public Finance Management Act, 1999 (Act 1 of 1999), **[required by the Minister in terms of subsection (6)]** shall be prepared by the **[provincial education department concerned, in consultation with the Department, and the]** Minister and the Minister shall

table the plan in Parliament. [with his or her comments within 21 days of receipt, if Parliament is then in session, or, if Parliament is in recess, within 21 days after the commencement of the first ensuing session of Parliament.]”.

Amendment of section 41H of Act 16 of 2006

24. Section 41H of the principal Act is hereby deleted:

“[41H (1) There is hereby established a council, called the Council of Education Ministers, consisting of-

- (a) the Minister, who is the chairperson; and**
- (b) every provincial political head of education.**

(2) The Director-General shall attend meetings of the Council of Education Ministers in order to report on the proceedings of the Heads of Education Departments Committee established by section 411, and to advise on any other matter relating to the responsibilities of the Department.

(3) The chairpersons of the Portfolio Committee on Higher Education and Training of the National Assembly and of the Select Committee on Education and Recreation of the National Council of Provinces may attend meetings of the Council of Education Ministers.

(4) The functions of the Council of Education Ministers shall be to--

- (a) promote national further education and training which take full account of the policies of the government;**
- (b) share information and views on all aspects of further education and training in the Republic; and**

(c) co-ordinate action on matters of mutual interest to the national and provincial governments.

(5) The Council of Education Ministers may draw up such rules regarding the convening of its meetings, the frequency of its meetings, the procedure at its meetings, including the quorum for its meetings, and any other administrative or procedural matter it may deem necessary or expedient for the proper performance of its functions or the exercise of its powers.

(6) The proceedings of the Council of Education Ministers shall not be invalid merely by virtue of the fact that there is a vacancy in the Council.]”.

Amendment of section 41I Act 16 of 2006

25. Section 41I of the principal Act is hereby amended by –

(a) the substitution for paragraph (c) of subsection (2) for the following paragraph:

“(c) co-ordinate administrative action on matters of mutual interest to the **[higher education and training d]**Departments; and

(b) the deletion for paragraph (d) of subsection (2):

“**[(d) advise the Department on any matter contemplated in sections 41B to 41G and 41J in respect of further education and training, or on any other matter relating to the proper functioning of the national further education and training system.]**”.

Amendment of section 42 of Act 16 of 2006

26. Section 42 of the principal Act is hereby amended by the deletion of subsection (2) -
- “[(2) A provincial department of education or college must, on the request of the Director-General, provide him or her with any relevant information required to comply with subsection (1).]”.**

Amendment of section 44 of Act 16 of 2006

27. Section 44 of the principal Act is hereby amended by –
- (a) the substitution for subsection (1) of the following subsection:
- “(1) A public college must prepare a strategic plan contemplated in the norms and standards for each financial year, which must be approved by the council and submitted to the **[Member of the Executive Council] Minister** at least 30 days before the commencement of the financial year.”.
- (b) the substitution for subsection (2) of the following subsection:
- “(2) A public college must prepare and submit to the **[Member of the Executive Council] Minister** an annual report in respect of-
- (a) its performance; and
- (b) its use of available resources.”.
- (c) the substitution for subsection (3) of the following subsection:
- “(3) The Minister **[or Member of the Executive Council]** must publish the reports in a manner determined by the Minister **[or Member of the Executive Council]**.”.

Amendment of section 45 of Act 16 of 2006

28. Section 45 of the principal Act is hereby amended by –

- (a) the substitution for subsection (2) of the following subsection:
“(2) Every college must provide such information about the college as is required by the **[Head of Department or the]** Director-General **[in consultation with the Head of Department]**.”.
- (b) the substitution for subsection (3) of the following subsection:
“(3) The **[Head of Department,]** Director-General and any college must provide such information about the college or the quality of the further education and training as is required by the NBFET.

Amendment of section 46 of Act 16 of 2006

29. Section 46 of the principal Act is hereby amended by –

- (a) the substitution for subsection (1) of the following subsection:
“(1) The **[Member of the Executive Council]** Minister may appoint a person to conduct an investigation at a public college if the council of the college requests the appointment of such a person or if-
- (a) circumstances arise at the colleges that-
 - (i) involve financial or other maladministration of a serious nature;
 - or
 - (ii) seriously undermine the effective functioning of the college; and
 - (b) the council of the college has failed to resolve such circumstances; and
 - (c) the appointment is in the interests of further education and training in an open and democratic society.”; and
- (b) the substitution for subsection (2) of the following subsection:
“(2) The person appointed in terms of subsection (1) must, in terms of the terms of reference specified by the **[Member of the Executive Council]** Minister-

- (a) within 30 days of his or her appointment, conduct an investigation at the public college in question; and
 - (b) within 60 days after his or her appointment-
 - (i) report in writing to the **[Member of the Executive Council]** Minister the findings of his or her investigation; and”.
- (c) the substitution for subsection (3) of the following subsection:

“(3) The **[Member of the Executive Council]** Minister must as soon as practicable furnish a copy of the report referred to in subsection (2) to the council concerned.”.
- (d) the substitution for subsection (4) of the following subsection:

“(4) If an audit of the financial records of a public college, or an investigation by the person as contemplated in subsection (1), reveals financial or other maladministration of a serious nature at a public college or the serious undermining of the effective functioning of a public college, the **[Member of Executive Council may, after consultation with the]** Minister may after consultation with **[and]** the council of the public college concerned, if practicable, and despite any other provision of this Act, appoint a person as administrator to take over the authority of the council or the management of the college and such person may perform all the functions relating to governance or management on behalf of the college for a period determined by the **[Member of the Executive Council]** Minister, which period may not exceed two years.”.
- (e) the substitution for subsection (5) of the following subsection:

“(5) The **[Member of the Executive Council]** Minister may extend the period referred to in subsection (4) once for a further period not exceeding six months.

Amendment of section 47 of Act 16 of 2006

30. Section 47 of the principal Act is hereby amended by –

(a) the substitution for subsection (1) of the following subsection:

“(1) The council of a public college may, after consultation with interested parties and with the approval of the **[Member of the Executive Council] Minister**, change the name of the public college.

(b) the substitution for subsection (2) of the following subsection:

“(2) The **[Member of the Executive Council] Minister** must, by notice in the Gazette, publish the change of name of such college.”.

Amendment of section 49 of Act 16 of 2006

31. Section 49 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (3) of the following paragraph:

“(c) Any claim for damage or loss contemplated in paragraph (a) must be instituted against the **[Member of the Executive Council] Minister** concerned.”.

Amendment of section 50 of Act 16 of 2006

32. Section 50 of the principal Act is hereby amended by –

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

“(2) The **[Member of the Executive Council] Minister** may, on such conditions as he or she may determine, delegate the performance of any of his or her functions under this Act, to-

(a) any employee in a provincial department responsible for education and training; or

(b) any organ of state.”.

Amendment of section 54 of Act 16 of 2006

33. Section 54 of the principal Act is hereby amended by –

(a) the substitution for subsection (1) of the following subsection (1):

“(1) The principal, vice-principal, lecturers and support staff employed by the **[State]College on posts approved by the Minister as fully funded posts at 1 January 2012,** continue to be so employed until appointed in terms of this Act. “.

(b) the substitution for subsection (3) of the following subsection (3):

“(3) The Education Labour Relations Council (ELRC) and the **[PSCBC] GPSSBC** continue to be the bargaining council to determine salaries and conditions of employment until the parties agree to establish a new structure relevant to public colleges.

Transitional arrangements

34. The following transitional arrangements shall apply:

(1) The principal and vice-principals posts which are transferred from the Provincial Education Department to the Department of Higher Education and Training, in terms of section 14 of the Public Service Act, 1994 (Proc 103 of 1994) continue to exist.

(2) Personnel support services to colleges situated in provinces, both at district and head office, must be identified in accordance with section 14 of the Public Service Act, even if such a person is appointed as an educator in terms of the

Employment of Educators Act, 1998 (Act 76 of 1998) and must be transferred to the post establishment of the Department of Higher Education and Training.

(3) The Director-General of the Department of Higher Education and Training must identify the suitable office within provinces from which the support staff will function.

(4) The provincial offices contemplated in subsection (3) will provide-

(a) support to the further education and training colleges with regard to planning, coordination, monitoring and reporting of statutory responsibilities assigned to the Minister and adhere to and respect the statutory assignment of functions and responsibilities to the Further Education and Training Council; and

(b) perform any function delegated by the Minister or the Director-General, to the manager in the provincial office.

(5) Any disciplinary measures relating to employment of staff as contemplated in subsection (4) will continue under the framework that authorized the commencement of that procedure of the institution.

(6) The process will be transferred to be completed by the respective authority of the Department of Higher Education and Training.

(7) If any person occupying a lecturer's post as contemplated in section 54(1) of this Act, such post must be converted into an equivalent public service post and the incumbent will continue with employment in the converted post under the prescripts and conditions as set out in the Public Service Act, 1994 (Proc 103 of 1994).

(8) If any discrepancy exists between a condition of service relating to an educator's post and the public service post, then the conditions of the public service post will prevail.

(9) Notwithstanding subsection (8), during the translation of the post, any condition attached to an educator's post that is more beneficial to the incumbent continues to exist as a benefit personal to that incumbent, until the condition of the public service post are similar or better.

Short title

35. This Act is the Further Education and Training Colleges Amendment Act, 2011 and will come into operation on a date to be determined by the Minister and published in a *Government Gazette*.

MEMORANDUM ON THE OBJECTS OF THE FURTHER EDUCATION AND TRAINING COLLEGES AMENDMENT BILL, 2011

1. MAIN OBJECT OF BILL

- 1.1** To amend the Further Education and Training Colleges Act, 2006, so as to remove all references to provincial authority; to substitute functions previously assigned to the Member of the Executive Council with the Minister; to remove all references to the Head of Department and substitute with the Director-General; to provide for the prohibition of a member of Council or a member of staff to conduct business, directly or indirectly with the public further education and training college which business is in conflict of interest with the concerned public further education and training college; to provide for transitional arrangements with regard to public service posts and educator posts, staff, disciplinary measures; and policy made by the Member of the Executive Council under the principal Act or any provincial law, necessary for the effective governance, management and funding of public further education and training colleges; and to provide for matters connected therewith.
- 1.2** The Further Education and Training Colleges Act, 2006 (Act 16 of 2006), (the FETC Act), is the principal Act that is amended by this Bill.

2. MAIN FEATURES OF BILL

2.1 FETC Act (clauses 1 to 11; 13 and 26 to 33)

- 2.2.1** The Bill seeks to amend the Act so as to remove all references to provincial authority; to substitute functions previously assigned to the Member of the Executive Council with the Minister; to remove all references to the Head of Department and substitute with the Director-General.

2.2 FETC Act (clauses 20 to 24 and 34)

2.2.2 The Bill seeks to provide for transitional arrangements with regard to public service posts and educator posts, staff, disciplinary measures; and policy made by the Member of the Executive Council under the principal Act or any provincial law, necessary for the effective governance, management and funding of public further education and training colleges.

