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AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GOVERNMENT NOTICES

DEPARTMENT OF LABOUR

No. R. 886

8 September 2005

SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 OF 1998)


**APPROVAL OF CONSTITUTION FOR AGRICULTURE SECTOR EDUCATION
AND TRAINING AUTHORITY (AGRISETA)**

The Minister of Labour has on 1 July 2005 in terms of section 13(1) of the Skills Development Act, approved the constitution of the AGRICULTURE SECTOR EDUCATION AND TRAINING AUTHORITY as set out in the Schedule.

SCHEDULE

**CONSTITUTION
OF THE AGRICULTURE
SECTOR EDUCATION AND
TRAINING AUTHORITY
("AgriSETA")**

27 June 2005



Chairperson PAETA

Date: 29 June 2005



Chairperson SETASA

Date: 29 June 2005

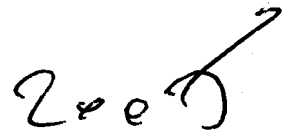


TABLE OF CONTENTS

INTRODUCTION.....	1
CHAPTER ONE: DEFINITIONS, PURPOSE AND IDENTITY.....	1
1 Definitions	1
2 Purpose of constitution.....	2
3 Name..	3
4 Establishment.....	3
5 Place of business	3
6 Scope of coverage....	3
7 Organisations in sector.....	3
8 Legal status	3
9 Limitation of liability	4
CHAPTER TWO OBJECTIVES AND FUNCTIONS	4
10 Objectives of AgriSETA..	4
11 Functions of AgriSETA	5
CHAPTER THREE: MEMBERSHIP OF GOVERNING BOARD.....	8
12 Composition.....	8
13 Functions	9
14 Financial and general responsibilities of Governing Board.....	9
15 Procedure at meetings.....	10
16 voting	11
17 Term of office and vacancies	11
18 Removal from office.....	12

19	Filling of vacancies	12
20	Powers.....	12
21	Delegation of powers and duties	13
22	Annual General Meeting.....	13
CHAPTER FOUR: OFFICE BEARERS.....		14
23	Appointment	14
24	Functions.....	14
25	Absence or vacancies.....	15
26	Removal of office bearers	15
CHAPTER FIVE: EXECUTIVE COMMITTEE		16
27	Composition.....	16
28	Terms of office.....	16
29	Duties and functions.....	16
30	Powers	18
CHAPTER SIX: STANDING COMMITTEES.....		18
31	General.....	18
32	Meetings and procedure.....	19
33	Sub-Sectoral Committees (SSCs)	19
34	Learnership Committee.....	20
35	Education and Training Quality Assurance ("ETQA") Committee.....	21
36	Skills Planning Committee.....	22
37	Audit Committee	24
CHAPTER SEVEN FINANCES AND FIDUCIARY RESPONSIBILITIES.....		25
38	Finances.....	25

39	Fiduciary duties of Governing Board	26
	CHAPTER EIGHT: EXECUTIVE OFFICER	27
40	Appointment.....	27
41	Functions	27
	CHAPTER NINE: GENERAL	28
42	Amendments to constitution.....	28
43	Taking over administration of AgriSETA.....	28
44	Code of conduct.....	29
45	Dispute resolution.....	30
	Schedule 1: Scope	32
	Schedule 2: Organisations in sector.....	35
	Schedule 3: Nomination and appointment of members.....	37

INTRODUCTION

On 20 March 2000 the Minister of Labour established the Primary Agriculture Education and Training Authority (“PAETA”) and the Sector Education and Training Authority for Secondary Agriculture (“SETASA”), as two of 25 sector education and training authorities.

On 1 July 2005 in order to ~~co-ordinate~~ coordinate education and training activities more effectively within the broader agricultural sector the Minister of Labour amalgamated PAETA and SETASA to form the Agriculture Sector Education and Training Authority (“AgriSETA”).

CHAPTER ONE: DEFINITIONS, PURPOSE AND IDENTITY

1 Definitions

In this constitution any word or expression to which a meaning has been assigned in the Skills Development Act 97 of 1998 shall bear that meaning, and unless the context otherwise indicates:

- 1.1 “**AgriSETA**” means the Agriculture Sector Education and Training Authority;
- 1.2 “Alternate” means an alternate to a member as contemplated in clause 12.7 of this constitution;
- 1.3 “Chairperson” means the chairperson of the Governing Board;
- 1.4 “Clause” means a clause in this constitution;
- 1.5 “Department” means the Department of Labour;
- 1.6 “Deputy chairperson” means the deputy chairperson of the Governing Board;
- 1.7 “Director-General” means the Director-General of Labour;
- 1.8 “Executive officer” means the executive officer appointed in terms of this constitution;

- 1.9 "Governing Board" means the Governing Board contemplated in clause 12.2 of this constitution;
- 1.10 "Member" means a natural person who is a member of the Governing Board as contemplated in clause 12.2 of this constitution; or a member of the Executive Committee as contemplated in clause 27.1 of this constitution;
- 1.11 "Minister" means the Minister of Labour;
- 1.12 "Organised employers" means employers organised for the purpose of furthering their interests as employers;
- 1.13 "Organised labour" means trade unions registered in terms of the Labour Relations Act 66 of 1995;
- 1.14 "Public Finance Management Act" means the Public Finance Management Act 1 of 1999;
- 1.15 "Representative" means a natural person representing organised labour or organised employers on a standing committee of AgriSETA;
- 1.16 "Skills Development Levies Act" means the Skills Development Levies Act 9 of 1999;
- 1.17 "South African Qualifications Authority Act" means the South African Qualifications Authority Act 58 of 1995;
- 1.18 "The Act" means the Skills Development Act 97 of 1998; and
- 1.19 "Trade union" means a trade union registered in terms of the Labour Relations Act, 1995.

2 Purpose of constitution

The purpose of this constitution is to set out the objectives, functions, governance structures and incidental matters pertaining to the establishment of AgriSETA.

3 Name

The name of this sector education and training authority is the Agriculture Sector Education and Training Authority.

