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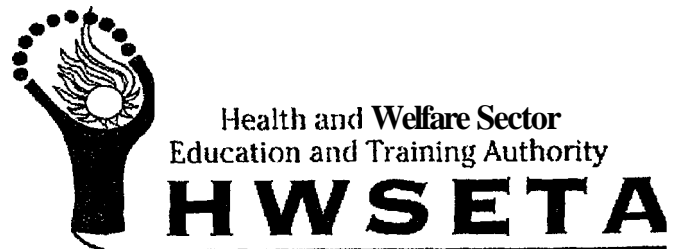
8 September 2005

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

**APPROVAL OF CONSTITUTION FOR HEALTH AND WELFARE SECTOR
EDUCATION AND TRAINING AUTHORITY (HWSETA)**

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

SCHEDULE



CONSTITUTION

HEALTH AND WELFARE SECTOR EDUCATION AND TRAINING AUTHORITY

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1. INTRODUCTION

The Health and Welfare Sector Education and Training Authority ~~st~~ **st**ives for the development of a skilled workforce to meet the health and welfare needs of South Africans. 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 the Health and Welfare Sector Education and Training Authority;
- (d) **“Chief Executive Officer”** means the Chief Executive ~~Officer~~ **Officer** of the Authority appointed in terms of clause **14**;
- (e) **“Constitution”** means this Constitution and any Annexures to ~~it~~ **it**;
- (f) **“Department”** means the Department of Labour;
- (g) **“Designated Groups”** means black people, women and people with disabilities;
- (h) **“Director-General”** ~~means~~ the Director-General of Labour;
- (i) **“Exempt Employers”** means those employers within the Sector who are exempt from paying levies in terms of section **4** of the SDLA;
- (j) **“Learnership Agreement”** means an agreement ~~as~~ contemplated in section **17** of the Act;
- (k) **“Minister”** means the Minister of Labour;
- (l) **“NSA”** means the National Skills Authority established in terms of section **4** of the Act;
- (m) **“Organised Employer”** means the ~~State~~ **State**, any employer’s organisation registered ~~as~~ such in terms of the provisions of the

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Labour Relations Act, 1995 (Act 66 of 1995) and operative in the Sector, and any other association of employers in the Sector representing the interests of its members **as** employers;

- (n) **“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 operative in the Sector and any other association of employees in the Sector representing the interests of its members **as** employees;
- (o) **“PFMA”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (p) **“prescribed”** means prescribed by a regulation made and in force in terms of the Act;
- (q) **“Professional Councils”** means those councils in the Sector that have been established by Acts of Parliament;
- (r) **“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);
- (s) **“SDLA”** means the Skills Development Levies Act, 1999 (Act No. 9 of 1999);
- (t) **“Sector”** means the health and welfare sector **as** determined by the Minister in terms of section 9 of the Act and in Government Gazette No 21012 of 20 March 2000 as amended and reproduced in Annexure “A” to this Constitution;
- (u) **“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 Health and Welfare 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 may authorise any person or persons to act on its behalf and to sign all documents and to take all steps as may be necessary in connection with any legal proceedings brought by or against the Authority.

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- (c) The Authority is governed by the Act, 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 Health and Social Development sector determined by the Minister in terms of section 9(2) of the Act. The Minister's determination is reproduced in Annexure "A" to this Constitution.

(4) Organisations in the sector

The trade unions, employer organizations and relevant government departments 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).

(1) General objectives

The general objectives of the Authority are –

- (a) to identify skills shortages in the Sector;
- (b) to develop the skills of employees in the Sector;
- (c) to improve the quality of life, prospects and labour mobility of employees in the Sector;
- (d) to strengthen the institutional capacity of health and welfare services in order to improve productivity and the quality of services;
- (e) to increase the levels of investment in skills development and to improve returns on such investment;
- (f) to improve productivity in the workplace and the competitiveness of employers;
- (g) to improve the employment prospects of persons previously disadvantaged by unfair discrimination;
- (h) in liaison with employment services and private employment services agencies, to assist work-seekers to gain access to work experience;

