

No. R. 887

8 September 2005

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

**APPROVAL OF CONSTITUTION FOR: PUBLIC SERVICE SECTOR EDUCATION
AND TRAINING AUTHORITY (PSETA)**

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 **PUBLIC SERVICE SECTOR EDUCATION AND TRAINING AUTHORITY** **as set** out in the Schedule.

SCHEDULE

CONSTITUTION

PUBLIC

SERVICE

SECTOR

EDUCATION

&

TRAINING

AUTHORITY

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CONSTITUTION OF PUBLIC SERVICE SECTOR EDUCATION AND TRAINING AUTHORITY

1. INTRODUCTION

The Public Service Sector Education and Training Authority (PSETA) strives for the development of a skilled workforce to provide a better service to the people of South Africa. This SETA is inspired by the vision of a skilled workforce, appropriately educated, trained and empowered to render quality services, which are comparable with world-class standards.

2. DEFINITIONS

In this Constitution, unless the context indicates otherwise, any word or phrase that is defined in the Skills Development Act, 1998 (Act No. 97 of 1998) has the same meaning as in that Act, and –

- (a) “**Accounting Standards Board**” means the board established in terms of section 87 of the PFMA;
- (b) “**Act**” means the Skills Development Act, 1998 (Act No. 97 of 1998);
- (c) “**Authority**” means PSETA;
- (d) “**Board**” means the PSETA Board
- (e) “**Chief Executive Officer**” means the Chief Executive Officer of the Authority appointed in terms of clause 14;
- (f) “**Constitution**” means this Constitution and any Annexures to it.
- (g) “**Department**” means the Department of Labour;
- (h) “**Designated Groups**” means black people, women and people with disabilities;
- (i) “**Director-General**” means the Director-General of Labour;
- (j) “**DPISA**” means the Department of Public Service and Administration
- (k) “**GPSSBC**” means the General Public Service Sectoral Bargaining Council
- (l) “**Employer**” means any government department and organisational component listed in Schedules 1 to 3 of the Public Service Act, 1994 and participating Parastatals as listed in Annexure “B” to this Constitution;
- (m) “**Exempt Employers**” means those employers within the Sector who are exempt from paying levies in terms of section 4 of the SDLA;

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- (n) **“Line-function”** means officials who perform line functions, which have a direct impact on the core functions of the Institution that is the reason for that institution’s existence
- (o) **“Member(s)”** means the PSETA Board Member
- (p) **“Minister”** means the Minister of Labour;
- (q) **“NSA”** means the National Skills Authority established in terms of section 4 of the Act;
- (r) **“NSDS”** means the National Skills Development Strategy
- (s) **“Organised Labour”** means any trade union or federation of trade unions registered as such in terms of the provisions of the Labour Relations Act, 1995, and admitted to the GPSSBC;
- (t) **“Parastatal”** means any public entity, board, commission, company, corporation, fund or other entity listed in Schedules 1, 2 and 3 of the Public Finance Management Act, 1999 (PFMA), and that is not elsewhere committed.
- (u) **“PFMA”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (v) **“SAQA”** means the South African Qualifications Authority established in terms of section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);
- (w) **“SDLA”** means the Skills Development Levies Act, 1999 (Act No. 9 of 1999);
- (x) **“Sector”** means the Public Service sector as defined in clause 3 (3) of this constitution;
- (y) **“SETA”** means a Sector Education and Training Authority contemplated in Chapter 3 of the Act; and

3. CHARACTER

(1) Name

The name of this SETA is the Public Service Sector Education and Training Authority, referred to in this Constitution as “the Authority”.

(2) Legal status

- (a) The Authority is a juristic person.
- (b) The Authority, through the Board, may authorise any person or persons to act on its behalf and to sign all documents and to take all

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steps **as** may be necessary in connection with any legal proceedings brought by or against the Authority.

(c) The Authority is governed by the Act, the PFMA, the SDLA, and this Constitution.

(d) The Authority is an organisation not for gain.

(3) Scope of Coverage

The scope of coverage of the Authority is the Public Service as proposed in Annexure "A" of this Constitution **as** determined by the Minister of Labour in terms of section 9(2) of the Act.

(4) Organisations in the sector

The Employer, Organised **Labour** and Parastatals in the sector **are** set out in Annexure "B" to this Constitution.

4. OBJECTIVES OF AUTHORITY

In performing the functions contemplated in the Act and in this Constitution, the Authority must seek to promote the objectives contemplated in clauses 4(1), 4(2), and 4(3) of this Constitution.