4 Establishment

The Minister has established AgriSETA in accordance with sections 9A(1), 9A(2) and 13 of the Act.

5 Place of business

The place of business of AgriSETA is:

529 Belvedere Street,

Arcadia,

0083.

6 Scope of coverage

The scope of coverage of AgriSETA has been determined by the Minister in terms of sections 9(2) and 9A(3) of the Act. A detailed description of the scope of coverage is set out in Schedule 1 to this constitution.

7 Organisations in sector

The trade unions, employer organisations and relevant government departments in the sector are set out in Schedule 2 to this constitution.

8 Legalstatus

8.1 AgriSETA is a statutory body and body corporate with an identity and existence separate from that of its members, office bearers and employees and shall continue to exist despite changes in the composition of its membership.

8.2 AgriSETA may sue or be sued in its own name and is capable of having its own rights, obligations, and duties. AgriSETA may enter into contracts as far as this constitution and relevant legislation permits.

8.3 The income and property of AgriSETA must be applied solely towards the promotion of its objectives as contemplated in the Act.

No portion may be paid, or transferred directly or indirectly to AgriSETAs members, representatives or employees except for the payment of reasonable remuneration to employees or for the payment of allowances to any member or representative or for the reimbursement of expenses reasonably incurred in the performance of a member or representative's duties.

9 Limitation of liability

- 9.1 No member, office-bearer, representative or employee of AgriSETA shall be liable for any of the obligations and liabilities of AgriSETA solely by virtue of his or her status as a member, office bearer, representative or employee.
- 9.2 No member, office-bearer, representative or employee of AgriSETA shall in any way be personally liable for any loss or damage suffered by any person as a result of the execution or non-execution, in good faith, of the member's, office bearer's representative's or employee's duties and powers under this constitution. Such members, office bearers, representatives and employees will be indemnified by AgriSETA for any such loss or damage.

CHAPTER TWO: OBJECTIVES AND FUNCTIONS

10 Objectives of AgriSETA

- 10.1 The objectives of AgriSETA are to promote the purposes of the Act within the sector.
- 10.2 The purposes of the Act are-
- 10.2.1 to develop the skills of the South African workforce-
- 10.2.1.1. to improve the quality of life of workers, their prospects of work and labour mobility;
- 10.2.1.2. to improve productivity in the workplace and the competitiveness of employers;
- 10.2.1.3. to promote self-employment; and
- 10.2.1.4. to improve the delivery of social services;

- 10.2.2 to increase the levels of investment in education and training in the labour market and to improve the return on that investment;
- 10.2.3 to encourage employers-
 - 10.2.3.1. to use ~~the~~ work-place as an active learning environment;
 - 10.2.3.2. to provide employees with the opportunities to acquire new skills;
 - 10.2.3.3. to provide opportunities for new entrants to the labour market to gain work experience; and
 - 10.2.3.4. to employ persons who find it difficult to be employed;
- 10.2.4 to encourage workers to participate in learnerships and other training programmes;
- 10.2.5 to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education;
- 10.2.6 to ensure the quality of education and training in and for the workplace;
- 10.2.7 to assist-
 - 10.2.7.1. work-seekers to find work;
 - 10.2.7.2. retrenched workers to re-enter the **labour** market; and
 - 10.2.7.3. employers to find qualified employees.

11 Functions of AgriSETA

AgriSETA must in accordance with any requirements that may be prescribed:

- 11.1 develop a sector skills plan within the framework of the national skills development strategy;
- 11.2 implement its sector skills by –
- 11.2.1 establishing learnerships;
 - 11.2.2 approving work-place skills plans;
 - 11.2.3 allocating grants in ~~the~~ prescribed manner and in accordance with any prescribed standards and criteria to employers, education and training providers and workers,
 - 11.2.4 monitoring education and training provision in the sector;
- 11.3 promote learnerships by –
- 11.3.1 identifying workplaces in the sector for practical work experience;
 - 11.3.2 supporting the development of learning materials;
 - 11.3.3 improving the facilitation of learning; and
 - 11.3.4 assisting in the conclusion of learnership agreements;
- 11.4 register learnership agreements;
- 11.5 perform the functions of an education and training quality assurance body as provided in the South African Qualifications Authority Act and relevant regulations;
- 11.6 when required to do so collect the skills development levies ~~and~~ disburse the levies allocated to it in terms of sections 8(3)(b) and 9(b) of the Skills Development Levies Act;
- 11.7 liaise with the National Skills Authority on-
- 11.7.1 the national skills development policy;
 - 11.7.2 the national skills development strategy; and
 - 11.7.3 AgriSETAs sector skills plan;

- 11.8** submit to the Director-General:
- 11.8.1** any budgets, reports and financial statements on **AgriSETA's** income and expenditure that it is required to prepare in terms of the Public Finance Management Act; and
 - 11.8.2** plans and reports on the implementation of AgriSETA's sector skills plan and **service** level agreement;
- 11.9** liaise with the employment **services** of the Department and any education body established under any law regulating education in **the** Republic to improve information-
- 11.9.1** about employment opportunities; and
 - 11.9.2** between education and training providers and the labour market;
- 11.10** subject to section **14** of the Act, appoint staff necessary for the performance of its functions;
- 11.11** promote the national standard established in terms of section **308** of the Act;
- 11.12** conclude a service level agreements for each financial year, with the Director-General concerning:
- 11.12.1** AgriSETA's performance **of** its functions in terms of the Act and the national skills development strategy;
 - 11.12.2** AgriSETA's annual strategic plan; and
 - 11.12.3** any assistance that the Director-General is to provide to AgriSETA in order to enable it to perform its functions;
- 91.13** perform any other duties imposed by the Act or the Skills Development Levies Act or consistent with the purposes of the Act and this constitution;
- 11.14** perform **its** functions **in** accordance with the Act, the Skills Development Levies Act and this constitution.

CHAPTER THREE: MEMBERSHIP OF GOVERNING BOARD

12 Composition

12.1 The Governing Board must consist of an equal number of members representing organised employers (on the one hand) and organised labour (on the other hand).