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- (i) in liaison with employment services and private employment services agencies, to assist retrenched workers to re-enter the labour market;
- (j) to assist employers to find suitably qualified employees;
- (k) to liaise with employers in skills development programmes;
- (l) 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;
- (m) to promote skills for self-employment;
- (n) to promote the quality of education and training in the Sector;
- (o) to approve and accredit providers of education and training in the Sector;
- (p) to promote effective communication and participation between bodies involved in skills development both inside and outside the Sector; and
- (q) 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 skills needs in the workplace;
- (e) to ensure quality education and training in the workplace;
- (f) to develop workplace skills plans in the context of integrated development planning;
- (g) to provide new entrants to the labour market with opportunities to learn through exposure to work experience in learnership programmes;

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- (h) to provide appropriate education and training interventions in relation to job creation and local economic development initiatives;
- (i) to provide employment opportunities for persons who might otherwise find it difficult to obtain employment;
- (j) to support education and training interventions linked to the objectives and mechanisms of the Employment Equity Act, 1998 (Act No. 55 of 1998); and
- (k) 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 by identifying workplaces for practical work experience, supporting the development of learning materials, improving the facilitation of learning, and 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 and, within 18 months from the date of that application, be so accredited;

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- (f) perform such functions as may be assigned to it by SAQA;
- (g) subject to sections 7, 9 and 10 of the SDLA, disburse the skills development levies in its sector;
- (h) liaise with the NSA on the national skills development policy, the national skills development strategy, and the sector skills plan;
- (i) 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;
- (j) 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, and between education and training providers and the labour market;
- (k) appoint staff necessary for the performance of its functions; and
- (l) 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 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; or
 - (ii) to any other committee or structure of the Authority.

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- (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.

6. SERVICE LEVEL AGREEMENT

- (1) For every financial year the Authority shall concluded 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. LEARNERSHIPS**(I) 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

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- (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-
 - (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 fund 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 national skills development strategy; and

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- (vi) there are finds available.
 - (b) The Authority may set any additional terms and conditions for finding it considers necessary.
- (2) **Monitoring of skills programmes**
- (a) The Authority must monitor any skills programme it finds.
 - (b) The Authority may withhold funds or recover any funds paid if it is of the opinion that
 - (i) the finds 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 AUTHORITY**(1) Composition of Authority**

- (a) Subject to clauses 9(1)(b)(iii) and 9(1)(b)(iv) there **are** twenty-six members of the Authority.
- (b) The Authority is composed of
 - (i) twelve members representing Organised Labour within the scope of the Authority;
 - (ii) twelve members representing Organised Employers within the scope of the Authority and contemplated **as** follows:
 - (a) six members representing employer organisations in the private sector;
 - (b) three members representing the Department of Health, as an employer in the public sector; and
 - (c) three members representing the Department of Social Development, **as an** employer in the public sector; and
 - (iii) one member representing the Professional Councils if the Minister, having consulted the members of the Authority representing Organised Labour, Organised Employers, and relevant governmental departments, considers it appropriate; and

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- (iv) one member representing Exempt Employers if the Minister, having consulted the members of the Authority representing Organised Labour, Organised Employers, and relevant governmental departments, considers it appropriate.
- (c) Members representing government departments must be drawn from senior management.
- (d) Each constituency contemplated in clause 9(1)(b) must be represented by members who are sufficiently representative of Designated Groups.

(2) Terms of office of members of Authority

Subject to clause 9(9)(a), a member of the Authority 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 Authority

- (a) At least three months before the expiry of the term of office of members of the Authority, the Chief Executive Officer must invite nominations from Organised Labour, Organised Employers, relevant government departments, and the Professional Councils and Exempt Employers within the Sector for members for the forthcoming term of office.
- (b) The relevant government departments must jointly nominate their members.
- (c) The Chief Executive Officer must set a date for the first meeting of the new term.
- (d) At the final meeting of the term the outgoing members will appoint the new members of the Authority. Such appointment will take effect on the first day after the expiry of the outgoing member's term of office.
- (e) The outgoing members of the Authority are eligible for nomination and re-appointment as members of the Authority for further terms of office.

(4) Alternates to members of Authority

The organisations contemplated in clause 9(1)(b) 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 Authority.

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

- (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) elect a chairperson and vice-chairperson as contemplated in clause 11(1);
 - (ii) set the dates for the forthcoming meetings of that year; and
 - (iii) take such other decisions as are necessary to ensure the prompt and effective functioning of the Authority.
- (c) The Chief Executive Officer will preside over the first meeting of the new term of office until the chairperson has been appointed.