(1) General objectives

The general objectives of the Authority are –

- (a) to facilitate, coordinate and monitor the implementation of the **NSDS** in the Public Service;
- (b) to attend to the transversal training needs of government departments in the Public Service and participating parastatals;
- (c) to identify skills shortages in the Sector;
- (d) to develop the skills of employees in the Sector;
- (e) to improve the quality of life, prospects and labour mobility of employees in the Sector;
- (f) to strengthen the institutional capacity of Public Service services in order to improve productivity and the quality of services;
- (g) to increase the levels of investment in skills development and to improve returns on such investment;
- (h) to improve performance and productivity in the workplace;

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- (i) to improve the employment prospects of persons previously disadvantaged by unfair discrimination;
- (j) in liaison with employment services and private employment services agencies, to assist work-seekers to gain access to work experience;
- (k) in liaison with employment services and private employment services agencies, to assist retrenched workers to re-enter the labour market;
- (l) to assist employers to find suitably qualified employees;
- (m) to liaise with employers in skills development programmes;
- (n) to access additional funds from the National Skills Fund in accordance with any prescribed procedure, or any applicable law, for the benefit of the Sector;
- (o) to promote skills for self-employment;
- (p) to promote the quality of education and training in the Sector;
- (q) to approve and accredit providers of education and training in the Sector;
- (r) to promote effective communication and participation between bodies involved in skills development both inside and outside the Sector; and
- (s) to support the development of the National Qualifications Framework.

(2) Objectives in relation to employers

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

- (a) to develop their capacity to manage and provide education and training;
- (b) to provide employees with the opportunities to acquire new skills;
- (c) to use their workplaces and facilities to create active learning environments;
- (d) to identify transversal skills needs in the public sector;
- (e) to ensure quality education and training in the workplace;
- (f) to provide new entrants to the labour market with opportunities to learn through exposure to work experience in learnerships;

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- (g) to provide employment opportunities for persons who might otherwise find it difficult to obtain employment;
- (h) to develop appropriate partnerships between themselves and other public, private and non-governmental organisations.

(3) Objectives in relation to employees

The objectives of the Authority in relation to employees are to encourage them –

- (a) to participate in learnerships and other education and training programmes;
- (b) to participate in the governance and evaluation of the programmes they undertake; and
- (c) to develop an ethos of responsibility in respect of their work.

5. POWERS AND FUNCTIONS OF AUTHORITY

(1) Authority must perform certain functions

The **Authority** must, in accordance with any prescribed requirements, –

- (a) develop a sector skills plan within the framework of the national skills development strategy;
- (b) implement its sector skills plan by establishing learnerships, approving workplace skills plans, allocating grants, and monitoring education and training in the Sector;
- (c) promote learnerships and any other learning programmes that include work experience by:
 - (i) identifying workplaces for practical work experience,
 - (ii) improving the facilitation of learning,
 - (iii) assisting in the conclusion of Learnership Agreements;
- (d) register Learnership Agreements;
- (e) apply to SAQA for accreditation **as** a body contemplated in section 5 (1) (a) (ii) (bb) of the South African Qualifications Authority Act, 1995;
- (f) perform such functions **as** may be assigned to it by SAQA;
- (g) liaise with the NSA on the national skills development policy, the national skills development strategy, and the sector skills plan;

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- (h) submit to the Director-General any budgets, reports and financial statements on its income and expenditure that it is required to prepare in terms of the **PFMA**, and plans and reports on the implementation of its sector skills plan and service level agreement;
- (i) liaise with the employment services of the Department and relevant education bodies established under any law regulating education in the Republic to improve information about employment opportunities;
- (j) appoint **staff** necessary for the performance of its functions; and
- (k) perform any other functions and duties imposed by **the Act, the SDLA**, or this Constitution or consistent with the purposes **of** the Act or this Constitution.

(2) Authority may exercise certain powers

The Authority may-

- (a) exercise all such powers **as** are necessary to enable it to perform its functions referred to in clause 5(1);
- (b) accredit any relevant professional bodies or other bodies to perform quality assurance functions in accordance with the accreditation requirements stipulated by SAQA,
- (c) make decisions on any matter related to the performance of its functions on which this Constitution is silent; and
- (d) exercise any other powers conferred on it by the Act, the **PFMA, the SDLA**, or this Constitution.

(3) Delegation of powers and functions

- (a) The Authority, subject to any conditions that it may impose, may delegate any of its functions-
 - (i) to the Executive Committee;
 - (ii) to any other committee or **structure** of the Authority; or
 - (iii) to the Chief Executive Officer.
- (b) Every delegation by the Authority must be in writing, setting out the terms and conditions of such delegation, and must **be** recorded in a book of record.
- (c) The Authority is not divested of any power, **duty** or function by virtue of the delegation and may vary or set aside any decision made under any delegation.