12.2 The Governing Board consists of twenty members:

12.2.1 ten members nominated by organised employers; and

12.2.2 ten members nominated by organised labour.

12.3 Members representing organised employers and members representing organised labour must be sufficiently representative of designated groups.

12.4 The organised employers and trade unions which are eligible to participate in the process of nominating members are listed in Schedule 2.

12.5 Members are nominated and appointed in accordance with this clause and Schedule 3.

12.6 The Governing Board must elect from its members a chairperson and a deputy chairperson provided that the respective offices must be occupied by one employer representative and one employee representative simultaneously.

12.7 Every organisation that nominates a member to the Governing Board must also nominate an alternate to that member to substitute for a member who may be temporarily absent and unable to attend a meeting of the Governing Board.

12.8 An alternate contemplated in clause 12.7 has all the rights and duties of the member of the Governing Board whilst substituting for that member.

13 Functions

13.1 The Governing Board must ensure that AgriSETA performs the functions contemplated in clause 11.

13.2 The Governing Board must ensure that AgriSETA complies with this constitution, the Act, the Skills Development Levies Act, the Public Finance Management Act and any other applicable law.

14 Financial and general responsibilities of Governing Board

14.1 The Governing Board must ensure that AgriSETA has and maintains:

14.1.1 effective, efficient and transparent systems of financial and risk management and internal control;

14.1.2 a system of internal audit under the control and direction of an audit committee complying with the operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77 of the Public Finance Management Act;

14.1.3 an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; and

14.1.4 a system for properly evaluating all major capital projects prior to a final decision on the project.

14.2 The Governing Board must take effective and appropriate steps to:

14.2.1 collect all revenue due to AgriSETA ; and

14.2.2 prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of AgriSETA; and

14.2.3 manage available working capital efficiently and economically.

14.3 The Governing Board is responsible for ~~the~~ management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of AgriSETA.

14.4 The Governing Board must comply with any tax, levy, duty, pension and audit commitments as required by legislation.

14.5 The Governing Board must take effective and appropriate disciplinary steps against any employee of AgriSETA who:

14.5.1 contravenes or fails to comply with a provision of ~~this Act~~;

14.5.2 commits an act which undermines ~~the~~ financial management and internal control system of AgriSETA; or

14.5.3 makes or permits an irregular expenditure or a fruitless and wasteful expenditure.

14.6 The Governing Board is responsible for ~~the~~ submission by AgriSETA of all reports, returns, notices and other information ~~to~~ Parliament or the Minister, as may be required by the Public Finance Management Act.

14.7 The Governing Board must comply, and ensure compliance by AgriSETA, with the provisions of the Public Finance Management Act and any other legislation applicable to AgriSETA.

15 Procedure at meetings

15.1 The Governing Board may regulate its meetings as ~~it~~ deems ~~fit~~.

15.2 The quorum necessary for the transaction of business is six members representing organised employers and six members representing organised labour.

15.3 **If** within one hour after the ~~time~~ appointed for the ~~meeting~~, a quorum is not present, the meeting must be rescheduled to another day within two weeks of the meeting, at the same time and place.

15.4 If there is no quorum at the rescheduled meeting within half an hour after the time appointed for the meeting, ~~the~~ members ~~then~~

present must continue and may make recommendations, to be ratified at the next meeting of the Governing Board.

15.5 The chairperson must preside at all meetings of the Governing Board.

15.6 The chairperson must ensure that minutes of Governing Board meetings are kept and are circulated to members within three weeks after each Governing Board meeting.

16 Voting

16.1 Each member has one vote.

16.2 There may be no voting by proxy.

16.3 Members must attempt to make decisions by consensus.

16.4 If consensus cannot be reached then the meeting must make decisions by way of majority vote.

16.5 Members must reach a decision by way of a secret ballot unless the meeting is of the general view that a show of hands would be appropriate in the circumstances.

17 Term of office and vacancies

17.1 A member holds office for a period of two years from the date of the member's appointment.

17.2 A vacancy occurs if, during the member's term of office:

17.2.1 the organisation that nominated the member recalls the member by notice in writing to **AgriSETA**

17.2.2 the member resigns, dies or otherwise becomes incapable of performing the functions of a member; or

17.2.3 the Governing Board removes the member from office for a reason contemplated in clause **18** after affording the member an opportunity to be heard.

18 Removal from office

The Governing Board may remove a member for:

- 18.1.1 being absent **from** three consecutive meetings of the Governing Board without good cause or the prior submission of a written apology;
- 18.1.2 any conduct that may undermine the integrity of **AgriSETA** or which may bring AgriSETA or any of its members into disrepute;
- 18.1.3 serious misconduct;
- 18.1.4 any violation of the **Code of** Conduct contemplated in clause 44; or
- 18.1.5 any material violation of this constitution.

19 Filling of vacancies

- 19.1 **I** f a vacancy occurs as contemplated in clause 17.2, **the** Governing Board must appoint the member's alternate to replace the member of the Governing Board.
- 19.2 Any person appointed to **fill** a vacancy in terms of this clause must **fill** the vacancy for the unexpired duration of the original member's term of office.
- 19.3 The Governing Board must as soon as practicable **after** appointing the member as contemplated in clause 19.1 request the nomination **of** an alternate to that member from the relevant nominating body.

20 Powers

- 20.1 The Governing Board has all such powers as are necessary to enable it to perform its functions set out in clause 13.
- 20.2 The Governing Board has such other powers as are conferred by this constitution, the Act or the Skills Development Levies Act

21 Delegation of powers and duties

21.1 The Governing Board may delegate its powers and duties to members, committees and employees, provided that the Governing Board may impose conditions for the delegation, may not be divested of any power or duty by virtue of the delegation and may vary or set aside any decision made under any delegation.

21.2 A delegation must be in writing and must specify the period for which it is valid and any limitations or conditions on the delegation.

21.3 The Governing Board may continue to exercise or perform a power, or function which it has delegated.

21.4 The Governing Board remains responsible for all actions taken under a delegation.

22 Annual General Meeting

22.1 The Governing Board must meet for its Annual General Meeting at least once in each year within six months after the end of each financial year.