(6) Meetings of Authority

- (a) The Authority must meet at least twice each year.
- (b) The business of the Authority at these meetings shall include:
 - (i) the consideration of the annual financial statements of the Authority, the annual report of the Authority's affairs and the report of the Auditor-General;
 - (ii) the appointment of an auditor;
 - (iii) the discussion of any matter referred to in or arising out of the financial statements or the reports;
 - (iv) the appointment of the members of the Authority;
 - (v) 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;
 - (vi) the transaction of such other business as is required to be transacted by the Authority under this Constitution, the Act, or the SDLA;
 - (vii) the approval of the Authority's annual budget and business plan for submission to the Minister; and
 - (viii) the delegation of the functions, rights, duties and powers to members, employees, or committees.

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(7) Meeting procedures

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

(8) Suspension of members of Authority

(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 Authority must –

- (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 Authority.

(9) Vacation of office by members of Authority

(a) A member of the Authority 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 Authority; or
- (iii) dies.

(b) The Authority 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 Authority without the prior permission of the Authority, 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 “B”;
- (vi) for conduct that undermines the Authority or brings the Authority or any of its members into disrepute; or

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- (vii) for any other good reason.
- (c) Before removing a member, the Authority 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 Authority.
- (d) If the Authority contemplates removing a member in terms of clauses 9(9)(b)(iv) or 9(9)(b)(vii), the Authority must hold an inquiry to determine whether or not the member should be removed from office.
- (e) The Authority must appoint three of its members, who will normally include the Chairperson and the Vice-chairperson, 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 Authority

- (a) If a member of the Authority 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.
- (b) Subject to clause 9(1), the Authority must appoint any person so nominated as a member of the Authority.
- (c) If the organisation contemplated in clause 9(10)(a) has not nominated a new member within a reasonable period of a written request by the Authority to do so, the Authority may appoint a member to represent the interests of Organised Employers, Organised Labour, the Professional Councils, or Exempt Employers, as the case may be.

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10. EXECUTIVE COMMITTEE

(1) Establishment of Executive Committee

The Authority must establish an Executive Committee.

(2) Composition of Executive Committee

The Executive Committee of the Authority consists of -

- (a) the chairperson and vice-chairperson contemplated in clause 1(1);
- (b) the Chief Executive Officer in an ex-officio capacity;
- (c) four members nominated by the members of the Authority representing Organised Labour; and
- (d) four members nominated by the members of the Authority representing Organised Employers.

(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 Authority.

(4) Functions of Executive Committee

- (a) Subject to the directions of the Authority, the Executive Committee must exercise the powers and perform the functions and duties of the Authority 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;

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- (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 Authority.
- (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); and
 - (iii) meeting procedures.

(5) Meetings of Executive Committee

The Executive Committee must meet at least four times each year.

(6) Meeting procedures

Meetings of the Executive Committee must comply with the procedures contemplated in clause 13.

11. CHAIRPERSON AND VICE-CHAIRPERSON**(1) Elections of chairperson and vice-chairperson**

- (a) The Authority must at the first meeting of each new term of office elect from among its members-
- (i) a chairperson; **and**
 - (ii) a vice-chairperson.
- (b) At the first meeting of each new term of office the Chief Executive Officer must call for nominations for chairperson of the Authority. If there is only one nomination, then the Chief Executive Officer must declare the member concerned elected as chairperson. If there is more than one nomination, the Chief Executive Officer must conduct a closed ballot.

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- (c) The nominee who receives the highest number of votes must be declared elected as chairperson of the Authority.
- (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 Authority.
- (e) The vice-chairperson must be elected in the same manner **as** the chairperson, provided that if the chairperson is a member who represents Organised Employers, then the vice-chairperson **must** be a member who represents Organised Labour and vice versa.

(2) **Terms of office**

The chairperson and vice-chairperson shall hold office for the period of their term of office **as** members of the Authority.

(3) **Chairperson**

The chairperson of the Authority **must-**

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

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(6) Vacation of **office**

- (a) The chairperson or vice-chairperson 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 Authority 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 Authority must replace him or her in the manner contemplated **in** clause 9(10) read with clause 11(1).

12. **ESTABLISHMENT OF COMMITTEES AND STRUCTURES**

(1) **Establishment and membership of committees and structures**

- (a) The Authority 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) its functions; and
 - (iii) its written terms of reference.
- (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 Organised Employers; and
 - (ii) is not restricted to members of the Authority.

(2) **Meeting procedures**

Meetings of any committee or structure must comply with the procedures contemplated in clause **13**.