3. CONSULTATION

The Bill will be published in the *Government Gazette* for public comment.

4. FINANCIAL IMPLICATOINS

Costs follow functions, therefore current budgets earmarked for Further Education and Training Colleges and reflected on provincial budgets, will follow the functions to the national Department of Higher Education and Training. Such funds will therefore be reverted to the national budget; and costs for publication of this Bill.

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 76 of the Constitution, since it is still a concurrent legislative competency of the national and provincial governments. Once the proposed amendment to Schedule 4 to the Constitution, namely "Education at all levels, excluding tertiary education" has been amended, to substitute that for "school education" and comes into effect, this Bill will then only become a section 75 Bill.

- 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, 2003 (Act No. 41 of 2003), since it does not contain any provisions pertaining to customary law or to the customs of traditional communities.

HIGHER EDUCATION LAWS AMENDMENT BILL, 2011**(Section 75 Bill)****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.

BILL

To amend the Higher Education Act, 1997, so as to provide for the prohibition of council members and staff conducting business with the public higher education institution concerned; and to provide for matters connected therewith; to amend the National Student Financial Aid Scheme Act, 1999, so as to amend the power of the Minister to intervene by way of an administrator in the case of poor or non performance or maladministration by the Board; and to provide for Ministerial power to remove the Board, as well as the procedure for such removal; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: –

Amendment of section 27 of Act 101 of 1997

1. Section 27 of the Higher Education Act, 1997, is hereby amended by the substitution for subsection (7) of the following subsection:

“(7) **[The]** A member**[s]** of a council-

- (a) must be a person**[s]** with knowledge and experience relevant to the objects and governance of the public higher education institution concerned; **[and]**

- (b) must participate in the deliberations of the council in the best interests of the public higher education institution concerned; and
- (c) must declare any business, commercial or financial activities undertaken for financial gain that may raise a possible conflict of interest;
- (d) may not place him or her under any financial or other obligation to outside individual or organization that might seek to influence performance and function of the council;
- (e) (i) may not have a conflict of interest with the institution;
(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 must, before or during such meeting, declare the interest;
(iii) must in writing, inform the chairperson of a meeting, before a meeting, of a conflict or possible conflict of interest of a council member of which such person may be aware;
(iv) is obliged to excuse him or herself from the meeting during the discussion of the matter and the voting thereof.”.

Amendment of section 34 of Act 101 of 1997

2. Section 34 of the Higher Education Act, 1997, is hereby amended by the insertion for subsection (4) of the following subsections:

“(4) A member of staff may not conduct business directly or indirectly with the public higher education institution which business is in conflict of interest with the public higher education institution.

(5) Business referred in subsection (4) relates to conduct that is aimed at receiving any direct or indirect financial personal gain that does not form part of the employment relationship contemplated in subsection (1).”.

Amendment of section 47 of Act 101 of 1997

3. Section 47 of the Higher Education Act, 1997, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) An independent assessor appointed under section 44, must within **[30 days]** a period determined by the Minister, but not exceeding 90 days and on the terms specified by the Minister –

- (a) conduct an investigation at the public higher education institution concerned;
- (b) report in writing to the Minister on the findings of his or her investigations; and
- (c) suggest appropriate measures.”.

Insertion of sections 4A and 4B in Act 56 of 1999

4. The National Student Financial Aid Scheme Act, 1999, is hereby amended by the insertion after section 4 of the following sections:

“4A Intervention by Minister

(1) The Minister may direct the board to take any action specified by the Minister if the NSFAS-

- (a) is in financial difficulty or is being otherwise mismanaged;
- (b) is unable to perform its functions effectively due to dissension among board members;
- (c) has acted unfairly or in a discriminatory or inequitable way towards a person to whom it owes a duty under this Act;
- (d) has failed to comply with any law;
- (e) has failed to comply with any directive given by the Minister under this Act; or

(f) has obstructed the Minister or a person authorised by the Minister in performing a function in terms of this Act.

(2) A directive contemplated in subsection (1) must state-

- (a) the nature of the deficiency;
- (b) the steps which must be taken to remedy the situation; and
- (c) a reasonable period within which the steps contemplated in paragraph (b) must be taken.

(3) If the board fails to remedy the situation within the stated period, the Minister may-

- (a) after having given the board a reasonable opportunity to be heard; and
- (b) after having afforded the board a hearing on any submissions received, replace the members of the board where circumstances so require, appoint a person as an administrator who shall take over the relevant function of the board.

(4) If the Minister appoints an administrator to take over a function of the board in terms of subsection (3)-

- (a) the administrator may do anything which the board might otherwise be empowered or required to do by or under this Act, to the exclusion of the board;
- (b) the board may not, while the administrator is responsible for that function, exercise any of its powers or perform any of its duties relating to that function;
- (c) an employee or a contractor of the board must comply with a directive given by administrator.

(5) Once the Minister is satisfied that the board is once more able to perform its functions effectively, the Minister must terminate the appointment of the administrator.

(6) The costs associated with the appointment of an administrator shall be for the account of the NSFAS.

4B Failure to perform a function

(1) If the board fails to comply with any function contemplated in section 4, or fails to comply with any condition or directive or action assigned to it by the Minister in terms of section 4(g) within the specified period set by the Minister, the Minister may appoint an administrator in terms of section 17A to rectify the failure of the board.

(2) The administrator contemplated in subsection (1), must build the necessary capacity and introduce any reasonable corrective measures to remedy the situation and to provide continuity when the board resumes the function in terms of the Act after the appointment of the administrator lapsed.

(3) Before taking action under subsection (1), the Minister must-

- (a) give notice to the board of the intention so to act;
- (b) give the board a reasonable opportunity to make representations; and
- (c) consider such representations.”.

Insertion of section 7A in Act 56 of 1999

5. The National Student Financial Aid Scheme Act, 1999, is hereby amended by the insertion after section 7 of the following section:

“7A Dissolution of the board

- (1) The Minister may dissolve the NSFAS board if-
- (a) the conduct of the board members necessitates such action and if the dissolution of the board is in the best interest of higher education and NSFAS;
 - (b) more than 75% of the members of the board has resigned; or
 - (c) less than 75% of members resign and the recommendation by the administrator that the efficient and effective governance and management

of the NSFAS would be prejudiced to the aims, purpose and objectives of the Act.

(2) If the Minister dissolves the board as contemplated in subsection (1), the Minister must-

- (a) appoint an administrator if such administrator as contemplated in section 17A has not already been appointed; and
- (b) reappoint a new board as contemplated in section 5, within the timeframe applicable to the appointment of the administrator.”.

Insertion of Chapter 2A in Act 56 of 1999

6. The National Student Financial Aid Scheme Act, 1999, is hereby amended by the insertion after Chapter 2 of the following Chapter:

“CHAPTER 2A

17A Appointment of administrator

- (1) If –
- (a) an audit of the financial records of NSFAS; or
 - (b) a report by a Ministerial Committee; or
 - (c) the board requests the appointment; or
 - (d) circumstances arise at the NSFAS that-
 - (i) involve financial or other maladministration of a serious nature; or
 - (ii) seriously undermine the effective functioning of the NSFAS; or
 - (e) the board has failed to resolve such circumstances; and
 - (f) the appointment is in the interests of the NSFAS and higher education in an open and democratic society;

the Minister may, after consultation with the board, if practicable, and notwithstanding any other provision of this Act, appoint a person as administrator to take over the authority of the board or the management of the NSFAS and perform the functions relating to governance or management on behalf of the

NSFAS for a period determined by the Minister, and such period may not exceed two years.

(2) The Minister may extend the period referred to in subsection (1) once for a further period not exceeding six months.

(3) Notwithstanding subsection (1), if a board is deemed to have resigned because 75 per cent or more of the members of the board resign at a meeting of the board, the Minister must appoint a person for a period determined by the Minister as an administrator to-

- (a) take over the authority of the board;
- (b) perform the board's functions relating to governance; and
- (c) ensure that a new board is constituted.

17B Assistance to administrator

An administrator appointed under section 17A may, with the concurrence of the Minister, appoint any other person with suitable knowledge and experience to assist him or her in the performance of his or her functions.

17C Remuneration and allowances

The Minister, with the concurrence of the Minister of Finance, may determine the remuneration and allowances to be paid to the administrator and any other person appointed under section 17B."

Repeal of section 23 of Act 56 of 1999

7. Section 23 of the National Student Financial Aid Scheme Act, 1999, is hereby repealed.

Short title

8. This Act is the Higher Education Laws Amendment Act, 2011.

MEMORANDUM ON THE OBJECTS OF THE HIGHER EDUCATION LAWS AMENDMENT BILL, 2011

1. MAIN OBJECT OF BILL

1.1 The main object of the Bill is to amend the Higher Education Act, 1997, so as to provide for the prohibition of council members and staff conducting business with the public higher education institution concerned; and to provide for matters connected therewith; to amend the National Student Financial Aid Scheme Act, 1999, so as to amend the power of the Minister to intervene by way of an administrator in the case of poor or non performance or maladministration by the Board; and to provide for Ministerial power to remove the Board, as well as the procedure for such removal; and to provide for matters connected therewith.

1.2. The laws that the Bill seeks to amend are—

- the Higher Education Act, No. 101 of 1997 (the HE Act); and
- the National Student Financial Aid Scheme Act, No. 59 of 1999 (the NSFAS Act).

2. MAIN FEATURES OF THE BILL

2.1 HE Act (clauses 1 to 3)

2.1.1 The main features of the amendment to the Higher Education Act, 1997, are to provide for the prohibition of council members and staff conducting business with the public higher education institution concerned; and to amend the period by which an independent assessor is appointed by the Minister in terms of section 44 of the said Act.

2.2 NSFAS Act (clauses 4 to 8)

This Bill seeks to amend the power of the Minister to intervene by way of an administrator in the case of poor or non performance or maladministration by the Board; and to provide for Ministerial power to remove the Board, as well as the procedure for such removal; and to provide for matters connected therewith.

3. CONSULTATION

The Bill will be published for public comment in the *Government Gazette*, providing all stakeholders and the public with an opportunity to comment.