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6. SERVICE LEVEL AGREEMENT

- (1) For every financial year the Authority shall conclude with the Director-General a service level agreement concerning –
 - (a) the Authority's performance of its functions in terms of the Act and the national skills development strategy;
 - (b) the Authority's annual business plan;
 - (c) any assistance the Director-General is to provide to the Authority in order to enable it to perform its functions; and
 - (d) any other prescribed matters.
- (2) The service level agreement must be concluded in the prescribed manner and within the prescribed period.
- (3) If the Authority and the Director-General are unable to agree on the contents of the service level agreement within the prescribed period, the Minister must determine the contents of the service level agreement after consulting the NSA.
- (4) The determination by the Minister in respect of the service level agreement is final and binding.

7. LEARNERSEUPS**(1) Establishment of learnerships**

The Authority may establish a learnership if-

- (a) the learnership consists of a structured learning component;
- (b) the learnership includes practical work experience of a specified nature and duration;
- (c) the learnership would lead to a qualification registered by SAQA and related to an occupation; and
- (d) the intended learnership is registered with the Director-General in the prescribed manner.

(2) Learnership Agreements

- (a) A Learnership Agreement must be in the prescribed format and registered with the Authority in the prescribed manner.
- (b) A Learnership Agreement may not be terminated before the expiry of the period of duration specified in the Learnership Agreement unless-

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- (i) the learner meets the requirements for the successful completion of the learnership;
 - (ii) the Authority approves of the termination; or
 - (iii) ~~the learner is fairly dismissed for a reason related to the learner's~~ conduct or capacity as an employee, ~~or~~ the employer's operational requirements.
- (c) The employer or training provider that is a party to a Learnership Agreement may be substituted ~~with~~ - - -
- (i) the consent of the learner; and
 - (ii) the approval of the Authority.
- (d) The Authority must, in the prescribed manner, provide the Director-General with a record of Learnership Agreements registered by the Authority.

8. SKILLS PROGRAMMES

(1) Grants for skills programmes

- (a) The Authority may facilitate a skills programme if-
- (i) it is occupationally ~~based~~;
 - (ii) when completed it will constitute a credit towards a qualification registered in terms of the National Qualifications Framework;
 - (iii) it uses ~~an~~ accredited training provider;
 - (iv) it complies with any prescribed requirements;
 - (v) it is in accordance with the skills development plans of the Authority and the NSDS; ~~and~~
 - (vi) such programs address the skills imperatives of the public service ~~based on~~ the ~~Human~~ Resources development Strategy priorities.
- (b) The Authority may set any additional terms and conditions for facilitation it considers necessary.

(2) Monitoring of skills programmes

- (a) The Authority must monitor any skills programme implemented in the Public Sector ~~on~~ behalf of its members.

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- (b) The Authority may **cause** funds to be withheld or recovered if it is of the opinion that -
 - (i) the funds **are** not being used for the purpose for which they were made available;
 - (ii) any **term** or condition of funding is not complied with; or
 - (iii) the **standard** of the training is unsatisfactory.

9. MEMBERS OF BOARD

(1) Composition of Board

The Board shall consist of **20** Members, comprising:

- (a) Eight non-executive Members representing the State as employer, appointed by the Minister for Public Service and Administration **as** follows:
 - (i) One Member representing DPSA
 - (ii) Two Members representing national government departments;
 - (iii) Three Members representing provincial government departments, and
 - (iv) Two Members representing Parastatals (i.e. schedule **1, 2**, and 3 entities according to ~~the~~ PFMA)
- (b) Eight Members representing Organised Labour, appointed by the trade union parties to the GPSSBC based on the principle of proportionality.
- (c) The Chief Executive Officer of the PSETA
- (d) The Employer and Organised Labour - additional to their prescribed **numbers** in **terms** of clauses 9(1)(a) and **9(1)(b)** of the this Constitution - shall EACH appoint an expert in any field listed in Annexure "C" to this Constitution to serve **on** the PSETA board as a Member.
- (e) The Members of the Board of the PSETA **so** appointed in **terms** of clauses 9(1)(a), **9(1)(b)** and 9(1)(d) **of** this Constitution, shall appoint a chairperson of the Board from a list of NO LESS than **5** names submitted by themselves.
- (f) From amongst the Members of the board, the Members shall appoint a vicechairperson.

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- (g) Members representing government departments must be drawn from senior management.

(2) Terms of office of Members of Board

Subject to clause 9(9)(a), a Member of the Board holds office for a period of five years and on expiry of his or her term of office is eligible for re-appointment.

(3) Nomination and appointment of Members of Board

- (a) At least three months before the expiry of the term of office of Members of the Board, the Chief Executive Officer must invite nominations from Organised Labour and the Employer within the Sector for Members for the forthcoming term of office.
- (b) The Chief Executive Officer must set a date for the first meeting of the new term and the new Board must meet within three months of the expiry of the term of office of the previous Board.
- (c) The outgoing Members of the Board are eligible for nomination and re-appointment as Members of the Board for further terms of office.

(4) Alternates to Members of Board

The organisations contemplated in clauses 9(1)(a) and 9(1)(a) must appoint alternates to act in the place of each Member that represents their organisation, in the event that such Member is unable to attend a meeting of the Board.