22.2 The chairperson in consultation with the Executive Committee shall determine the time, date and place of the Annual General Meeting.

22.3 Representatives of organisations in the sector set out in Schedule 2 may be invited to attend the Annual General Meeting.

22.4 Voting at the Annual General Meeting is restricted to members of the Governing Board only.

22.5 At the Annual General Meeting the members must :

22.5.1 consider the annual financial statements of AgriSETA, the annual report of AgriSETA's affairs and the report of the Auditor General;

22.5.2 appoint an internal auditor;

22.5.3 discuss any matter of which notice must have been given to the executive officer at least **15** days before the date of the annual general meeting;

22.5.4 elect office bearers; and

22.5.5 transact such other business as is required to be transacted by AgriSETA under this constitution or applicable legislation.

CHAPTER FOUR: OFFICE BEARERS

23 Appointment

23.1 The ~~office~~ bearers of AgriSETA are:

23.1.1 the chairperson of the Governing Board; and

23.1.2 the deputy chairperson of the Governing Board.

23.2 If the chairperson is appointed from members representing organised labour then the deputy chairperson may be appointed only from members representing organised employers and vice versa.

23.3 ~~Office~~ bearers are appointed for one year.

24 Functions

24.1 The chairperson must chair all meetings of the Governing Board.

24.2 The chairperson must perform all functions and duties entrusted to the chairperson by the constitution as well as those that are generally associated with the office of the chairperson.

24.3 The deputy chairperson must chair meetings of the Governing Board and perform the duties and functions of the chairperson whenever the chairperson is absent or for any reason is unable to perform those functions and duties.

25 Absence or vacancies

25.1 In the temporary absence of the chairperson, the deputy chairperson must act as chairperson.

25.2 If both the chairperson and the deputy chairperson are absent from a meeting of ~~the~~ Governing Board, then the members present must appoint a chairperson from amongst their number to chair the meeting.

25.3 *If* the **office** of chairperson or deputy chairperson becomes vacant then the constituency which nominated the chairperson or deputy chairperson must nominate a replacement as the chairperson or the deputy chairperson (as the **case** may be).

25.4 A replacement contemplated in **clause 25.3** holds office for the unexpired ~~period~~ of ~~the~~ previous office bearer's term of office. During this period, the acting office bearers shall have all the powers, rights, duties and privileges which this constitution confers upon the officer in whose place they stand.

26 Removal of office bearers

26.1 The Governing Board may remove an office bearer for:

26.1.1 being absent from three consecutive meetings ~~of~~ AgriSETA without good cause or the prior submission of a written apology;

26.1.2 any conduct that may undermine the integrity of AgriSETA or which may bring AgriSETA or any of its members into **disrepute**;

26.1.3 serious misconduct;

26.1.4 any violation of the Code of Conduct contemplated in clause 44; or

26.1.5 any material violation of this constitution;

26.2 The Governing Board may replace an office bearer who has been removed in terms of this clause in the manner contemplated *in* clause **23**.

CHAPTER FIVE: EXECUTIVE COMMITTEE

27 Composition

27.1 The Executive Committee consists of six members:

27.1.1 the chairperson;

27.1.2 the deputy chairperson;

27.1.3 two members nominated by organised employers; and

27.1.4 two members nominated by organised labour.

28 Terms of office

28.1 The ~~office~~ bearers hold office as members of the Executive Committee for as long as they hold the office to which they have been appointed.

28.2 Ordinary members of the Executive Committee hold office for two years or until their term of office as members of the Governing Board expires, whichever occurs first.

29 Duties and functions

29.1 The Executive Committee is responsible for overseeing the management of the operational affairs of AgriSETA.

29.2 With respect to finances, the Executive Committee must:

29.2.1 receive, consider and approve the financial reports of AgriSETA;

29.2.2 recommend the appointment of an independent auditor and receive and consider the auditor's reports:

29.2.3 monitor and report on the financial operations, internal financial controls and budget performance of AgriSETA

- 29.2.4 approve **AgriSETA's** insurance portfolio;
- 29.2.5 approve tenders for items of major expenditure;
- 29.2.6 present the business plan, sector skills plan and budget for the approval of the Governing Board;

29.3 With respect to employees, the Executive Committee must :

- 29.3.1 recommend human resources policies to the Governing Board and monitor their implementation;
- 29.3.2 recommend the appointment of the executive officer of **AgriSETA** to the Governing Board;
- 29.3.3 recommend the terms and conditions of employment of the executive officer to the Governing Board;
- 29.3.4 direct and **supervise** the executive officer in the performance of his or her duties;
- 29.3.5 monitor staffing requirements;
- 29.3.6 recommend any other policies applicable to **AgriSETA's** employees to the Governing Board and monitor their implementation.

29.4 With respect to reporting, ~~the~~ Executive Committee must:

- 29.4.1 submit to the Governing Board the audited annual accounts of **AgriSETA** for incorporation into **AgriSETA's** annual report; and
- 29.4.2 submit, for the consideration of the Governing Board, an annual report on its activities.

29.5 Generally the Executive Committee may -

- 29.5.1 manage, co-ordinate and monitor the activities of standing committees and any other committees;
- 29.5.2 receive and consider the reports and recommendations of standing committees and any other committees; and

29.5.3 appoint ad hoc committees as may be required.

30 Powers

30.1 The Executive Committee has the powers to perform the functions contemplated in clause 29.

30.2 The Governing Board may delegate further functions and powers to the Executive Committee in accordance with clause 21.

30.3 The Executive Committee may refer matters to a standing committee or ad hoc committee for advice.

30.4 The Executive Committee may act on behalf of **AgriSETA** in an emergency. In such event, the Executive Committee must report its actions and the reasons for them as soon as possible to the Governing Board.