4. FINANCIAL IMPLICATOINS FOR STATE

Apart from publication costs, no extra financial implications 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, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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, 2003 (Act No. 41 of

2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

SKILLS DEVELOPMENT AMENDMENT BILL, 2011
(SECTION 75 BILL)

GENERAL EXPLANATORY NOTE

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

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

BILL

To amend the Skills Development Act, 1998, so as to effect the necessary amendments to the provisions which were excluded in the transfer of the statutory functions to the Minister of Higher Education and Training; to provide for the prohibition of a SETA member not to conduct business with the concerned SETA; to provide for the disclosure of conflict of interest; and to repeal section 23, 24, 25, 26, 26K, 26L, 26M, 26N and Schedule 4 of the Act; to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Substitution of section 1 of Act 97 of 1998

1. Section 1 of the Skills Development Act, 1998, is hereby amended-

(a) by the deletion of the Definition "Employment Services":

“[Means the provision of the service of-

(a) advising or counseling of workers on career choices either by the provision of information or other approaches;

(b) assessment of work-seekers for-

(i) entry or re-entry into labour market; or

(ii) education and training;

- (c) the reference of work-seekers-**
 - (i) to employers to apply for vacancies; or**
 - (ii) to training providers for education and training;**
- (d) assistance of employers by**
 - (i) providing recruitment and placement services;**
 - (ii) advising them on the availability of work-seekers with skills that match their needs;**
 - (iii) advising them on the retrenchment of employees and the development of social plans;**
- (dA) procuring for or providing to a client other persons to render services to or perform work for the client, irrespective of by whom those persons are remunerated; [or]**
- (e) any other prescribed employment service;].”**

Amendment of section 2 of Act 97 of 1998

2. Section 2 of the principal Act is hereby amended-

- (a) by the deletion in subsection (1) of paragraph (g) and (h); and**
 - “[(g) to assist-**
 - (i) work-seekers to find work;**
 - (ii) retrenched workers to re-enter the labour market;**
 - (iii) employers to find qualified employees; and**
 - (h) to provide and regulate employment services;].”**
- (b) by the deletion in subsection (2) (a) of the subparagraph (v), (vi) and (xii).**
 - “[(v) provincial offices of the Department;**
 - (vi) labour centres of the Department;**
 - (vii) accredited trade test centres;].”**

Amendment of section 5 of Act 97 of 1998

3. Section 5 of the principal Act, 1998 is hereby amended (a) 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

4. Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister may, in the prescribed manner, establish a sector education and training authority with a constitution subject to section 13 for any national economic sector.”.

Substitution of section 9A of Act 97 of 1998

5. Section 9A of the principal Act is hereby amended by the substitution for section 9A of the following section:

“9A Mergers and dissolution of SETAs

(1) The Minister may, after consulting the National Skills Authority and the SETAs in question and subject to section 9 (2), merge two or more SETAs.

(2) The Minister must approve a constitution for the merged SETAs subject to section 13 of this Act.

(3) The Minister must publish a notice in the *Gazette* containing-

- (a) the date of the merger;
 - (b) the sector for which the merged SETA is established; and
 - (c) any other matter necessary to prescribe in order to establish the merges.
- (4) On the establishment of the merged SETA, all assets, rights, liabilities and obligations of the merged SETAs devolve upon and vest in the merged SETA.
- (5) The Minister may, after consulting the National Skills Authority and the SETA in question, dissolve a SETA if the SETA is unable to continue to perform its functions.
- (6) The Minister must publish a notice in the *Gazette* -
- (a) containing the date of the dissolution of the SETA;
 - (b) setting out the manner in which, and by whom, the SETA is to be wound-up;
 - (c) setting out how any assets remaining after the winding-up of the SETA must be distributed; and
 - (d) providing for any other matter necessary for the dissolution and winding-up of the SETA in question.
- (7) No transfer duty, any other fee or costs are payable in respect of the transfer of any assets, rights, liabilities or obligations between SETAs as contemplated in this section.
- (8) The Registrar of Deeds on presentation of proof of any transfer of immovable property contemplated in this section, must endorse the title deeds accordingly and make the entries in the relevant register that are necessary to register the transfer.

(9) (Notwithstanding sections 197 and 197A of the Labour Relations Act, 1995 (Act 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 merged single SETA (herein referred to as 'the new employer') as from the date of the merger contemplated in subsection (1), but any redeployment of an employee as a consequence of the merger is subject to applicable labour legislation.

(10) If two or more SETAs are merged into a single SETA as contemplated in subsection (1), all the rights and obligations between the old employers and each employee at the time of the merger continue in force as if they were rights and obligations between the new employer and each employee and anything done before the merger by or in relation to the old employers is considered to have been done by or in relation to the new employer.

(11) A merger referred to 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 SETA as from the date of the merger 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 merger, such enquiry or proceedings continue in terms of the codes and rules applicable to the relevant SETA immediately prior to the merger.

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

(15) Notwithstanding subsection (1), the old employer may undertake rationalization of its workforce according to operational requirements in accordance with section 189 of the Labour Relations Act, 1995 (Act 66 of 1995), prior to the date of the merger contemplated in subsection (1).

(16) If two or more SETAs are merged into a single SETA as contemplated in subsection (1), the new single SETA will continue with its activities in terms of this Act.

(17) (a) The single SETA in subsection (1) is deemed to be a SETA established under section 9.

(b) The Minister must, after consultation with the National Skills Authority and SETAs that are to be merged, determine by notice-

- (i) the date of establishment of the SETAs;
- (ii) the type and name of the SETAs; and

(18) The Minister must in the notice establish an interim board for a period not exceeding six months, to perform the functions relating to the governance of the single SETA.

(19) The Minister may extend the period referred to in subsection (18) once for a further period not exceeding six months.

(20) The members of the interim board contemplated in subsection (18) are appointed by the Minister and consist of-

- (a) the chairperson; and
- (b) a minimum of six members and a maximum of eight members.

(21) The members contemplated in subsection (20) (b) -

(a) must be appointed by the Minister from nominations received from the SETAs concerned.

(22) Apart from the functions contemplated in subsection (18) the interim board must in particular-

- (a) appoint an interim body to manage the day-to-day activities of the SETA;
- (b) ensure that a board is constituted in terms of this Act.

(23) Any decision of the interim board which may affect the right of any structure of the new SETAs, may only be taken in consultation with the Minister.

(24) Upon a written request by the Minister and within 60 days thereof, each of the SETAs referred to in subsection (1) must provide the Minister with no fewer than four nominations for appointment of the members.

(25) If any of the SETAs fail to provide the nominations in terms of this Act, the Minister may appoint the members from the nominations received from the other SETA concerned, or at his or her discretion.”.

Insertion of section 9B in Act 97 of 1998

6. The principal Act is hereby amended by the insertion after section 9A of the following section:

“9B Incorporation of subdivisions of a SETA

(1) The Minister may, after consulting the National Skills Authority and by notice in the Gazette, incorporate a subdivision of a SETA into another SETA.

(2) The assets, liabilities, rights and obligations of the subdivisions concerned devolve upon the SETA with which the subdivision has been incorporated in a manner agreed by the board of the SETA concerned or failing such agreement, in a manner determined by the Minister after consulting such boards.”.

Insertion of section 9C in Act 97 of 1998

7. The principal Act is hereby amended by the insertion after section 9B of the following section:

“9C Closure of a SETA

(1) The Minister may, after consulting the National Skills Authority and by notice in the Gazette, close a SETA.

(2) If a SETA is closed under subsection (1), all assets and liabilities of such SETA must after closure be dealt with according to law by the Minister and any assets remaining after payment of all liabilities vest in the Minister.”.

Amendment of section 10A of Act 97 of 1998

8. Section 10A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) for each financial year, every SETA must conclude with the Director-General a service level agreement concerning:

- (a) the SETA’s performance of its functions in terms of this Act and the national skills development strategy;
- (b) the SETA’s annual business plan; **[and]**
- (c) any assistance that Director-General is to provide to the SETA in order to enable it to perform its functions;

- (d) the SETA's performance of its obligations and functions as a national public entity in terms of the Public Finance Management Act, 1999 (Act 1 of 1999); and
- (e) SETA's performance to assist the Minister in complying with his or her responsibility in accordance with government policy determined by the President on service delivery.

Substitution of section 11 of Act 97 of 1998

9. Section 11 of the principal Act is hereby amended by the substitution for section 11 of the following section:

"11 Establishment and Composition of SETA Board

- (1) The Minister must appoint the Chairperson for a respective SETA.
- (2) The Minister must appoint 14 members to a respective SETA board unless the Minister has approved additional members through a deviation to the standard Constitution as contemplated in section 13(2).
- (3) The Minister may appoint a member contemplated in subsection (2) who compliance with the following criteria that:
 - (a) represent the interest identified by National Skills Development Strategy as contemplated by section 5(ii);
 - (b) achieve sufficient gender representation;
 - (c) achieve sufficient demographic representation;
 - (d) the organization of community which consists of non-government organization identified by the Minister after consultation with National Skills Authority that represent community interest related to educational training including but not limited to educational institutions identified in

- terms of Higher Education Act, 1997 (Act 101 of 1997) and Further Education and Training Colleges Act, 2009 (Act 16 of 2008); and
- (e) achieve representation of disadvantaged persons or communities which have been prejudiced by past racial and gender discrimination in relation to access to skills development programs.
- (4) A SETA board may consist only of members representing-
- (a) organized labour;
 - (b) organized employers, including small business;
 - (c) relevant government departments; and
 - (d) if the Minister, after consultation with the members referred to in paragraph (a), (b) and (c), considers it appropriate for the sector-
 - (i) any interested professional body;
 - (ii) any bargaining council with jurisdiction in the sector;
 - (iii) organization of community which have a identifiable interest in education in particular development skills.
- (5) The organization of community and development as contemplated in subsection (4)(iii) consists of those non-governmental organization identified by the Minister after consultation with National Skills Authority that represent community interest relating to education and training including but not limited to educational institutions identified in terms of Higher Education Act, 1997 (Act 101 of 1997) and Further Education and Training Colleges Act, 2008 (Act 16 of 2008).

Insertion of section 11A in Act 97 of 1998

10. The principal Act is hereby amended by the insertion after section 11 of the following section:

"11A DISQUALIFICATION OF A MEMBER TO A SETA BOARD

- (1) A person will not qualify to be appointed to the board if such person-

- (a) is not a citizen of and not permanently resident in the Republic;
- (b) is subject to an order of a competent court declaring such person to be mentally ill or disordered;
- (c) is convicted, after the commencement of this Act, 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 this Act 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 6 of 1958) the Corruption Act, 1992 (Act 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 12 of 2004),
 - (ii) elsewhere, of any offence corresponding materially with any offence referred to in subparagraph (i); and
 - (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty;
- (e) has been convicted of an offence under this Act.

Insertion of section 11B in Act 97 of 1998

11. The principal Act is hereby amended by the insertion after section 11A of the following section:

"11B Disclosure of conflict of interests

(1) A person may not be appointed on the board, 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 SETAs;
- (b) or his or her spouse, partner or associate, holds an office in or is employed by any SETA, organization 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 board it appears that any board member has or may have an interest which may cause such conflict of interest to arise on his or her part-
- (a) such board member must forthwith fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining board members to discuss the matter and determine whether such board 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 board members regarding such determination, must be recorded in the minutes of the meeting in question.
- (3) If any board 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 board is held or in any manner whatsoever participates in the proceedings of the board, the relevant proceedings of the board will be null and void."