(5) First meeting of each new term of office of Board

- (a) The Chief Executive Officer must notify the Members of the date, time and venue of the first meeting of their term of office.
- (b) At that meeting, Members must -
 - (i) appoint a chairperson as contemplated in clause 9(1)(e);
 - (ii) elect a vice-chairperson as contemplated in clause 11(1);
 - (iii) set the dates for the forthcoming meetings of that year; and
 - (iv) take such other decisions as are necessary to ensure the prompt and effective functioning of the Board.
- (c) The Chief Executive Officer will preside over the first meeting of the new term of office until the chairperson has been appointed.

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(6) Meetings of Board

- (a) The Board must meet at least **FOUR** times each year, one of which must be the Annual General Meeting.
- (b) The business of the Board at the Annual General Meeting shall include:
 - (i) the consideration of the annual financial statements of the Authority;
 - (ii) the annual report of the Authority's **affairs**;
 - (iii) the report of the Auditor-General;
 - (iv) the appointment of an auditor;
- (c) The business of the Board at meetings shall include:
 - (i) the discussion of any matter referred to in or arising out of the financial statements or the **reports**;
 - (ii) the appointment of the Members of the Board;
 - (iii) the discussion of any matter of which notice shall have been given to the Chairperson at least **10** days before the date of the meeting;
 - (iv) the transaction of such other business **as** is required to be **transacted** by the Authority under this Constitution, the Act, the PFMA or the SDLA;
 - (v) the approval of the Authority's annual budget and business plan for submission to the Minister; **and**
 - (vi) the delegation of **the** functions, rights, duties and powers to Members, employees, or committees.

(7) Meeting procedures

Meetings of the Board must comply with the requirements contemplated in clause **13**.

(8) Suspension of Members of Board

- (a) The Authority may on reasonable grounds contemplated in clauses 9(9)(b)(iv) and 9(9)(b)(vii) suspend a Member pending an inquiry contemplated in clause 9(9)(d).
- (b) Before suspending a Member, the **Board** must –

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- (i) give notice to that Member of its intention to suspend him or her;
- (ii) give reasons for the intention to suspend; and
- (iii) give the Member a reasonable opportunity in the circumstances to make representations to the Board.

(9) Vacation of office by Members of Board

- (a)** A Member of the Board shall vacate his or her office if that Member-

- (i) is removed from office as contemplated in clause 9(9)(b);
- (ii) resigns by written notice addressed to the Board; or
- (iii) dies.

- (b)** The Board may remove a Member-

- (i) on the written request of the organisation represented by that Member;
- (ii) for absence from three consecutive meetings of the Board without the prior permission of the Board, unless the Member shows good cause;
- (iii) for permanent incapacity;
- (iv) for serious misconduct;
- (v) for failure to comply with any provision in the Code of Conduct contained in Annexure "D";
- (vi) for conduct that undermines the Board or Authority or brings the Board or Authority or any of its Members into disrepute; or
- (vii) for any other good reason.

- (c)** Before removing a Member, the Board must –

- (i) give notice to that Member of its intention to remove him or her;
- (ii) give reasons for the intention to remove him or her; and
- (iii) give the Member a reasonable opportunity in the circumstances to make representations to the Board.

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- (d) If the Board contemplates removing a Member in terms of clauses 9(9)(b)(iv) or 9(9)(b)(vii), **the** Board must hold an inquiry to determine whether or not the Member should be removed **from** office.
 - (e) The Board must appoint three of its Members to preside over the inquiry.
 - (f) The Chairperson must inform the Member in sufficient detail in **writing -**
 - (i) of the allegations against him or her; and
 - (ii) of **the** date, time and venue of the inquiry.
 - (g) **The** Member must be given adequate time to prepare for the inquiry and may be represented by a fellow Member at the inquiry.
- (10) Filling of vacancies on Board
- (a) If a Member of the Board vacates office before the expiry of his or her **period** of office for any reason contemplated in clauses 9(9)(a) or 9(9)(b), the organisation which was represented by that Member may nominate a new Member for the remaining portion of that period, and in the case of a Member appointed in terms of clause 9(1)(e), the board shall appoint a Member for the remaining period.
 - (b) Subject to clause 9(1), the Board must appoint any person so nominated **as** a Member of the Board.
 - (c) If **the** organisations contemplated in clause 9(1)(a) or 9(1)(b) has not nominated a new Member within a reasonable period of a written **request** by the Board to do so, the Board may appoint a Member to represent **the** interests of such an organisation, **as** the case may be.

10. EXECUTIVE COMMITTEE

(1) Establishment of Executive Committee

The Board must establish an Executive Committee.