CHAPTER SIX STANDING COMMITTEES

31 General

31.1 The standing committees of the Governing Board are:

31.1.1 Sub-Sectoral Committees (**SSCs**);

31.1.2 the Learnership Committee;

31.1.3 the ETQA Committee;

31.1.4 the Skills Planning Committee; and

31.1.5 the Audit Committee.

31.2 The Governing Board may establish any other standing committee that it deems necessary for the effective functioning of AgriSETA and may determine its composition, duties and functions.

31.3 The Governing Board may determine any procedural or substantive matter with respect to a particular standing committee or to the standing committees in general.

31.4 The standing committees may, in addition to their functions in *this* constitution make recommendations of policy to the Executive Committee.

32 Meetings and procedure

32.1 Each committee shall meet as often as necessary for the proper conduct of its affairs but at least once in every six months and shall regulate its meetings as *it* deems fit.

32.2 At meetings of each committee, each representative present shall have one vote and all questions shall be decided by a majority of votes.

32.3 A resolution in writing signed by all the representatives of a committee and inserted in the minute book of that committee shall be as valid and effective as *if* it had been passed at a meeting of the committee, duly convened and held.

32.4 A resolution shall be deemed to have been signed *if* consent has been given in a message transmitted by telegram, e mail or telefax and purporting to emanate from the person whose signature to such resolution is required.

32.5 The person presiding at any meeting of a committee shall ensure that minutes of such meetings are kept and circulated to relevant representatives.

33 Sub-Sectoral Committees (SSCs)

33.1 Number of SSCs

33.1.1 The Governing Board may establish SSCs as agreed to by the different industry groupings within the sector.

33.2 Composition

33.2.1 Each SSC shall consist of the following voting representatives:

33.2.1.1. a minimum of 3 and a maximum of 5 representatives representing organised employers; and

33.2.1.2. a minimum of 3 and a maximum of 5 representatives representing organised labour.

33.2.2 There must be an equal representation of organised employers and organised labour in each SSC.

33.2.3 The SSCs may invite any person to attend any meeting of the SSC for a specific period or purpose but such person will not be entitled to participate in any voting.

33.2.4 Each SSC must appoint a chairperson and deputy chairperson who must generally supervise, manage and co-ordinate the functions of the SSC.

33.3 Functions of SSCs

The SSCs may:

33.3.1 develop and make recommendations regarding the Sector Skills Plan for submission to the Governing Board;

33.3.2 facilitate the development of the Sector Skills Plan for approval by the Governing Board;

33.3.3 collate information in respect of retrenchments from individual companies within the SSC;

33.3.4 report the results of implementation of the Skills Development Strategy within the SSC to the Executive Committee; and

33.3.5 perform any other function determined by the Governing Board.

34 Learnership Committee

34.1 Composition

34.1.1 The Learnership Committee consists of six representatives:

34.1.1.1. three representatives nominated by organised employers; and

34.1.1.2. three representatives nominated by organised labour.

34.1.2 The Learnership Committee may appoint a chairperson who must generally supervise, manage and co-ordinate ~~the~~ functions of the Learnership Committee.

34.2 Duties and functions -

34.2.1 The Learnership Committee may:

34.2.1.1. develop policies, principles, criteria and guidelines related to learnerships in accordance with Chapter 4 of ~~the~~ Act; and

34.2.1.2. develop and recommend plans for the implementation of learnerships.

35 Education and Training Quality Assurance ("ETQA") Committee

35.1 Composition

35.1.1 The **ETQA** consists of six representatives :

35.1.1.1. three representatives nominated by organised employers; and

35.1.1.2. three representatives nominated by organised labour.

35.1.2 The **ETQA** Committee may appoint a chairperson who shall must generally supervise, manage and co-ordinate ~~the~~ functions of the ETQA Committee.

35.2 Duties and functions -

35.2.1 the **ETQA** Committee may:

- 35.2.1.1. develop policies, principles, criteria and guidelines pertaining to AgriSETAs ETQA functions in accordance with the South African Qualifications Authority Act and relevant regulations;
- 35.2.1.2. make recommendations to the Governing Board on the accreditation of providers in the sector or sub-sectors for specific standards or qualifications;
- 35.2.1.3. promote quality amongst the various constituent providers;
- 35.2.1.4. register constituent assessors of national qualifications in the sector or sub-sectors in respect of specific standards or qualifications in terms of such criteria which may be established for this purpose;
- 35.2.1.5. monitor the development of, and requirements for, new standards, qualifications or modifications to existing standards or qualifications for the sector or sub-sectors;
- 35.2.1.6. ensure that AgriSETA maintains an appropriate data base for its quality assurance and certification functions; and
- 35.2.1.7. report to the Executive Committee on such matters as may be necessary.

36 Skills Planning Committee

36.1 Composition

36.1.1 The Skills Planning Committee consists of six representatives:

- 36.1.1.1** three representatives nominated by organised employers; and

36.1.1.2. three representatives nominated by organised labour.

36.1.2 The Skills Planning Committee may appoint a chairperson **who** must generally supervise, manage and co-ordinate the functions of the Sector Skills Planning Committee.

36.2 Duties and functions •

36.2.1 the Skills Planning Committee may:

36.2.1.1. develop such policies, principles, criteria and guidelines relating to sector skills planning for recommendation to the Governing Board;

36.2.1.2. identify the data which may be necessary for the development of a **sector** skills plan and to **propose** a means of **collecting** or acquiring such data;

36.2.1.3. determine the enterprise, employee, occupational and skills profile of the sector or **sub-sectors** with which it may be entrusted;

36.2.1.4. establish such **skills**, needs and employment growth developments in the economic **sub-sectors** and regions **or** provinces;

36.2.1.5. determine education and training priorities in **the** sector or sub-sectors with which it **is** entrusted;

36.2.1.6. develop policies, principles, guidelines and criteria related to workplace skills plans for recommendations **to the** Executive Committee;

36.2.1.7. report to the Executive Committee on the implementation **of** workplace skills plans;

36.2.1.8. develop sector skills plans for consideration by the Executive Committee; and

- 36.2.1.9. monitor and report to the Executive Committee on the implementation of the sector skills plan.