Substitution of section 13 in Act 97 of 1998

12. Section 13 of the principal Act is hereby repealed and substituted for section 13 of the following section:

“13 Constitution of SETA

- (1) For the purpose of the establishment of a SETA, the Minister must approve the constitution of the SETA in accordance with the standard constitution contained in Schedule 4 of this Act;
- (2) Notwithstanding, subsection (1) the Minister may approve an amendment to the constitution of a SETA if:
- (a) The respective SETA apply to the Minister to deviate from the standard constitution as contained in schedule 4 of this Act;
 - (b) The application contemplated in paragraph (a) must motivate the extend of the deviation accompanied by a detail motivation to justify the requested deviation
 - (c) The Minister may consider a deviation contemplated in paragraph (a) if an exceptional need relating to the respective SETA as being identified based on the following criteria:
 - (i) the deviation must be unique to the functions and operation of SETA;
 - (ii) be justified within the directives given by the National Skills Development Strategy; and
 - (iii) recommended by the National Skills Authority as essential deviation needed to the operational needs of the respective SETA.

Insertion of section 13A in Act 97 of 1998

13. The principal Act is hereby amended by the insertion after section 13 of the following section:

13A Prohibition of SETA member or staff member from conducting business with SETA

Any member of SETA or member of staff of a SETA –

- (a) (i) must declare any business, commercial or financial activities undertaken for financial gain that may raise a possible conflict of interest;
- (ii) may not conduct business directly or indirectly with the SETA, which business is in conflict of interest with the SETA;
- (iii) business referred to in subsection (i) relates to conduct that is aimed at receiving any direct or indirect financial personal gain that does not form part of the employment relationship.
- (b) (i) may not have a conflict of interest with the SETA;
- (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 must, before or during such meeting, declare the interest;
- (iii) must in writing, inform the chairperson of a meeting, before a meeting, of a conflict or possible conflict of interest of a SETA member of which such person may be aware;
- (iv) is obliged to excuse him or herself from the meeting during the discussion of the matter and the voting thereof.”.

Amendment of section 22 of Act 97 of 1998

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

”[(1) Subject to the laws governing the public service, the Director-General must ensure that the Department, including its provincial offices and labour centres, has the personnel and financial resources necessary for the performance of its functions in terms of this Act.]”.

Repeal of section 23 of Act 97 of 1998

15. Section 23 of the Skills Development Act is hereby repealed.

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.

Repeal of section 26K of Act 97 of 1998

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

Repeal of section 26L of Act 97 of 1998

20. Section 26L of the principal Act is hereby repealed:

Repeal of section 26M of Act 97 of 1998

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

Repeal of section 26N of Act 97 of 1998

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

Amendment of section 32 of Act 97 of 1998

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

“[(2) A labour inspector appointed in terms of section 63 of the Basic Conditions of Employment Act may issue an order in the prescribed form requiring any person to cease conducting the business of a private employment services agency in contravention of this Act.]”.

Amendment of section 36 of Act 97 of 1998

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

“[(o) circumstances specified in the regulations under which a private employment services agency may charge fees in respect of any services provided by private employment services agencies and the maximum fees that may be charged;

(p) services for which private employment services agencies may not charge work-seekers fees;

(q) a form for registering private employment services agencies;].”.

Amendment of Schedule 2A of Act 97 of 1998

25. Schedule 2A of the principal Act, is hereby amended by the deletion of item 7:

“[7 National Productivity Institute

(1) On a date determined by the Minister by notice in the Gazette, all the assets, rights, liabilities and obligations of the National Productivity Institute, a company incorporated in terms of section 21 of the Companies

Act, 1973 (Act 61 of 1973), registration number 75/04742/08, are transferred to Productivity South Africa.

(2) The National Productivity Institute must thereafter be wound up in accordance with its articles of association.]”.

Amendment of Schedule 4 of Act 97 of 1998

26. Schedule 4 of the principal Act is hereby amended by the repeal of the Schedule and to substitute it with the following Schedule 4.

Short title

27 (1) This Act is called the Skills Development Amendment Act, 2011 and will come into effect on a date to be determined by the Minister in a Government Gazette.

(2) Despite subsection (1), the Minister may not publish the notice unless the Minister of Labour has approved that sections 17 to 25 will become effective

(3) Different dates for different sections of this Act to become effective may be determined by the Minister when the notice as contemplated in subsection (1) is published.

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

1. MAIN OBJECT OF THE BILL

The Bill seeks to amend the following Acts:

- 1.1 Skills Development Act 97 of 1998.

2. MAIN FEATURES OF THE BILL

To amend the Skills Development Act, 1998, so as to effect the necessary amendments to the provisions which were excluded in the transfer of the statutory functions to the Minister of Higher Education and Training; to provide for the prohibition of a SETA member not to conduct business with the concerned SETA; to provide for the disclosure of conflict of interest; and to repeal section 23, 24, 25, 26, 26K, 26L, 26M, 26N and S1chedule 4 of the Act; to provide for matters connected therewith.

Clause 5

This clause amends section 9 of the SDA, which provides for the Minister to merge and dissolve SETAs after consultation with the NSA and the procedures to be followed.

Clause 6

This clause seek to provide the Minister with powers to incorporate the subdivision of a SETA with another, and as a result the assets , liabilities, rights and obligations of the subdivisions concerned devolve upon a SETA with which the subdivision has been incorporated

Clause 7

This clause provides among others that the assets remaining, after payment of all liabilities, rest with the Minister.

Clause 9

This clause provides for the establishment and composition of a SETA.

Clause 10 and 11

These clauses regulate the eligibility of individuals to be members of the SETA board without serving their personal interests.

Clause 12 and 13

The SDA provides for the constitution of the SETA and this clause spells out the manner in which the Minister can adopt the constitution of a SETA and provide the exception to the general rule.

Clause 14 to 25

These clauses deal with deletions and repeals.

Clause 27

This clause deals with the short title.

3. OTHER DEPARMENTS OR BODIES CONSULTED

After publication for comment, the Bill will be referred to the National Treasury.

4. FINANCIAL IMPLICATIONS FOR THE 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.

Schedule 4

[Insert SETA logo]

CONSTITUTION

of the

[insert name]

SECTOR EDUCATION AND TRAINING AUTHORITY

[“insert SETA acronym”]

Date [insert date]

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DEFINITIONS

In this Constitution, any word or expression to which a meaning has been assigned in the Skills Development Act, 1998 (Act 97 of 1998) bears that meaning and, unless the context indicates otherwise –

- (a) **“Act”** means the Skills Development Act, 1998 (Act 97 of 1998).
- (b) **“the Accounting Authority”** means the board or other controlling body of the SETA.
- (c) **“Alternate”** means a person appointed to act in the absence of a Member of the Accounting Authority, as contemplated by clause 8(8) of this Constitution.
- (d) **“Chairperson”** means the independent Chairperson of the Accounting Authority, appointed in terms of clause 10 of this Constitution.
- (e) **“Chief Executive Officer”** means the Chief Executive Officer of the SETA, appointed in terms of clause 12 of this Constitution.
- (f) **“Committee”** means any permanent, ad hoc or subcommittee of the SETA, established by the Accounting Authority or this Constitution.
- (g) **“Constituency”** means Organised Labour, Organised Employers, relevant government departments or other organisations as contemplated in Schedule 4 to this Constitution.
- (h) **“Constitution”** means this Constitution and includes the schedules to this Constitution.
- (i) **“Department”** means the Department of Higher Education and Training.
- (j) **“Designated Groups”** means black people, women and people with disabilities.
- (k) **“Director-General”** means the Director-General of Higher Education and Training.
- (l) **“ETQA”** means an Education and Training Quality Assurance body, as contemplated in section 5(1) (a) (ii) (bb) of the SAQA Act.
- (m) **“Executive Authority”** means the Minister of Higher Education and Training, who, in terms of the Act, is accountable to Parliament for skills development.
- (n) **“Executive Committee”** means the Executive Committee established in terms of clause 9 of this Constitution.
- (o) **“Member”** means a natural person appointed as a member of the Accounting Authority or any of its chambers or committees.
- (p) **“Minister”** means the Minister of Higher Education and Training.
- (q) **“MQA”** means the Mining Qualifications Authority.
- (r) **“NQFA”** means the National Qualification Framework Act, 2008 (Act 67 of 2008).
- (s) **“National Skills Fund”** means the National Skills Fund, established in terms of section 27 of the Act.
- (t) **“NSA”** means the National Skills Authority, established in terms of section 4 of the Act.
- (u) **“NSDS”** means the National Skills Development Strategy, referred to in section 5(1) (a) (ii) of the Act.
- (v) **“Organised Employers”** means any employers organisation in the Sector, registered in terms of the Labour Relations Act, 1995 (Act 66 of 1995), as well as any other association of employers in the Sector, established for the purpose of representing the interests of its members as employers.

- (w) **“Organised Labour”** means any trade union or federation of trade unions in the Sector, registered in terms of the Labour Relations Act, 1995 (Act 66 of 1995), as well as any other association of employees in the Sector, representing the interests of its members as employees.
- (x) **“PFMA”** means the Public Finance Management Act, 1999 (Act 1 of 1999).
- (y) **“prescribed”** means prescribed by regulation in terms of the Act.
- (z) **“QCTO”** means the Quality Council for Trades and Occupations, established in terms of section 26G of the Act.
- (aa) **“SAQA”** means the South African Qualifications Authority established in terms of section 3 of the SAQA Act;
- (bb) **“SAQA Act”** means the South African Qualifications Authority Act, 1995 (Act 58 of 1995).
- (cc) **“SDLA”** means the Skills Development Levies Act, 1999 (Act 9 of 1999).
- (dd) **“Sector”** means the [insert name] Sector, as determined by the Minister in terms of section 9(2) of the Act.
- (ee) **“SETA”** means the [insert name] Sector Education and Training Authority, established by the Minister in terms of section 9 of the Act.
- (ff) **“SLA”** means a Service Level Agreement, as contemplated in section 10A of the Act.

3. BACKGROUND AND PURPOSE OF THIS CONSTITUTION

- (1) The Skills Development Act, 1998 (Act 97 of 1998) makes provision for the 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.
- (2) This Constitution was drawn up in accordance with the requirements of section 13, as further provided for in terms of section 9 (1) of the Act, and provides an institutional framework for the SETA to develop and implement national, sectoral and work-place 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.

4. EXECUTIVE AUTHORITY

- (1) The Executive Authority responsible for the SETA must exercise its powers and responsibilities to ensure that the implementation of the objectives and execution of the functions of the SETA comply with both the Act, NSDS and the policies of the Executive Authority and government.
- (2) In executing its accountability and responsibility functions, the Executive Authority must exercise its powers as provided for in terms of the Act, the Constitution, the PFMA and any other relevant legislation.

5. IDENTIFICATION OF THE 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.

(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, as determined by the Minister in terms of section 9(2) of the Act, is recorded in Schedule 1 to this Constitution, as amended from time for time.

(3) Organisations in the Sector

The trade unions, employer organisations and relevant government departments in the Sector are listed in Schedule 4 to this Constitution.