(2) Composition of Executive Committee

The Executive Committee of the Board consists of –

- (a) **the** Chairperson and vicechairperson contemplated in clause 11(1);
- (b) the Chief Executive Officer and Chief Financial Officer in an ex-officio capacity;

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- (c) 2 members nominated by the Members of the Board representing Organised Labour,
 - (d) 2 members nominated by the Members of the Board representing the Employer; **and**
 - (e) One member drawn from the experts appointed in terms of clause 9(1)(d)
- (3) Terms of office of 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 Board.
- (4) Functions of Executive Committee
- (a) Subject to the directions of the Board, the Executive Committee must exercise the powers and perform the functions and duties of the Board relating to the supervision and control of the everyday management and administration of the Authority.
 - (b) Without limiting the powers, functions and duties contemplated in clause 10(4)(a), the Executive Committee ~~must-~~
 - (i) supervise the proper management of all financial matters;
 - (ii) co-ordinate and supervise the implementation of the policies of the Authority;
 - (iii) monitor national policy issues and developments **and** make recommendations for the adoption of policy;
 - (iv) co-ordinate the functioning of committees and structures of the Authority and monitor their activities to ensure that they are acting within the terms of any powers delegated to them by the Authority;
 - (v) manage ~~staff~~ employment ~~issues~~;
 - (vi) consider and approve skills programmes which have been recommended by committees and structures if the skills programmes comply with approved policy guidelines;
 - (vii) determine budgets and business plans;
 - (viii) monitor the relations and interactions of the Authority with the **NSA** and other SETA's; and
 - (ix) perform any other function or duty, delegated **to** it by the Board or contained elsewhere in this Constitution,

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- (c) The Executive Committee may establish committees and structures to assist it in the performance of its functions and in this regard may determine –

- (i) terms ~~of~~ reference;
- (ii) membership (which may include persons who are not members of the Executive Committee);
- (iii) Chairperson or facilitator; and
- (iv) meeting procedures.

(5) Meetings of Executive Committee

The Executive Committee must meet at ~~least~~ 8 times each year,

(6) Meeting procedures

Meetings of the Executive Committee must comply with the procedures contemplated in clause 13 read ~~with~~ the necessary changes.

11. CHAIRPERSON AND VICE-CHAIRPERSON

(1) Elections of Chairperson and vice-chairperson

- (a) The Board must at the first meeting of each new term appoint a chairperson in terms of clauses 9(1)(e), ~~11(1)(b), 11(1)(c) or 11(1)(d);~~
- (b) The Members of the Board shall nominate at least **5** independent candidates from a list compiled by Members of the Board to be voted ~~as~~ Chairperson of the Board.
- (c) The nominee who receives the highest number of votes must be ~~declared elected as~~ Chairperson of the Board.
- (d) If two nominees receive the same number of votes, then the Chief Executive Officer must ~~draw~~ one of ~~the~~ names from a hat or ~~box~~ and that person must be declared elected ~~as~~ the Chairperson of the Board.
- (e) The Board must at the first meeting of each new term of office elect from among its Members a vice-chairperson.

(2) Terms of office

The Chairperson and vicechairperson shall hold office for the period of their term of office ~~as~~ Members of the Board.

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(3) Chairperson

The chairperson of the Board must-

- (a) preside at meetings of the Board ~~and~~ Executive Committee;
- (b) conduct such meetings in accordance with clause 13; and
- (c) perform any further duties or functions determined by the Board or Executive Committee.

(4) Vice-chairperson

The vice-chairperson **must**-

- (a) assist the Chairperson perform his or her duties;
- (b) exercise the powers and duties of the Chairperson in his or her absence; and
- (c) perform any further functions determined by the Board or Executive Committee.

(5) Temporary absence or incapacity of Chairperson or vice-chairperson

- (a) If the Chairperson is temporarily absent or incapacitated then the vice-chairperson must perform the functions of the ~~office~~ of Chairperson for the period of such absence or incapacity.
- (b) If the vice-chairperson is **temporarily** absent or incapacitated then the Executive Committee must appoint a member to perform the functions of that office for the ~~period~~ of such absence or incapacity.

(6) Vacation of office

- (a) The Chairperson or vicechairperson shall vacate his or her office if-
 - (i) he or she is removed ~~as~~ a Member ~~as~~ contemplated in clause 9(9); or
 - (ii) **75%** of the Members of the Board pass a resolution to remove ~~him~~ or her from office, notice of which must be given at least 10 days before the convening of the meeting at which the resolution is passed.
- (b) If the Chairperson or vice-chairperson vacates his or her office ~~as~~ contemplated in clause 11(6)(a), the Board must replace him or her in the manner contemplated in clause 9(10)(e) read with clause 11(1).