37 Audit Committee

37.1 Composition

The Governing Board must appoint an audit committee in accordance with the provisions of the Public Finance Management Act and any relevant treasury regulations.

37.2 Duties and functions

37.2.1 The audit committee must, amongst others, review the following:

37.2.1.1. the effectiveness of the internal control systems;

37.2.1.2. the effectiveness of internal audit;

37.2.1.3. the risk areas of AgriSETA's operations to be covered in the scope of internal and external audits;

37.2.1.4. the adequacy, reliability and accuracy of financial information provided to management and other users of such information;

37.2.1.5. any accounting and auditing concerns identified as a result of internal and external audits;

37.2.1.6. the AgriSETA's compliance with legal and regulatory provisions; and

37.2.1.7. the activities of the internal audit function, including its annual work programme, co-ordination with the external audits, the reports of significant investigations and the responses of management to specific recommendations; and

37.2.1.8. where relevant, the independence and objectivity of the external auditors.

37.2.2 **The** audit committee must:

37.2.2.1. report and make recommendations to the AgriSETA;

37.2.2.2. report on the effectiveness of internal controls in the annual report of the institution; and

37.2.2.3. comment on its evaluation of the financial statements in the annual report.

CHAPTER SEVEN: FINANCES AND FIDUCIARY RESPONSIBILITIES

38 Finances

38.1 AgriSETA is financed from:

38.1.1 **80** per cent of the skills development levies, interest and penalties collected in respect of AgriSETA, as allocated in terms of sections 8(3)(b) and 9 (b) of the Skills Development Levies Act;

38.1.2 the moneys paid to it from the National Skills Fund;

38.1.3 grants, donations and bequests made to it;

38.1.4 income earned on surplus moneys deposited or invested;

38.1.5 income earned on services rendered in the prescribed manner; and

38.1.6 money received from any other source.

38.2 **The** money received by AgriSETA must be paid into a banking account at any registered bank and may be invested only in:

38.2.1 savings accounts, permanent shares or fixed deposits in any registered bank or other financial institution;

38.2.2 internal registered stock as contemplated in section **21(1)** of the Exchequer Act 66 of 1975 any other manner approved by the Minister.

38.3 The moneys received by AgriSETA may be used only in the prescribed manner and in accordance with any prescribed standards or criteria to:

38.3.1 fund the performance of its functions; and

38.3.2 pay for its administration within the prescribed limit.

38.4 AgriSETA must be managed in accordance with the Public Finance Management Act.

38.5 AgriSETA must:

38.5.1 prepare annual budgets, annual reports and financial statements in accordance with Chapter 6 of the Public Finance Management Act; and

38.5.2 furnish the Director-General with copies of all budgets, reports and statements contemplated in clause **38.5.1** or other information that it is required to submit in terms of the Public Finance Management Act.

39 Fiduciary duties of Governing Board

39.1 The Governing Board must, as contemplated in section 50 of the Public Finance Management Act:

39.1.1 exercise the duty of utmost care to ensure reasonable protection of the assets and records of AgriSETA;

39.1.2 act with fidelity, honesty, integrity and in the best interest of AgriSETA in managing the financial affairs of AgriSETA;

39.1.3 on request, disclose to the Minister **all** material facts, including those reasonably discoverable, which in any way may influence the decisions of the Minister; and

39.1.4 **seek**, within the sphere of influence of AgriSETA to prevent any prejudice to the financial interests of the state.

39.2 A member may not:

39.2.1 act in a way that is inconsistent with the responsibilities assigned to AgriSETA in terms of the Public Finance Management Act; or

39.2.2 ~~use~~ the position or privileges of, or confidential information obtained for personal gain or to improperly benefit another person.

39.3 A member must:

39.3.1 disclose to the Governing Board any direct or indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before AgriSETA; and

39.3.2 withdraw from the proceedings of AgriSETA when that matter is considered, unless the Governing Board decides that the member's direct or indirect interest in the manner is trivial or irrelevant.

CHAPTER EIGHT: EXECUTIVE OFFICER

40 Appointment

40.1 The Governing Board must appoint a suitably qualified person as executive officer of AgriSETA.

40.2 The Governing Board may, subject to the provisions of this constitution, appoint persons as employees of AgriSETA to assist in ~~the~~ performance of the functions of the executive officer.

41 Functions

41.1 The executive officer must perform such functions as may be assigned to the executive officer by the Act or by the Governing Board.

41.2 If the executive officer is absent or for any reason is unable to perform the functions entrusted to him or her, or there is a vacancy in office of the executive officer, the chairperson of the Governing Board may designate an employee of AgriSETA to act as executive officer until the executive officer is able to resume his or her, functions.

41.3 The executive officer must attend all meetings of the Governing Board and the Executive Committee.

CHAPTER NINE: GENERAL

42 Amendments to constitution

42.1 Any member may propose amendments to this constitution. The member must submit the proposed amendments with a written motivation to the executive officer.

42.2 The provisions of this constitution may be amended only:

42.2.1 by the decision of at least two-thirds of the members present at an Annual General Meeting or a special general meeting; and

42.2.2 if they are approved by the Minister.

42.3 The Executive Committee in consultation with the chairperson may call a special general meeting to consider the proposed amendments and motivation.

42.4 The executive officer must send copies of the proposed amendments and motivation together with the agenda for the meeting to all members. At least **30** days notice of an Annual General Meeting or a special general meeting at which an amendment will be considered is required.

43 Taking over administration of AgriSETA

43.1 The Minister may, after consultation with the National Skills Authority and AgriSETA, direct the Director-General to appoint an administrator to take over the administration of AgriSETA or to perform the functions of AgriSETA if-

- 43.1.1 AgriSETA fails to perform its functions;
- 43.1.2 there is mismanagement of finances;
- 43.1.3 its membership no longer substantially represents the composition contemplated in section 11 of the Act;
- 43.1.4 AgriSETA has failed to comply with its service level agreement; or
- 43.1.5 AgriSETA has failed to comply with an instruction issued by the Minister in terms of section 14A of the Act.