(4) Legal status

- (a) The SETA is a statutory body and juristic person.
- (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 as may be necessary in connection with any legal proceedings brought by or against the Authority.
- (c) The SETA and its Accounting Authority are governed by the Act, the PFMA, the SDLA, this Constitution and any other relevant legislation.

6. OBJECTIVES OF THE SETA

In performing its functions contemplated in the Act and in this Constitution, the SETA must seek to promote the objectives contemplated in clauses 5(1), 5(2) and 5(3) of this Constitution.

(1) General objectives

The general objectives of the SETA are to –

- (a) facilitate, coordinate and monitor the implementation of the NSDS in the [insert name] Sector;
- (b) identify skills shortages in the Sector;
- (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 work-places in the Sector, as well as the competitiveness of employers;

- (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;
- (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;
- (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;
- (p) promote effective communication between, and participation by bodies involved in skills development – both inside and outside the Sector;
- (q) co-operate with, and support the QCTO in such matters relating to QCTO functions and operations referred to in section 10 of the Act; and
- (r) to cooperate with, and support the functions of other agencies in matters related to skills development.

(2) Objectives in relation to employers in the Sector

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

- (a) identify skills needs in the work-place;
- (b) provide employees with opportunities to acquire new skills;
- (c) use their work-places 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 work-place;
- (f) support occupation-based learning interventions, linked to the objectives and mechanisms of the Employment Equity Act, 1998 (Act 55 of 1998);
- (g) ensure occupation-based learning of quality in the work-place; and
- (h) to develop appropriate partnerships with other public, private and non-governmental organisations in promoting skills development.

(3) Objectives in relation to employees in the 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;
- (b) take responsibility for their learning by utilising the learning opportunities offered to them; and
- (c) to provide input into, and feedback on occupation-based learning programmes that they undertake.

7. POWERS AND FUNCTIONS OF THE SETA

(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 [insert name] SETA must, in accordance with any prescribed requirements –

- (a) develop a Sector Skills Plan within the NSDS framework;
- (b) implement its Sector Skills Plan by –
 - (i) establishing learning programmes;
 - (ii) approving work-place 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
 - (iv) by 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) improving the facilitation and assessment of learning; and
 - (iii) by assisting with conclusion of agreements for learning programmes;
- (d) register agreements for learning programmes;
- (e) support and form partnerships with other agencies on matters related to skills development;
- (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) submit to the Director-General any budgets, reports and financial statements on its income and expenditure, which it is required to prepare in terms of the PFMA, as well as plans and reports on the implementation of its SLA;
- (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, as well as between skills development providers and the labour market;
- (i) formulate policies and procedures of the SETA;
- (j) appoint the employees necessary for the performance of its functions;
- (k) promote the national standard, established in terms of section 30B of the Act; and
- (l) perform any other functions and duties imposed on it by the Act, the SDLA, other relevant legislation and this Constitution, or that are consistent with the purposes of the Act, the SDLA, any other relevant legislation and this Constitution.

(2) SETA powers

- (a) The SETA has all such powers as are necessary to enable it to perform its duties referred to in section 10(1) of the Act; and

- (b) such other powers conferred on the SETA by this Act or the SDLA and this Constitution.

7. SERVICE LEVEL AGREEMENT AND STRATEGIC PLAN OF THE SETA

For every financial year the SETA must conclude an SLA with the Director-General, concerning –

- (a) the SETA's performance of its functions in terms of the Act and the NSDS;
 - (b) the SETA's annual Strategic Plan;
 - (c) any assistance that the Director-General is to provide to the SETA in order to enable it to perform its functions; and
 - (d) any other prescribed matters.
- (1) The SLA must be concluded in the prescribed manner and within the period prescribed in the Act.
 - (2) If the [insert name] 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.
 - (3) The Minister's determination in respect of the SLA is final and binding.
 - (4) The SETA must submit a Strategic Plan, as required in terms of Regulation 30 of the Treasury Regulations.

8. THE ACCOUNTING AUTHORITY

(1) Role and functions of the Accounting Authority

The role and functions of the Accounting Authority are to –

- (a) govern and manage the SETA;
- (b) ensure that the SETA achieves the objectives contemplated in clause 5 of this Constitution and performs the functions contemplated in clause 6 of this Constitution;
- (c) provide effective leadership and to ensure that the SETA implements the goals of the NSDS and the Performance Agreement with the Minister;
- (d) to set a strategic direction for the SETA;
- (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; and
- (i) apply for the establishment of the SETA in terms of section 9(1) of the Act, read together with the Regulations Regarding the Establishment of Sector Education and Training Authorities, 7 September 1999, as amended by General Notice R106 in the *Government Gazette* 27254 of February 2005.

(2) Exercising of powers by the Accounting Authority

The Accounting Authority may –

- (a) exercise all such powers as are necessary to enable it to perform its functions, as required in terms of any relevant legislation and this Constitution;
- (b) take decisions on any matter related to the performance of its functions as provided for in this Constitution and the Act;
- (c) establish committees of the SETA to assist it in performing its functions;
- (d) ensure that its members, as well as the members of the committees established by it, comply with the Code of Conduct in Schedule 2 to this Constitution; and
- (e) exercise any other powers conferred on it by the Act, the PFMA, the SDLA, any other relevant legislation and this Constitution.

(3) Delegation of powers and functions

- (a) The Accounting Authority may, subject to any conditions that it may impose, delegate any of its functions to –
 - (i) the Executive Committee;
 - (ii) the Chief Executive Officer; or
 - (iii) to any other committee or chamber of the SETA.
- (b) Every delegation by the Accounting Authority must be in writing, stating the terms and conditions of the delegation and it must be recorded.
- (c) The Accounting Authority is not divested of any power, duty or function by virtue of any delegation and may vary or set aside any decision taken in terms of any delegation.

(4) Size of the Accounting Authority

- (a) The composition of the Accounting Authority may not exceed fifteen (15) Members.
- (b) This maximum number of Members includes any appointments made by the Minister.

(5) Composition of the Accounting Authority

- (a) The Accounting Authority comprises of Members representing the following constituencies and stakeholders in the Sector –
 - (i) Organised Labour;
 - (ii) Organised Employers, including small businesses;
 - (iii) relevant government departments; and
 - (iv) any interested professional body or bargaining council with jurisdiction in the Sector, which the Minister considers appropriate for the sector.
- (b) The Accounting Authority must consist of an equal number of members representing Organised Employers and Organised Labour in the Sector.
- (c) Each constituency and stakeholders represented on the Accounting Authority must be represented by Members who are sufficiently representative of designated groups.
- (d) The members of the SETA are listed in Schedule 4 to this Constitution.

- (e) The Accounting Authority may, with good cause, recommend to the Minister the removal of any trade union or employer organisation as a member listed in Schedule 4 to this Constitution.

(6) Nomination and appointment of Members of the Accounting Authority

- (a) At least three (3) months before the expiry of the term of office of Members of the Accounting Authority, the Chief Executive Officer must invite nominations of members, for the forthcoming term of office, from Organised Labour, Organised Employers and relevant government departments within the Sector, as provided for in clause 8(5) of this Constitution, with the exception of the ministerial appointees as provided for in clause 8 (6) (c) of this Constitution.
- (b) Members of the Accounting Authority must be nominated, taking into consideration –
 - (i) the knowledge, skills and experience required to serve on the Accounting Authority, as described in the eligibility criteria in Schedule 4 to this Constitution;
 - (ii) the requirements in section 14(3) of the Act, stipulating that the Accounting Authority should be sufficiently representative of the designated groups; and
- (c) Such nominations should be submitted to the Minister for consideration and to recommend these to Cabinet for approval.
- (d) Three (3) persons must be ministerial appointees to the Accounting Authority, including the Chairperson who will have no voting rights.
- (e) Two of the ministerial appointees will have full voting rights.
- (f) The Minister will call for nominations of candidates, referred to in clause 8 (6) (e) of this Constitution, in terms of the nomination processes as stipulated in clause 8(6) of this Constitution.
- (g) The applications for nominations of the 2 ministerial appointees must be submitted to the Minister for consideration, and to recommend these to Cabinet for approval after the closing date stipulated in the call for nominations.
- (h) The Chief Executive Officer must provide Members of the Accounting Authority with formal letters of appointment signed by the Minister, on the SETA letterhead, which sets out their duties and responsibilities of Members following their appointment.
- (i) Members must accept their appointment, and being bound by the Code of Conduct of the SETA, in writing to the Minister on or before the induction date provided for in clause 8(10) of this Constitution.

(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 Organised Employers on the Accounting Authority.

- (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.
- (c) If organisations cannot reach agreement on the proportional allocation of Members then the principle of proportionality must be applied on the basis of the formula provided in Schedule 4 to this Constitution.

(8) Alternates to Members of the Accounting Authority

- (a) The organisations contemplated in clause 8(5) (a) of this Constitution may nominate Alternates for appointment in the same manner as Members.
- (b) The number of Alternates at any meeting is limited to no more than one third of the number of Members contemplated in Schedule 4 to this Constitution.

(9) Term of office of Members of the Accounting Authority

Subject to clause 8(13) of this Constitution, the term of office of Members of the Accounting Authority is five (5) years. A Member is eligible for reappointment upon expiry of that Member's term of office, with the provision that reappointed members may not exceed one third of the members of the Accounting Authority in any one term.

(10) Induction and capacity building of Members

The Accounting Authority must ensure that –

- (a) within one (1) month of taking office, the appointed Members 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;
- (b) within three (3) months of taking office, Members attend a training session that covers –
 - (i) the role and responsibilities of the Accounting Authority; and
 - (ii) the role and responsibilities of Members, as well as how to discharge their duties;
- (c) Members receive training and development on an ongoing basis to enhance or update their understanding of the operations of the Accounting Authority and matters relevant to their oversight roles as contemplated in Schedule 2 to this Constitution.

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

- (a) The Chief Executive Officer must set a date for the first meeting of the term of office, which must be convened within two (2) 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 of their term of office.
- (c) At that meeting, Members must –
 - (i) set the dates for forthcoming meetings during that year; and
 - (ii) take such other decisions as are necessary to ensure the prompt and effective functioning of the SETA.
- (d) In the event that the chairperson of the Accounting Authority has not yet been appointed, the Chief Executive Officer presides over the first meeting of the Accounting Authority, where after the members must choose a temporary chairperson from their own ranks, for each meeting convened until such time as the chairperson has been appointed by the Minister.

(12) Suspension of Members of the Accounting Authority

The Accounting Authority may, on reasonable grounds, recommend to the Minister the suspension of a Member pending an inquiry.

(13) Vacation of office by Members of the Accounting Authority

- (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;
 - (ii) no longer satisfies the eligibility requirements contemplated in Schedule 4 to this Constitution;
 - (iii) dies; or
 - (iv) is removed from office as contemplated in clause 8(13) (b) of this Constitution.
- (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 for three (3) consecutive meetings of the Accounting Authority without prior and written permission of the Accounting Authority, unless the Member shows good cause;
 - (iii) due to permanent incapacity;
 - (iv) for serious misconduct;
 - (v) for failure to comply with any provision in the Code of Conduct contained in Schedule 2 to this Constitution;
 - (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 –
 - (i) give notice of its intention to do so to that Member;
 - (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.