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12. ESTABLISHMENT OF COMMITTEES AND STRUCTURES**(1) Establishment and membership of committees and structures**

(a) The Board may establish any standing committee, ad hoc committee or structure to assist it in the performance of its functions and **must** determine-

- (i) the membership of the committee or structure;
- (ii) the chairperson or facilitator;
- (iii) its functions;
- (iv) its written terms of reference; and
- (v)** clear timeframes.

(b) Unless otherwise determined in terms of clause 12(1)(a), membership of a committee or structure "

- (i) must consist of an equal number of members representing Organised **Labour** and representing Employers; and
- (ii)** is not restricted to Members of the Board.

(2) Meeting procedures

Meetings of any committee or structure established in terms of clause **12(1)(a)** must comply **with** the procedures contemplated in clause **13**, read with the necessary changes.

13. MEETING PROCEDURES**(1) Ordinary meetings**

In respect of meetings, whether in the form of a physical meeting, telephone conference call, video conference, internet meeting or e-mail meeting, of the Board and **any** other committee or structure of the Board, the Chairperson must "

- (a)** give at least 10 working days written notice of the forthcoming meeting to Members; and
- (b)** include an agenda with the notice.

(2) Special meetings

(a) The Chairperson, may, on grounds of urgency, call **a** special meeting, whether in the form of a physical meeting, telephone

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conference call, video conference, internet meeting or e-mail meeting, of the Board or Executive Committee on **48** hours notice.

- (b) If the Chairperson receives a request signed by at least half of the Members of the Board or the Executive Committee, **as** the case may be, he or she must **as soon as** practicable give notice of a special meeting of the Board **or** the Executive Committee and that special meeting must be held within **15** working days of receiving the request.
- (c) The chairperson of any committee or structure of the Board may, on grounds of urgency, call a special meeting, whether in the form of a physical meeting, telephone conference call, video conference, internet meeting or e-mail meeting, of that committee or structure on **48** hours notice.

(3) Chairperson

- (a) The Chairperson must preside at meetings of the Board and the Executive Committee.
- (b) If the Chairperson is absent from the meeting then **the** vice-chairperson must preside at the meeting.
- (c) If the vice-chairperson is absent then Members at the meeting must elect a Member from amongst themselves to act **as** chairperson at that meeting.

(4) **Quorum** at meetings

- (a) **A** quorum at a meeting, whether in the form of **a** physical meeting, telephone conference call, video conference, internet meeting or e-mail meeting, consists of at least half of the total Members plus one Member provided that at least half of the Members representing Organised Labour and **at** least half of the Members representing the Employer is present.
- (b) If, within one hour of the time fixed for a scheduled meeting, a quorum is not present, then that meeting must stand adjourned to a day, time and place determined by the Chairperson **and** the Members present at **the** adjourned meeting shall form a quorum.
- (c) The Chairperson **must** notify Members who were absent from the scheduled meeting of the adjourned meeting.

(5) Voting rights and decisions **at** meetings

- (a) Each Member **has** a single vote on any matter before a meeting for its decision.
- (b) Proxy votes will not **be** allowed.

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- (c) Any policy decision at a meeting requires the support of at least two thirds of Members present.
- (d) Any operational decision at a meeting requires the support of at least **50%** plus one of the Members present.
- (e) Decisions must be made by way of a show of hands or, if at least half the Members present so require, by way of closed ballot.
- (f) In the event of an equality of votes, the Chairperson has a casting vote.

(6) Minutes of meetings

- (a) The Chairperson must appoint a person to –
 - (i) take minutes of the meeting;
 - (ii) forward the minutes to the Members within two weeks of the meeting; **and**
 - (iii) table the minutes at the next meeting, for approval by the Members.
- (b) The Chairperson of the meeting must sign the minutes as confirmation of their correctness.

14. APPOINTMENT OF CHIEF EXECUTIVE OFFICER AND OTHER STAFF OF AUTHORITY**(1) Appointment**

The Board must-

- (a) appoint a Chief Executive Officer **and** such other employees necessary for the effective performance of the functions of the Authority; and
- (b) determine the terms **and** conditions of their employment.
- (c) the Chief Executive Officer appointed in terms of section 14(1) (a) of this constitution shall demonstrate competency.

(2) ~~Duties~~ of Chief Executive Officer

The Chief Executive Officer ~~must~~-

- (a) implement decisions of the Board;
- (b) manage the day to day affairs of the Authority;

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- (c) attend the meetings of the Board and the Executive Committee in **an** ex-officio capacity;
- (d) promote strategic planning and policy development;
- (e) as accounting officer of the Authority ensure strict and responsible control over the finances of the Authority;
- (f) supervise and direct the staff of the Authority; and
- (g) perform such other functions as are determined by the Board **and the** Executive Committee from time to time.