44 Code of conduct

44.1 Every member of the Governing Board and every representative on a standing or other committee of AgriSETA is bound by this code of conduct.

44.2 Members and representatives-

- 44.2.1 must perform their functions in good faith;
- 44.2.2 must act honestly and in the utmost good faith;
- 44.2.3 must exercise reasonable care and diligence;
- 44.2.4 must give full effect to the obligations and spirit of the Act;
- 44.2.5 must avoid any material conflict between their own interests and those of AgriSETA, and in particular must not derive any personal economic benefit to which they are not entitled; and must protect and promote the reputation and goodwill of AgriSETA;
- 44.2.6** must exercise their powers for the benefit and in the interests of AgriSETA;
- 44.2.7 must not abuse the resources of AgriSETA;
- 44.2.8 must not disclose to any unauthorised person any privileged or confidential information of AgriSETA; and

44.2.9 must promote and advance the interests and objectives of AgriSETA.

45 Dispute resolution

45.1 Any party to a dispute concerning the interpretation or application of this constitution may refer the dispute to the executive officer.

45.2 The referral must

45.2.1 be in writing;

45.2.2 adequately describe the dispute; and

45.2.3 be delivered to every other party to the dispute by the party referring the dispute.

45.3 The executive officer must, as soon as reasonably practicable, refer the dispute to the Executive Committee which must endeavour to resolve the dispute by conciliation within 30 days of referral of the dispute.

45.4 If the Executive Committee fails to resolve the dispute within 30 days of its referral, then any party to the dispute may refer it to for arbitration by an arbitrator.

45.5 The arbitrator must be agreed to by the parties to the dispute with the approval of the chairperson or, failing such agreement or approval, by an arbitrator appointed by the Arbitration Foundation of Southern Africa.

45.6 The arbitrator must first attempt to conciliate the dispute. If conciliation is not possible, then the arbitrator must arbitrate the dispute.

45.7 The arbitrator must conduct the arbitration in a manner that he or she considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formality.

45.8 Within 14 days of conclusion of the arbitration proceedings:

- 45.8.1** the arbitrator must issue a signed arbitration award with reasons; and
- 45.8.2** the executive officer must provide a copy of the award to every party to the dispute.
- 45.9** The arbitration award is final and binding on the parties to the dispute.
- 45.10** The costs of the arbitrator must be borne:
- 45.10.1** equally by the parties to the dispute if the dispute involves a party who is not a member of the Governing Board; or
- 45.10.2** by AgriSETA if the parties to the dispute are members of the Governing Board.
- 45.11** The arbitrator may however make a different and appropriate award of costs if:
- 45.11.1** a party to the dispute, without reasonable cause, refuses or fails to attend the arbitration or unduly delays arbitration proceedings; or
- 45.11.2** the arbitrator is of the view that a party pursuing or resisting the dispute did so vexatiously or frivolously or had no reasonable prospect of succeeding.
- 45.12** An arbitrator may, at his or her own initiative or as a result of an application by an affected party, vary or rescind an award:
- 45.12.1** erroneously sought or made in the absence of any party affected by the award;
- 45.12.2** in which there is ambiguity, or any obvious error or omission, but only to the extent of the ambiguity, error or omission; or
- 45.12.3** granted as a result of a mistake common to the parties to the proceedings.

Schedule 1: Scope

1	11110	Growing of cereals and other crops n.e.c.
2	11120	Growing of vegetables, horticultural specialities and nursery products
3	11121	Growing of vegetables, horticultural specialities (including ornamental horticulture) and nursery products
4	11122	Sugar Plantation including sugar cane and sugar beet etc.
5	11130	Growing of fruit, nuts, beverage and spice crops
6	11221	Ostrich Farming
7	11222	Game Farming
8	11210	Farming of cattle, sheep, goats, horses, asses, mules and hinnies; dairy farming
9	11300	Growing of crops combined with farming of animals (mixed farming)
10	11301	Growing of coffee and tea including coconuts, cocoa, nuts, olives, dates etc.
11	11400	Agricultural and animal husbandry services, except veterinary activities
12	11402	Other animal farming N.E.C
13	12109	Growing of trees as second crop by farmers
14	13000	Fishing, operation of fish hatcheries and fish farms
15	11140	Seed production and marketing
16	11141	Production of animal products N.E.C.

17	11142	Manufacture of Tobacco Products
18	11220	Other animal farming, production of animal products, N.E.C
19	30111	Slaughtering, dressing and packing of livestock including poultry and small game for meat
20	30114	Poultry and egg production including the slaughtering, dressing and packing of poultry
21	30115	Production, sale and marketing of agricultural by- products e.g. bones, hides)
22	30117	Slaughtering, dressing and packing of livestock, including small game for meat and processing of ostrich products
23	3011B	Grading, ginning and packaging of wool and cotton raw material
24	30132	Fruit packed in cartons, fruit juice concentrate drummed and fruit juice in container ready for human consumption
25	30133	Fruit exporters and importers
26	30300	Manufacture of grain mill products, starches and starch products and prepared animal feeds
27	30311	Manufacture of flour and grain mill products, including rice and vegetable milling; grain mill residues
28	30313	Handling and storage of grain
29	30330	Manufacture of prepared animal feeds
30	30331	Manufacture of pet products
31	30332	Manufacture of starches and starch products

32	30421	Manufacture of sugar, including golden syrup and castor sugar
33	30493	Growing and marketing of coffee and tea
34	61210	Wholesale trade in agricultural raw materials and livestock
35	61502	Wholesale and retail trade in agricultural machinery
36	62111	Sale and distribution of agricultural raw materials and other farming inputs
37	62112	Service for nut farmers and companies
30	62208	Processing and dispatching of tobacco
39	74136	Transport of livestock as supporting activity
\$0	67120	Agricultural and livestock research
\$1	99003	Pest control

Schedule 2 Organisations in sector

Trade Unions

1	Food and Allied Workers Union
2	Food and General Workers Union
3	Forestry, Farm & Allied Trade Union
4	National Union for Food Beverage Wine Spirits and Allied Workers
5	National Union of Farmworkers
6	Solidarity
7	South African Agricultural Plantation and Allied Workers Union
8	South African Commercial Catering Allied Workers Union
3	South African Food and Allied Trade Union