- (d) The Chairperson must inform the Member in writing and in sufficient detail of—
 - (i) the allegations against the Member; and
 - (ii) 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.

(14) Filling vacancies in the Accounting Authority

If a Member of the Accounting Authority vacates office before the expiry of that Member's term of office for any reason contemplated in clause 8(13) of this Constitution, the procedure, as contained in clause 8(6) of this Constitution, applies with the necessary changes.

(15) Application to the Accounting Authority by a new organisation

Any organisation that meets the criteria stated in clause 8(5)(a) of this Constitution, and which are not listed in Schedule 4 to this Constitution, may apply to the Accounting Authority to be so listed. The Accounting Authority must forward the application to the Minister for determination that such an organisation belongs in the Sector and grant approval or not approve.

9. EXECUTIVE COMMITTEE OF THE ACCOUNTING AUTHORITY

(1) Establishment of the Executive Committee of the Accounting Authority

The Accounting Authority must establish an Executive Committee with the approval of the Minister, which should comprise a maximum of five (5) Members including the Chairperson.

(2) Composition of the Executive Committee

In the Executive Committee, Organised Labour and Organised Employers must have equal representation.

(3) Term of office of the Executive Committee

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 the Executive Committee

- (a) Subject to the directions of the Accounting Authority, the Executive Committee is responsible for overseeing the management of the SETA.
- (b) Without limiting its functions, the Executive Committee must—
 - (i) supervise the proper management of all financial matters;
 - (ii) coordinate and supervise the implementation of the Accounting Authority's policies;
 - (iii) monitor national policy issues and developments and make recommendations regarding the adoption of policies by the Accounting Authority;

- (iv) coordinate the functioning of committees, chambers and structures of the SETA and 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 and manage budgets and business plans of the SETA;
- (vii) monitor the relations and interactions of the SETA with other SETAs, as well as with other agencies on matters related to skills development; and
- (viii) perform any other function or duty, delegated to it by the Accounting Authority or conferred upon it by this Constitution.

10. CHAIRPERSON OF THE ACCOUNTING AUTHORITY

(1) Appointment of the Chairperson of the Accounting Authority

- (a) Only the Minister is authorised to appoint the Chairperson of the Accounting Authority.

(2) Term of office of the Chairperson

- (a) The term of office of the Chairperson is five (5) years.

(3) Functions of the Chairperson

The Chairperson of the Accounting Authority must –

- (a) preside at meetings of both the Accounting Authority and the Executive Committee;
- (b) conduct such meetings in accordance with clause 11 of this Constitution; and
- (c) perform any further duties or functions generally associated with the position of the Chairperson.

(4) Temporary absence or incapacity of the Chairperson

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

(5) Vacating of the office of the Chairperson

- (a) The Chairperson must vacate office if he or she –
 - (i) is removed as a Member as contemplated in clause 8(13) of this Constitution;
 - (ii) is unable to attend meetings of the Accounting Authority and Executive Committee for a consecutive period of six (6) months; or
 - (iii) if the Minister, on good cause shown, decides to terminate his or her appointment.

- (b) Where the Chairperson has vacated office, the same process followed to appoint the Chairperson, applies to the appointment of a new chairperson.

11. MEETING PROCEDURES

(1) Meetings of the Accounting Authority

- (a) The Accounting Authority must meet at least once per quarter – i.e. four (4) times per year.
- (b) An Annual General Meeting must be advertised in the media at least thirty (30) days prior to the meeting.
- (c) The business of the Accounting Authority at the Annual General Meeting must include consideration of –
 - (i) the annual financial statements of the Accounting Authority;
 - (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 business plan.
- (d) The business of the Accounting Authority at other Accounting Authority meetings includes:
 - (i) discussion of any matter referred to it or arising from the financial statements or reports;
 - (ii) discussion of any matter of which notice has been given to the Chairperson at least ten (10) days before the date of notice regarding the meeting;
 - (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) delegation of its functions, powers and duties to Members, employees or committees.

(2) Meetings of the Executive Committee

- (a) The Executive Committee must meet at least once a month, when necessary.¹
- (b) Meetings of the Executive Committee must comply with the procedures contemplated in clause 11 of this Constitution.

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

- (a) The Chairperson may, on grounds of urgency, call a special meeting of the Accounting Authority or Executive Committee on at least forty-eight (48) hours' notice, whether in the form of a physical meeting or by using any electronic medium.
- (b) If the Chairperson receives a request for a meeting, signed by at least fifty per cent (50%) 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, and that special meeting must be held within fifteen (15) working days of receiving such request.

¹The Executive Committee should meet between meetings of the Accounting Authority, and more often, only if urgent and pressing circumstances arise.

- (c) The chairperson of any committee of the Accounting Authority may, on grounds of urgency, call a special meeting on at least forty-eight (48) hours' notice, whether in the form of a physical meeting or by using any electronic medium.
- (4) Chairperson of meetings of the Accounting Authority and Executive Committee**
- (a) The Chairperson must preside at meetings of both the Accounting Authority and the Executive Committee.
- (b) If the Chairperson is absent from the meeting, Members present at the meeting must elect a Member from their own ranks to act as chairperson of that meeting.
- (5) Meeting procedures for all committees**
- (a) In respect of meetings of the Executive Committee or any other committee established by the Accounting Authority, whether in the form of a physical meeting or by using any electronic medium, the relevant chairperson must –
- (i) give at least ten (10) working days written notice of the proposed meeting to Members; and
 - (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 fifty per cent (50%) of the total number of Members plus one Member, with the provision that at least fifty per cent (50%) of the Members representing Organised Labour and at least fifty per cent (50%) of the Members representing Organised Employers are present.
- (c) If, within two (2) hours of the time fixed for a scheduled meeting, a quorum is not formed –
- (i) that meeting must stand adjourned to any other time later that day at the same venue; and
 - (ii) the Members present at the follow-up meeting will then constitute a quorum.
- (d) When a Member is unable to attend a meeting, such Member must inform the relevant chairperson no later than forty-eight (48) hours prior to the meeting.
- (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) Votes by proxy are not allowed.
 - (iii) Any decision at a meeting requires the support of at least fifty per cent (50%) plus one of the Members present.

- (iv) Decisions must be taken by way of a show of hands or, if at least fifty per cent (50%) 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.
- (f) The chairperson must ensure that –
 - (i) the minutes of each meeting are taken;
 - (ii) the minutes are forwarded to the Members within two (2) weeks of the meeting;
 - (iii) the minutes are tabled at the next meeting for approval by the Members; and that
 - (iv) approved minutes are retained in a record system.
- (g) The chairperson must sign the approved minutes as confirmation of their approval.

12. CHIEF EXECUTIVE OFFICER AND OTHER EMPLOYEES

(1) Appointments by the Accounting Authority

The Accounting Authority must –

- (i) within six months of taking office, after following a transparent process, recommend three (3) qualified or experienced candidates in accounting, financial and senior management matters for appointment to the position of the Chief Executive Officer by the Minister after approval by Cabinet;
- (ii) determine the terms and conditions of employment, including performance standards for senior employees; and
- (iii) as part of the employment contracts, provide comprehensive job descriptions, powers and functions, where possible.
- (iv) Notwithstanding any other provision herein contained, the term of office of the Chief Executive Officer is linked to the term of office of the Accounting Authority, subject to such Chief Executive Officer being retained for a further period of six (6) months in the event that the SETA is relicensed.

(2) Duties of the Chief Executive Officer

The Chief Executive Officer must –

- (i) implement the decisions of the Accounting Authority;
- (ii) manage the day-to-day affairs of the SETA;
- (iii) attend the meetings of the Accounting Authority and the Executive Committee;
- (iv) promote strategic planning and policy development;
- (v) ensure strict and responsible control of the finances of the SETA, in compliance with the financial management requirements in terms of the PFMA;

- (vi) supervise and direct the other employees of the SETA; and
- (vii) from time to time, perform such other functions as determined by the Accounting Authority or the Executive Committee.

13. FINANCES

(1) Sources of finance

The sources of finance for funding the activities of the SETA, as stipulated in section 14(1) of the Act are—

- (a) eighty per cent (80%) of the skills development levies, interest and penalties collected in respect of the SETA, as 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;
- (d) income earned on services rendered in the prescribed manner; and
- (e) money received from any other legitimate source.

(2) Investments

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

- (a) savings accounts, permanent shares or fixed deposits in any registered bank or other financial institution as 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 moneys received by the SETA may be used only in the prescribed manner and in accordance with any prescribed standards or criteria as per section 14(3) of the Act, to –

- (a) fund the performance of the functions as stipulated in this constitution and in line with NSDS; and
- (b) pay for its administration within the prescribed limit.

(4) Financial records of the SETA

- (a) The Accounting Authority must –
 - (i) prepare annual budgets, Annual Reports and financial statements in accordance with Chapter 6 of the PFMA;
 - (ii) furnish the Director-General with copies of all budgets, reports and statements contemplated in this Constitution, as well as any other information that the Accounting Authority is required to submit in terms of the PFMA;
 - (iii) keep full and proper records of the SETA's financial affairs;
 - (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;
 - (v) submit the financial statements referred to in clause 13(4)(a)(iv) of this Constitution within two (2) months after the end of the financial year to the Auditor-General for auditing; and

- (vi) within five (5) months of the end of a financial year and after adoption by the Accounting Authority, submit an Annual Report on its activities during that financial year to the Minister, as well as the financial statements for that financial year after the statements have been audited, and the Auditor-General's report on those statements.
- (b) The Annual Report and financial statements referred to in clause 13(4)(a)(i) of this Constitution 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 concerned;
 - (ii) include particulars of any material losses through criminal conduct, irregular, fruitless or wasteful expenditure; criminal or disciplinary steps taken as a consequence of such losses; any losses recovered or written off; any financial assistance received from the state and commitments made by the state on its behalf; and any other matters that may be prescribed.

(5) Audit of the 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
 - (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) Clause 13(5) (a) of this Constitution does not prevent the appointment of an independent auditor by the Minister and the Department to audit the accounts and financial statements of the SETA over and above that conducted by the Auditor General.

(6) Financial responsibility of the 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.

(7) Signatories to accounts

- (a) The Accounting Authority must appoint at least three (3) people, including the Chief Executive Officer, as signatories for each account of the SETA.
- (b) At least two (2) of the three (3) signatories, including the Chief Executive Officer, must be required to authorise any payment made by the SETA.

14. CODE OF CONDUCT

Adherence to the Code of Conduct

- (a) Members of the Accounting Authority, the committees and chambers established by the Accounting Authority, are bound by a Code of Conduct included as Schedule 2 to this Constitution.
- (b) This Code of Conduct binds Members in the performance and execution of their functions and duties. 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.