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 Authority and any other committee or structure of the Authority, 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) Annual General Meeting

- (a) **An** Annual General Meeting will be held once a year.
- (b) The HWSETA will advertise the Annual General Meeting thirty (30) days in advance of the meeting in the media.
- (c) The HWSETA Board will direct the **CEO** on the details of the Annual General Meeting.

(3) Special meetings

- (a) The Chairperson, 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 the Authority or Executive Committee on **48** hours' notice.
- (b) If the Chairperson receives a request signed by at least half of the members of the Authority 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 Authority 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 Authority 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.

(4) Chairperson

- (a) The chairperson must preside at meetings of the Authority or any committee or structure.

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- (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.

(5) 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 Organised Employers are 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 form a quorum.
- (c) The Chairperson must notify members who were absent from the scheduled meeting of the adjourned meeting.

(6) Voting rights and decisions at meetings

- (a) Subject to clause 13(6)(b), each member **has** a single vote on **any** matter before a meeting for its decision.
- (b) Proxy votes will not be allowed.
- (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.

(7) 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

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(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 Authority 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.

(2) Duties of Chief Executive Officer

The Chief Executive Officer must-

- (a) implement decisions of the Authority;
- (b) manage the day to day affairs of the Authority;
- (c) attend the meetings of the Authority 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 Authority and the Executive Committee from time to time.

15. FINANCES

(1) Sources of finance

The Authority is financed from-

- (a) 80% of the levies, interest and penalties collected in respect of the Authority, **as** allocated in terms of sections 8(3)(b) and 9(b) of the SDLA;

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- (b) grants made to it by relevant government departments as may be agreed from time to time;
- (c) moneys paid to it from the National Skills Fund;
- (d) grants, donations and bequests made to it;
- (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.

(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**

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- 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 and to the Executive Committee, 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 -
- (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.

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(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 "C".

17. DISPUTE RESOLUTION

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

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 Authority convened to discuss **the** amendment.

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. 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 21(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.



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

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- (3) If a notice is published in terms of clause 21(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 21(2) on such conditions that the Minister considers appropriate.
- (4) The Minister may act in terms of clause 21(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.

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ANNEXURE "A": SCOPE OF THE AUTHORITY

Standard Industrial Code (SIC) for the Health and Welfare SETA

SETA CODE	SETA NAME	SIC CODE	DESCRIPTION
11	HWSETA	3992	Registered therapeutic health and skin care
11	HWSETA	33531	Traditional healing services
11	HWSETA	37410	Manufacture of medical and surgical equipment and orthopaedic appliances
11	HWSETA	37413	Manufacture of medical precision and optical instruments
11	HWSETA	62312	Retail of prescribed medicines and pharmaceutical products by registered/licensed pharmacy
11	HWSETA	62313	Private sector pharmacy services
11	HWSETA	62314	Public sector pharmacy services
11	HWSETA	62315	Pharmacy management services
11	HWSETA	82132	Medical aid schemes
11	HWSETA	87000	Research and development in the health and welfare sectors
11	HWSETA	87130	Medical and veterinary research
11	HWSETA	87131	SA medical research council
11	HWSETA	87200	Research and experimental development on social sciences and humanities
11	HWSETA	88221	Biomedical engineering
11	HWSETA	88915	Health professionals employment agencies
11	HWSETA	93 101	Universities, specialist pharmaceutical and drug information services
11	HWSETA	93 102	Public and private rehabilitation services
11	HWSETA	93 104	Ancillary health care services
11	HWSETA	93 105	Residential care facilities
11	HWSETA	93 107	Environmental and occupational health and safety services
11	HWSETA	93 108	Health maintenance organisations
11	HWSETA	93 11B	Private and public hospitals
11	HWSETA	93 11E	Hospice care facilities
11	HWSETA	93 12A	Public sector doctors
11	HWSETA	93 12B	Private sector doctors
11	HWSETA	93 12C	General and specialist medical practitioners
11	HWSETA	93 12G	Public service dentists
11	HWSETA	93 12H	Private sector dentists
11	HWSETA	93 12I	Public and private oral hygienists
11	HWSETA	93 12J	Public and private dental therapists
11	HWSETA	93 12K	Public and private dental laboratories
11	HWSETA	93 193	Nursing services
11	HWSETA	93 199	Other health services
11	HWSETA	93 19A	Public sector emergency services