Employer Organizations

10	Agricultural Employers' Organisation
11	Agri South Africa and Affiliates
12	Cape Agri Employers' Organisation
13	Chamber of Milling
14	Co operative Wine Cellars Committee
15	Cotton SA
16	Grain SA
17	South African Sugar Association
18	Fruit Packaging Employers Organisation
19	Fruit Processors Association

20	Grain SA
21	National Association of Maize Millers
22	National African Farmers Union
23	Pet Food Manufacturing Institute
24	Red Meat Abattoir Association
25	South African Feedlot Association
26	South African Green Industries Council
27	South African Meat Industry Company
28	South African National Seed Organisation
29	South African Pest Control Association
30	South African Pig Produces Association
31	South African Poultry Association
32	TAU SA
33	Tobacco RSA

Relevant Government Departments

32	Department of Agriculture
33	Department of Land Affairs
34	Department of Education
35	Department of Health
36	Department of Labour
37	Department of Trade and Industry

Schedule 3: Nomination and appointment of members

1. Nominations by organised employers

- 1.1. Organised employers listed in Schedule 2 may by agreement nominate 10 members to represent their interests on the Governing Board.
- 1.2. Subject to section 11(b) of the Act only organised employer groups representing employers that have registered with the South African Revenue Services to pay the levies prescribed by the Act to AgriSETA may nominate persons as members.

2. Nominations by organised labour

Trade unions listed in Schedule 2 may by agreement nominate 10 members to represent their interests on the Governing Board.

3. Stakeholder participation

- 3.1. The Governing Board must review Schedule 2 every two years. If it is deemed appropriate the Governing Board must publish an advert in newspapers widely read by stakeholders in the sector, calling on organised employers and trade unions (not employers and employees) to apply in writing to be recognised by the Governing Board as stakeholders in the sector. The purpose of such an invitation is to ensure that the Governing Board is properly represented by members representing organised employers and organised labour.
- 3.2. Any organisation which is not listed in Schedule 2 may apply to the Governing Board to participate in the nomination of members to represent organised employers or organised labour (as the case may be).
- 3.3. The organisation must submit -
 - 3.3.1. their constitution or founding document;

3.3.2. the size of their membership and with respect to organised employers the size of the workforce employed by their members:

3.3.3. a motivation for consideration by the Governing Board; and

3.3.4. any other information the Governing Board considers relevant.

3.4. The Governing Board must consider the organisation's representations.

3.5. If the Governing Board is of the view that the organisation is sufficiently representative of organised employers or organised labour within the sector, then the Governing Board must list the organisation in Schedule 2. The organisation may thereafter participate in the nomination of members.

4. Consulting on proportional representation

4.1. Before the election of board members as provided for in this constitution, the Governing Board must invite organised employers and trade unions listed in Schedule 2 (respectively) to nominate persons as members.

4.2. The listed organised employers assisted by ~~the~~ chairperson or deputy chairperson of the Governing Board (whichever officer bearer has been elected by organised employers) must by way of consultation attempt to reach agreement on the proportional division of the ten employer ~~seats~~.

4.3. The listed trade unions assisted by the chair or deputy chairperson of the Governing Board (whichever ~~office~~ bearer has been elected by organised labour) must by way ~~of~~ consultation attempt to reach agreement on the proportional division of the ten employee seats.

4.4. Once the said organised employers and organised labour have reached agreement (respectively) on the division of seats, then the organisation allocated a ~~seat(s)~~ shall decide on the appropriate person(s) to sit as a ~~member(s)~~ on the Governing Board.

45. If agreement cannot be reached then the organised employers and trade unions (as the case may be) must apply the principle of proportionality to allocate the seats on the Governing Board. The formula set out below may be followed.

5. Formula for proportional representation

5.1. With respect to organised employers:

The formula is:

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

A represents the number of employees employed by members of an employer's organisation listed in Schedule 2

B represents the total number of employees employed by members of all employers' organisations listed in Schedule 2.

C represents 10 (number of members allocated to represent organised employers on the Governing Board).

D represents the number of members which the organisation representing organised employers is entitled to nominate to the Governing Board.

Example: if there are only two employers organisations, one representing members with 7500 employees and the other representing members with 10 500 employees (the total number of employees would be 18 000) each employers organisation would be represented as follows on the Governing Board:

$$\frac{7500}{18000} \times \frac{10}{1} = 4.16 \quad \frac{10500}{18000} \times \frac{10}{1} = 5.83$$

The employer's organisation representing members employing 7 500 employees could nominate 4 members onto the Governing Board to represent organised employers.

The employer's organisation representing members employing 10 500 employees could nominate 6 members onto the Governing Board to represent organised employers.

5.2. With respect to organised labour:

The formula is:

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

A represents the number of members of a trade union listed in Schedule 2.

B represents the total number of members of trade unions listed in Schedule 2.

C represents 10 (number of members allocated to represent organised labour on the Governing Board).

D represents the number of members which the trade union is entitled to nominate to the Governing Board.

Example : If there are only two organisations representing labour, one with 3000 members and another with 10 500 members (13 500 in total) then those organisations would be represented as follows on the Governing Board:

$$\frac{3\,000}{13\,500} \times \frac{10}{1} = 2.22$$

$$\frac{10\,500}{13\,500} \times \frac{10}{1} = 7.78$$

The organisation with 3 000 members could nominate 2 members onto the Governing Board to represent organised labour.

The organisation with 10 500 members could nominate 8 members onto the Governing Board to represent organised labour.

6. Appointment of members

The persons nominated to the Governing Board in accordance with this Schedule are deemed to be appointed as the members of the Governing Board.

7. Resolving disputes

If there is a dispute regarding the interpretation or application of this schedule which cannot be resolved amicably and informally then the organisations involved must refer the dispute for arbitration as contemplated in clause 45 of the constitution.