15. FINANCES**(1) Sources of finance**

- (a) **A** dedicated transfer from National Treasury via the **DP**~~SA~~ to the Authority to fund total administrative and management expenses.
- (b) grants made by relevant government departments **as** may be **agreed** from time to time;
- (c) moneys paid from the National Skills Fund;
- (d) grants, donations and bequests received;
- (e) income earned on ~~surplus~~ moneys deposited ~~or~~ invested;
- (f) income earned on services rendered in the prescribed manner; **and**
- (g) money received from any other lawful source.

(2) Investments

The money received by the Authority must be paid into a banking account at any registered bank and may be invested only in-

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

(3) Purpose for which funds may be used

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

- (a) fund the performance of its functions; and
- (b) pay for its administration within the prescribed limit.

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(4) Financial records of Authority**(a) The Authority must –**

- (i)** prepare annual budgets, annual reports and financial statements in accordance with Chapter 6 of the PFMA; and
- (ii)** furnish the Director-General with copies of all budgets, reports and statements contemplated in clause 15(4)(a)(i) and any other information that the Authority is required to submit in terms of the PFMA;
- (iii)** keep full and proper records of the financial affairs of the Authority;
- (iv)** prepare financial statements for each financial year in accordance with generally accepted accounting practices, unless the Accounting Standards Board approves the application of generally recognised accounting practices for the Authority;
- (v)** submit the financial statements referred to in clause 15(4)(a)(iv) within **two** months after the end of the financial year to the Auditor-General for auditing; and
- (vi)** submit within five months of the end of a financial year to the ~~Minister~~, after adoption by the Board, ~~an~~ annual report of its activities during that financial year, the financial statements for that financial year after the statements have been audited, and the report of the Auditor-General on those statements.

(b) The annual report and financial statements referred to in clause 15(4)(a)(i) must-

- (i)** fairly present the state of affairs of the Authority, its business, 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 and ~~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 Authority**(a) The Auditor-General must –**

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- (i) audit the accounts, financial statements and financial management of the Authority; and
 - (ii) report on that audit to the Authority and to the Minister and in that report express an opinion as to whether the Authority has complied with the provisions of the Act and this Constitution relating to financial matters.
- (b) Clause 15(5)(a) does not prevent the appointment of some other auditor to audit the accounts and financial statements of the Authority.

(6) Financial responsibility of Executive Committee

The Executive Committee is responsible for ensuring that the Authority complies with the financial requirements of the Act, this Constitution and any other applicable law.

(7) Signatories to accounts

- (a) The Authority must appoint at least three signatories to each account of the Authority.
- (b) At least two of the three signatories must be required to authorise any payment by the Authority.

16. CODE OF CONDUCT

The members of the Authority, its committees and structures and its staff must abide by the Code of Conduct contained in Annexure "D".

17. DISPUTE RESOLUTION

Any dispute concerning the interpretation or application of this Constitution must be determined in accordance with Annexure "E".

18. AMENDMENTS TO CONSTITUTION

- (1) The Minister, after consultation with the Authority, may amend this Constitution in the prescribed manner.
- (2) The Authority may, by resolution of 75% of its members, recommend to the Minister that this Constitution be amended in accordance with the resolution.
- (3) The Chairperson must give notice of any proposed amendments at least 30 days before any meeting of the Board convened to discuss the amendment.

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19. INDEMNIFICATION

The Authority indemnifies office bearers, committee members and employees of the Authority against any claims that may be made against them which **may** arise during the course and scope **of** their employment or performance of their duties, provided that such claim did not arise due **to** dishonesty, fraud, breach of **trust**, wilful default or wilful breach of duty **and** the Code of Conduct of the Authority.

20 DISSOLUTION/ WINDING UP

20.1 The Minister may, after consultation with the NSA **and** the Authority, **by** notice in the Government Gazette direct the Director-General to close down the Authority.

20.2 When the Authority closes down it **has** to payoff all its debts. Any assets remaining after all liabilities have been met, will be transferred to the National Skills Fund.

21 TRANSITIONAL ARRANGEMENT

21.1 The current Board shall act **as** the interim Board, with all powers and functions **as** assigned in this Constitution, until such time the new Board is established and convened in **keeping** with this Constitution.

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22. TAKING OVER ADMINISTRATION OF AUTHORITY

- (1) The Minister may, after consultation with the NSA and the Authority concerned, by notice in the Government Gazette direct the Director-General to appoint an administrator to take over the administration of the Authority or perform the functions of the Authority if the Minister is of the opinion that –
- (a) the Authority fails to perform its functions;
 - (b) there is mismanagement of the Authority's finances;
 - (c) the Authority's membership no longer substantially represents the composition contemplated in clause 9;
 - (d) the Authority has failed to comply with its service level agreement; or
 - (e) the Authority has failed to comply with an instruction by the Minister in terms of section **14B** 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 performance by the administrator of the Authority's functions in terms of the PFMA;
 - (b) may suspend or replace one or members of the Authority for a reason contemplated in clause **19(1)**;
 - (c) may suspend the operation of the Constitution of the Authority; and
 - (d) may direct the transfer of all or some of the funds in the Authority's bank account to the National Skills Fund.
- (3) If a notice is published in terms of clause **19(1)** the Minister may, to assure that the Authority resumes the performance of its functions –
- (a) amend its Constitution;
 - (b) reinstate any of its members; and
 - (c) withdraw or amend any provision of the notice mentioned in clause **19(2)** on such conditions that the Minister considers appropriate.
- (4) The Minister may act in terms of clause **19(1)** without consulting the NSA and the Authority if there is financial mismanagement of the Authority and the delay caused by the consultation would be detrimental to the Authority's capacity to perform its functions.