15. DISPUTE RESOLUTION

Any dispute concerning the interpretation or application of this Constitution must be determined in accordance with Schedule 3 to this Constitution.

16. INDEMNIFICATION

The SETA indemnifies office bearers, Members of the Accounting Authority and its committees, as well as employees of the Accounting Authority against any claim that may be made against them, which may arise during the course and scope of their employment or the performance of their duties, with the provision that 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.

17. AMALGAMATION AND DISSOLUTION OF THE 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.
- (2) 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. 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.

18. TAKING OVER THE ADMINISTRATION OF THE 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 *Government 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 the Minister is of the opinion that –
 - (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;

- (d) the SETA has failed to comply with its SLA; or
 - (e) that 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 publish a notice in the *Government Gazette*, appointing an Administrator and, in that notice, the Director-General –
- (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 (1) or more Members of the Accounting Authority for a reason as contemplated in clause 18(1) of this Constitution;
 - (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 *Government Gazette* in terms of clause 18(1) of this Constitution, the Minister may –
- (a) amend this Constitution;
 - (b) reinstate any of the Members of the Accounting Authority; and
 - (c) withdraw or amend any provision of the notice referred to in clause 18(2) of this Constitution, in terms of such conditions as the Minister considers appropriate to ensure that the SETA resumes the performance of its functions.
- (4) The Minister may act in terms of clause 18(1) of this Constitution, 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.

19. AMENDMENT OF THIS CONSTITUTION

- (1) The Minister, following consultation with the Accounting Authority, may amend this Constitution in the prescribed manner.
- (2) The Chairperson must give notice of any proposed amendment at least thirty (30) days before any meeting of the Accounting Authority is convened to discuss such amendment.
- (3) The Accounting Authority may propose amendments to the Constitution by a resolution supported by at least seventy-five per cent (75%) of its Members.
- (4) When the Accounting Authority has adopted a resolution proposing amendments to the Constitution, such proposals must be submitted to the Minister for consideration and a decision, accompanied by reasons document for such proposed amendments.
- (5) The SETA's Chief Executive Officer must ensure that copies of the proposed amendments, notifications of the meeting and the agenda are dispatched to all Members of the Accounting Authority at least thirty (30) days prior 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 Schedule 6 to this Constitution.
- (7) For the purposes of this clause, any amendment to a Schedule to this Constitution must be regarded as an amendment to this Constitution.

SCHEDULE 1: SCOPE OF THE AUTHORITY

1. Scope of coverage

The scope of coverage of the SETA, as determined by the Minister, is indicated in the table below².

SIC Code	Scope of Coverage / Description

SCHEDULE 2: CODE OF CONDUCT

1. INTRODUCTION

This document outlines the SETA's Code of Conduct ("the Code"), as provided for in terms of section 13(3) (x) of the Act.

2. APPLICATION OF THE CODE

- (1) All Members of the Accounting Authority, the chambers and any committee established by the Accounting Authority are subject to this Code of Conduct 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 –
 - (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;
 - (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

²SETAs must complete their scope of coverage as published in the *Government Gazette*.

- (f) conduct themselves ethically and in accordance with the principles of good governance.
- (3) To ensure the 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 –
- (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.
 - (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.
 - (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.
 - (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.
 - (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.

3. CONFLICT OF INTERESTS

- (1) Members of the Accounting Authority, the committees, the chambers and employees of the SETA (and their immediate families) are prohibited from being directly or indirectly associated with any business entity that provides goods or services to the SETA. Members (and their immediate family) are also prohibited from investing in or acquiring a financial interest, directly or indirectly, in relation to entities that provide goods and services to the SETA. In the case of such a relationship existing, Members must either relinquish their positions (directorships, shareholdings, etc) in such entities or step down/resign from the SETA concerned.
- (2) Any person referred to in 3(1), found to have a direct or indirect financial or business interest in the SETA must be removed from the office he or she is occupying at the SETA and such financial or business interests must be terminated by the SETA.
- (3) Any money paid by the SETA to a person or entity in contravention of 3(1) may be recovered and criminal charges laid against those involved.

4. GIFTS AND BENEFITS

- (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 of any law, 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.
- (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 (6) months of taking office, develop or cause to be developed clear policy guidelines for proposed inclusion in this Code of Conduct and which are in line with the amendments processes of the Constitution.

5. SETA RESOURCES

- (1) Members must 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.
- (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, should immediately and in confidence advise the Chairperson and/or the Minister.

6. ACCOUNTING STANDARDS

- (1) The [Insert name] SETA's financial books and records must reflect all transactions in an accurate and 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.

7. SECURITY OF INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

- (1) Only information necessary for SETA business may be collected, used and retained. Personal information of Members should be obtained directly from the person or organisation concerned. Only reputable and reliable sources should be used to supplement this information.
- (2) 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. Such information may only be disclosed if it must be disclosed in terms of the Act, the SDLA or any other applicable law or by an order of the court.
- (3) Members of the SETA may not copy or reproduce, by any means, confidential or privileged information acquired during the performance of their functions or

duties for use other than for the execution of their functions or duties in terms of the Act, the SDA or other relevant legislation or this Constitution.

- (4) Upon termination of a 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. 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.

8. CONTRAVENTION OF THE CODE

- (1) Any contravention of the Code is a serious offence and, depending on the circumstances, may result in criminal charges being laid.
- (2) Any Member, who believes that he or she may have contravened the Code, should advise the Chairperson immediately.
- (3) In the event that the Chairperson believes that he or she has contravened the Code, he or she should immediately advise the Minister and other members of the Accounting Authority in writing.
- (4) Any Member who believes that a contravention of the Code by another Member has taken place, should report this, preferably in writing, to the Chairperson, who must maintain confidentiality and ensure that the matter is investigated impartially.
- (5) Any Member, who believes that a contravention of the Code by the Chairperson has taken place, should 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 termination of employment or membership of a committee or chamber of the SETA.

9. DISCIPLINARY PROCEDURE

- (1) If a Member is reasonably suspected of having breached this Code, the Accounting Authority must recommend to the Minister for an enquiry to be held regarding the allegations against the Member.
- (2) The Accounting Authority must inform the Member, in writing, and in sufficient detail of –
 - (a) the allegations against the Member; and
 - (b) of the referral of the recommendation for an enquiry to the Minister.
- (3) 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.
- (4) The Member must be afforded the opportunity to present evidence in his or her defence at the enquiry. This includes calling witnesses, giving oral evidence and presenting documentary evidence, if any.
- (5) The person presiding at the inquiry must supply the Minister with written findings and recommendations.
- (6) When the person presiding at the enquiry decides to recommend the removal of a member, the process provided for removal must be followed.

- (7) If a Member is removed in terms of this disciplinary process, the constituency that the Member represented may nominate candidates for consideration to fill the vacancy, in line with the appointment process for a Member of the Accounting Authority.
- (8) If the transgression constitutes a criminal offence, the Accounting Authority must report or cause the matter to be reported to the South African Police Service.

SCHEDULE 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 and/or the Department.
- (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.
- (3) The Chief Executive Officer must, as soon as is reasonably practicable, refer the dispute to the Executive Committee and/or Department, which must endeavour to resolve the dispute by conciliation as soon as possible, but nevertheless within thirty (30) days of referral.
- (4) If the Executive Committee and/or Department fails to resolve the dispute within thirty (30) days of its referral, any party to the dispute may refer it for arbitration by an arbitrator appointed by the Minister in terms of the Arbitration Act, 1965 (Act 42 of 1965).
- (5) Within fourteen (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.
- (6) The costs of the arbitration must be borne equally by the parties to the dispute. The arbitrator may, however, make a different and appropriate awarding of costs, should –
 - (a) a party to the dispute, without reasonable cause, refuse or fail to attend the arbitration proceedings, or unduly delay arbitration proceedings; or
 - (b) should the arbitrator find that a party pursuing or resisting the dispute did so vexatiously or frivolously, or had no reasonable prospect of succeeding.

SCHEDULE 4: REPRESENTATION ON THE ACCOUNTING AUTHORITY**1. ORGANISATIONS IN THE SECTOR**

The trade unions, employer organisations and relevant government departments in the Sector, are listed below:³

- (1) **Trade unions:**
- (2) **Employer organisations:**
- (3) **Relevant government departments:**

2. MEMBERS OF THE ACCOUNTING AUTHORITY

(1) The Accounting Authority may not exceed fifteen (15) Members, comprising –

- (a) [insert number] Members representing Organised Labour within the scope of the SETA;
- (b) [insert number] Members representing Organised Employers within the scope of the SETA;
- (c) [insert number] Members representing relevant government departments within the scope of the SETA.
- (d) [insert number] Members representing interested professional bodies or bargaining councils with jurisdiction in the Sector as contemplated in section 11(d) of the Act.⁴
- (e) [Two (2)] Members who are ministerial appointees to the Accounting Authority,
- (f) The chairperson who is appointed by the Minister

(2) The Accounting Authority comprises –

- (a) **Organised Employers**
 - (i) [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 may nominate];
- (b) **Organised Labour**
 - (i) [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];
- (c) **Relevant government departments**
 - (i) [Insert the list of relevant government departments within the scope of the SETA, represented on the Accounting Authority, and the number of Members each may nominate];⁵
- (d) **Other organisations approved by the Minister**

³SETAs must list the trade unions, employer organisations and relevant government departments in their sectors.

⁴SETAs need not complete this section if the Minister approved such membership in terms of section 11(d) of the Act.

⁵SETAs need not complete this section if there are no relevant government departments in their sector.

- (i) [Insert the list of other organisations, approved by the Minister, where relevant – e.g. professional bodies and / or bargaining councils with jurisdiction in the Sector, and the number of Members each may nominate].⁶

3. ELIGIBILITY CRITERIA FOR ACCOUNTING AUTHORITY MEMBERS

(1) Minimum requirements for Members of the 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.
- (b) Members nominated for the Accounting Authority should comply with the following minimum requirements –
 - (i) They must be drawn from the ranks of senior officials in the organisation concerned.
 - (ii) When considered as a whole, they should be sufficiently representative of the designated groups.
 - (iii) They should have an appropriate blend of knowledge, skills and experience, as well as the personal attributes of objectivity, integrity and commitment.

(2) Selection criteria for Members of the Accounting Authority

Constituencies should use the following criteria as guidelines when nominating their representatives, to ensure that such representatives have the competence to make constructive contributions to the Accounting Authority. 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.
- (iii) The SETA's responsibility in respect of service delivery.
- (iv) The PFMA and financial management.
- (v) The Sector and/or the constituency represented by the Member.
- (vi) The strategic leadership role of the Accounting Authority.
- (vii) Education, training, skills development and human resources development.
- (viii) Quality assurance of learning provision.
- (ix) General management and business skills.
- (x) The communication and marketing role of an entity in relation to its stakeholders.
- (xi) Other areas of expertise relevant to the specific Sector.