CONSTITUTION OF PUBLIC SERVICE SECTOR EDUCATION AND TRAINING AUTHORITY**ANNEXURE "A": SCOPE OF THE AUTHORITY**

The scope of coverage for this period of the NSDS II – as determined by the Minister of Labour is as follows:

- (a) Government Departments
- (b) Provincial Administrations
- (c) Parastatals NEC
- (d) Department of Foreign Affairs
- (e) Department of Trade and Industry

Notes:-

1. The above scope covers all Government Departments and Provincial Administrations for transverse skills development.
2. The scope of coverage with regard to the attached list at Appendix 1 of National Departments extends to all areas of skill development.
3. NEC means "Not Elsewhere Committed".
4. Attached at Annexure B is a list of identified Parastatals that are currently with the PSETA.

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ANNEXURE "B": ORGANIZATIONS IN THE SECTOROrganised Labour

- (a) The following trade unions admitted in the GPSSBC namely -
 - (i) National Education and Allied Workers Union (NEHA WU)
 - (ii) Public Service Association of South Africa (PSA)
 - (iii) Police and Prisons Civil Rights Union (POPCRU)

Parastatals

- (b) Eastern Cape Appropriate Technology Agency
- (c) Eastern Cape Development Corporation
- (d) Commission on Gender Equality
- (e) Commission for Conciliation Mediation and Arbitration
- (f) The Competition Tribunal
- (g) Defence Research Centre (Pty) Ltd
- (h) Deeds Registration Trading Account
- (i) Federal Council-National
- (j) Independent Electoral Commission, National
- (k) Independent Electoral Commission, Gauteng
- (l) Independent Electoral Commission Wilderness TLC
- (m) Public Protector
- (n) National Director of Public Prosecutions
- (o) National Economic Development and Labour Council
- (p) National Nuclear Regulator
- (q) European Union Parliamentary Support Programme
- (r) Water Research Commission

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Government Departments

- (s) Departments listed in Schedule 1 of the Public Service Act, 1994
- (t) Provincial Departments listed in Schedule 2 of the Public Service Act, 1994
- (u) Organisational Components listed in Schedule 3 of the Public Service Act, 1994

Statutory Councils**Levy Exempt Sector**

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ANNEXURE C:

- (a) The organisations representing the **State as** employer and organised labour on the Board must nominate their representatives on the basis of their competency (knowledge, expertise and experience) by selecting from the following **areas** of expertise but not limited to-
- (b) Client / Stakeholder / sector knowledge (Public **Sector**, Public Service or organised **Labour**).
- (c) Strategic leadership and influence.
- (d) Management and business planning skills.
- (e) Education, training, skills development **and human resource** development.
- (f) Quality assurance, **assessor** and moderator **expertise**.
- (g) Service delivery.
- (h) Skills development legislation and **strategy**.
- (i) Corporate governance.
- (j) Financial management.
- (k) Human resource management.
- (l) Communication and marketing.

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ANNEXURE D: CODE OF CONDUCT

The Members of the Authority, all members of any committee or structure of the Authority, and all staff-

- (a) stand in a fiduciary relationship to the Authority;
- (b) must perform their functions in **good** faith giving **full** effect to the obligations, and spirit of the Act and this Constitution;
- (c) must avoid **any** material conflict between their own interests and those of the Authority, and in particular-
 - (i) must not derive **any** personal economic benefit to which **they are** not entitled because that benefit is obtained in conflict with the interests of the Authority; and
 - (ii) must notify the Authority, at **the** earliest opportunity practicable in the circumstances, of the nature and extent of any direct or indirect material interest which they may have in **any** dealings of the Authority;
- (d) must protect and promote the reputation **and** goodwill of the Authority;
- (e) must exercise their powers for the benefit and in the interests of the Authority;
- (f) must not abuse **the** resources of the Authority; and
- (g) must not disclose to **any** unauthorised person **any** privileged or confidential information of the Authority.

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- (11) 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:
- (a) erroneously sought or made in the absence of any party affected by the award;
 - (b) in which there is ambiguity, or any obvious error or omission, but only to the extent of the ambiguity, error or omission; or
 - (c) granted as a result of a mistake common to the parties to the proceedings.