(3) Disqualifying criteria

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

⁶SETAs need not complete this section if the Minister approved such membership in terms of section 11(d) of the Act.

- (i) is under a legal disability;
- (ii) is an unrehabilitated insolvent;
- (iii) was removed from an office of trust on account of misconduct;
- (iv) was, at any time, convicted of a criminal offence involving theft, fraud, corruption, forgery or any other act involving dishonesty;
- (v) is a Member of the Accounting Authority of another SETA; or
- (vi) if he or she, in terms of the Electoral Act No. 73 of 1998, has been nominated as a candidate for election as a Member of Parliament, a provincial legislature or any municipal council.

(4) Ensuring continuity in the 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.

4. FORMULA FOR THE PROPORTIONAL ALLOCATION OF MEMBERS

- (1) 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 clause 4(2) of this Schedule. The final number is subject to the maximum number of fifteen (15) Members on the Accounting Authority, as contemplated in clause 8(4)(a) of this Constitution.

(2) The formula is:

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

- (3) **A** represents either –

- (a) the number of employees employed by the members of an employers organisation listed in clause 1 of this Schedule; or
- (b) the number of members of a trade union listed in clause 1 of this Schedule.

- (4) **B** represents either –

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

- (5) **C** represents 10.

- (6) **D** represents either –

- (a) the number of Members whom 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.
- (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 –

$$\begin{array}{rcccl} 600 & & 10 & & 1,000 & & 10 \\ \hline & \times & & = & & \times & & = \\ 1,600 & & 1 & & 1,600 & & 1 & & 6.25 \end{array}$$

- (a) The trade union with 600 members would nominate forty percent (40%) of the five (5) Members representing Organised Labour.
- (b) The trade union with 1 000 members would nominate sixty percent (60%) of the five (5) Members representing Organised Labour.

SCHEDULE 5: COMMITTEES OF THE SETA

1. GENERAL GUIDELINES FOR ALL SETA COMMITTEES

- (1) The Accounting Authority has the power to constitute and dissolve any of its committees.
- (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 in Schedule 2 to this Constitution.
- (4) The membership of a committee –
 - (a) must comprise an equal number of Members representing Organised Labour and Organised Employers; and
 - (b) is not restricted to Members of the Accounting Authority.
- (5) Except for the Audit Committee, the chairperson of a committee must be a member of the Accounting Authority.
- (6) The members of committees must have the knowledge of, and experience in matters relevant to the duties and 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 duties and functions of the committee concerned.

- (8) Meetings of any committee, established in terms of this Constitution, must comply with the procedures contemplated in clause 11(5) of this Constitution.
- (9) All committees must meet as frequently as is reasonably required.
- (10) The committees established by the Accounting Authority must perform the functions identified in their terms of reference.

2. COMMITTEES TO BE ESTABLISHED BY THE SETA

- (1) The Accounting Authority must establish the following committees –
 - (a) Executive Committee, established in terms of clause 9 of this Constitution;
 - (b) Audit Committee, established in terms of section 77 of the PFMA, read together with chapter 9 of the Treasury Regulations made in terms of the PFMA;
 - (c) Finance and Remuneration Committee; and
 - (d) Governance and Strategy Committee.
- (2) The Accounting Authority may establish any other committee, including on a temporary basis, which it deems necessary for the effective functioning of the SETA, and it may determine its composition, duties and functions. Such committees may include:
 - (a) A Skills Planning Committee
 - (b) A Learnership Committee
 - (c) Regional Committees
 - (d) A Quality Assurance Committee
 - (e) Any other committee as required

3. AUDIT COMMITTEE OF THE SETA

(1) Establishment, composition and accountability of the Audit Committee

- (a) The Accounting Authority must appoint an Audit Committee as an independent body, which reports to the Accounting Authority.
- (b) The Audit Committee must be constituted in terms of section 77 of the PFMA, read together 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 be an independent person and may not be the Chairperson of the Accounting Authority. The chairperson of the Audit Committee must be knowledgeable about the status of the position, and have the requisite financial, business, leadership and communication skills.
- (f) The majority of the members of the Audit Committee must be independent persons and they must be financially literate. 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 of the Accounting Authority, the members of the Executive Committee and the Chief Executive Officer must not be members of the Audit Committee. They may attend Audit Committee meetings by invitation, if this is considered necessary by the chairperson of the Audit Committee.
- (h) The Audit Committee must have explicit authority to investigate any matters 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, as this may prejudice the objectivity of the Committee.
- (j) The Audit Committee's activities and effectiveness must be periodically reviewed and evaluated by the Accounting Authority. Its Terms of Reference must be reviewed and confirmed by the Accounting Authority on an annual basis.

(2) Functions of the Audit Committee

- (a) The Audit Committee must perform the functions of an audit committee as contemplated in the PFMA.
- (b) The Audit Committee must serve as a mechanism of the Accounting Authority to 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 on:
 - (i) the functioning and overall efficiency and effectiveness of the internal control system;
 - (ii) the functioning of the internal Audit Department;
 - (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;
 - (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;
 - (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;
 - (x) the SETA's compliance with relevant legal and regulatory requirements, as well as its Code of Conduct and the action taken to address any violations.

- (d) The Audit Committee must review the annual financial statements and establish whether they have been prepared in accordance with the PFMA and related Treasury Regulations, as well as the applicable accounting framework.
- (e) The Audit Committee must review and confirm the Internal Audit Department's Charter and the Internal Audit Plan, as well as the resources required to implement such plan.
- (f) The Audit Committee must develop a direct, strong and candid relationship with the external auditors. 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.
- (g) The Audit Committee must draw up a recommendation for the Accounting Authority regarding the appointment and removal of the internal and external auditors.
- (h) The Audit Committee must recommend such measures as, in the Committee's opinion, may be necessary to ensure the reliability, integrity and objectivity of the SETA.

4. FINANCE AND REMUNERATION COMMITTEE

Functions of the Finance and Remuneration Committee

- (a) The Finance and Remuneration Committee must perform all functions referred or 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, board and committee members and staff.
- (b) The Finance and Remuneration Committee must evaluate and make recommendations to the Accounting Authority in respect of the following financial matters of the SETA –
 - (i) the budget, cash flow and financial statements;
 - (ii) the financial policies and the Finance Division Plan;
 - (iii) actions to implement the recommendations of the Auditor-General's Report, as well as the internal and external audit reports;
 - (iv) the execution of the legally mandated financial functions; and
 - (v) the financial implications of policies, decisions and changes to the budget and Business Plan of the SETA.
- (c) The Finance and Remuneration Committee must advise the Accounting Authority on any matters 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.
- (d) The Finance and Remuneration Committee must evaluate and 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 –

- (i) Developing guidelines on, and reviewing the compensation and performance of staff members of the organisation.
 - (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.
 - (iv) Evaluating the Chief Executive Officer's performance against the above-mentioned goals and objectives.
 - (v) Review and reassessing the adequacy of the remuneration policy annually and recommending any changes to the Accounting Authority for approval.
 - (vi) Ensuring that the board 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 the said members.
- (e) The Finance and Remuneration Committee must present the Audit Committee with quarterly and annual financial statements.

5. QUALITY ASSURANCE COMMITTEE

Functions of the Quality Assurance Committee

- (a) The Quality Assurance Committee must have oversight powers of the execution of the quality assurance functions and obligations of the SETA, on behalf of the Accounting Authority.
- (b) The Quality Assurance Committee must evaluate and make recommendations to the Accounting Authority in respect of the following issues, relating to the quality assurance responsibilities of the SETA –
 - (i) The development of policies, principles, criteria and guidelines that are necessary to execute its quality assurance function in the Sector, as well as in the subsectors.
 - (ii) To monitor, evaluate and make recommendations on the execution of the quality assurance function to the Accounting Authority.
 - (iii) Promoting quality amongst constituent providers.
 - (iv) To quality assure the assessment and moderation of the specific qualifications and unit standards in the Sector and subsectors in terms of criteria that may be established for this purpose.
 - (v) Ensuring that the SETA maintains an appropriate data base for its quality assurance and certification functions.
 - (vi) Report to the Accounting Authority on such matters as it deems necessary.

SCHEDULE 5A: CHAMBERS OF THE SETA⁷**1. ESTABLISHMENT OF CHAMBERS**

- (1) The SETA, with the approval of the Minister, established the following chambers:

[Insert names of chambers]

- (2) The scope of coverage of the chambers are as follows:

[Insert scope of coverage of each chamber]

2. MEMBERS OF THE CHAMBERS⁸

- (1) Chambers –
- (a) must consist of an equal number of Members representing Organised Labour and Organised Employers; and
 - (b) are not restricted to Members of the Accounting Authority.

- (2) The [insert name] Chamber comprises:

- (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.]

- (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.]

⁷This Schedule should be completed only by those SETAs that, with the Minister's approval, established chambers as contemplated in section 12(1) of the Act.

⁸SETAs must define the membership of each chamber.

(c) Relevant government departments

[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.]⁹

(d) Additional Members

[Insert any additional Members of the Chamber, determined by the SETA.]¹⁰

3. CHAIRPERSON OF A CHAMBER

Each chamber must elect the chairperson.

4. FUNCTIONS OF THE CHAMBERS

- (1) The SETA chambers must perform those functions of the SETA delegated to them by the Accounting Authority, in terms of clause 8(3) of this Constitution.
- (2) The general guidelines for committees of the SETA, contained in clause 1 of Schedule 4 to this Constitution, apply to chambers.

SCHEDULE 6: PROCEDURE FOR AMENDING THIS CONSTITUTION**1. THE AUTHORITY INITIATES THE 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 –
 - (a) the text of the proposed amendments to the Constitution;
 - (b) a certified copy of its resolution approving the proposed amendments; and
 - (c) a brief memorandum explaining the rationale for such amendments.

After considering the submission, and after consultation with the Accounting Authority, the Minister may accept or reject the amendments proposed by the Authority wholly or in part.

2. THE MINISTER INITIATES THE AMENDMENT

⁹This section need not be completed if there are no relevant government departments within the scope of the Chamber.

¹⁰This section need not be completed if the SETA has not determined any additional membership of the Chamber.

- (1) If the Minister wishes to amend the SETA's Constitution, the Minister must submit the following to the Accounting Authority –
 - (a) the text of the proposed amendments; and
 - (b) a memorandum explaining the rationale for such amendments.
- (2) The Minister must allow the Accounting Authority thirty (30) days to make written representations concerning the amendments proposed by the Minister.
- (3) After considering any representations made by the Accounting Authority, the Minister may, wholly or in part, effect the Minister's proposed amendments.

SIGNED FOR AND ON BEHALF OF THE ACCOUNTING AUTHORITY BY:

1. ORGANISED LABOUR _____

2. ORGANISED EMPLOYERS _____

3. OTHER RELEVANT STAKEHOLDERS _____

Signed at _____ on this _____ day of _____ 20__.

Full Names: _____

CHAIRPERSON