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11	HWSETA	9319C	State services
11	HWSETA	9319D	Public and private clinics
11	HWSETA	9319E	Community services
11	HWSETA	9319F	Private and private clinics
11	HWSETA	9319M	Optical and optometric services
11	HWSETA	9319N	Dietetics and nutritional services
11	HWSETA	9319O	Hearing and audiometric services
11	HWSETA	9319P	Complementary health services
11	HWSETA	9319Q	Laboratory services
11	HWSETA	9319S	Ambulance services
	HWSETA	9319T	Blood transfusion services
	HWSETA	9319U	Psychological and psychometric services
	HWSETA	93200	Veterinary activities
	HWSETA	93300	Social work activities
	HWSETA	93301	Public welfare sector
11	HWSETA	93302	Private welfare sector
11	HWSETA	93303	Development and social services
11	HWSETA	9391W	NGO in the health and social development sectors
11	HWSETA	93400	Religious institutions, grief counselling working with the dying e.g.; Hospices
11	HWSETA	94000	Other community, social and personal service activities

CHANGES MADE

CODE	DESCRIPTION	NOTE
3992	Registered therapeutic health and skin care	New
37411	Orthopaedic Appliances	Deleted as contained under code 37410
37413	Manufacture of medical precision and optical instruments	New
62313	Private sector pharmacy services	New
62314	Public sector pharmacy services	New
62315	Pharmacy management services	New
87000	Research and development	Added "in the Health and Welfare sectors"
87200	Research and experimental development on social services and humanities	Deleted as contained in code 87000
93106	Rehabilitation Services	Deleted as it appears in code 93102
9319T	Blood Transfusion	Added "services"
93103	Other services including local government, mines and industry	Deleted
93110	Hospital activities	Deleted as covered in code 9311B

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93301	Public sector	Added "welfare"
93302	Hospice	Deleted as covered in code 9311E
93302	Private welfare sector	New
9391W	NGO involved in health work	Changed to "NGO in the health and social development Sector"
93400	Religious institutions, grief counselling working with the e.g.: Hospices	New
931 A	District hospitals	Deleted as covered in code 9311B
9311C	Mine hospitals	Deleted as covered in code 9311B
9311D	Company-owned hospitals	Deleted as covered in code 9311B
9312C	General and specialist practice	Deleted practice and added medical practitioners
9312D	Industry based doctors	Deleted as covered in code 9311B
9312E	Doctors in charitable organisations	Deleted as covered in code 9311B
9312F	Paediatrics	Deleted as covered in code 9311B
93190	Other human health activities	Deleted
93192	Clinics and related health care services	Deleted as covered in code 9319D
9319C	State services	Deleted
9319D	Public hospitals and clinics	Changed to read Public and private clinics
9319F	Private and private clinics	Deleted as covered in code 9319D
9319U	Psychological and psychometric testing	Replaced testing with services
93200	Veterinary activities	Replaced activities with services
93300	Social work activities	Replaced activities with services
93107	Environmental and occupational health and safety services	Questionable
94000	Other community, social and personal service activities	Deleted as covered in code 9319E, 93300

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ANNEXURE "B": ORGANIZATIONS IN THE SECTOR

Trade Unions:

ANASA	Association of Nursing Agencies of South Africa
DENOSA	Democratic Nursing Organisation of South Africa
HOSPERSA	Health and other Service Personnel Trade Union of South Africa
NEHAWU	National Education Health and Allied Workers Union
NPSWU	National Public Sector Workers Union
NUPSAW	National Union of Public Service and Allied Workers
PAWUSA	Public and Allied Workers
PSA	Public Servants Association of South Africa

Employers:

HASA	Hospital Association of South Africa
NPG	National Pathology Group
PSSA	Pharmaceutical Society of South Africa
SAMA	South African Medical Association

Government:

DoH	Department of Health and 9 provincial departments
DoSD	Department of Social Development: and 9 provincial departments

Statutory Councils

Forum of Statutory Professional Councils (Health and Social Development)

Levy Exempt Sector

ANNEXURE C: 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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ANNEXURE "D" DISPUTE RESOLUTION

- (1) Any party to a dispute concerning the interpretation or application of this Constitution may refer the dispute to the Chief Executive Officer.
- (2) The referral must:
 - (a) be in writing;
 - (b) adequately describe the dispute; and
 - (c) be delivered to every other party to the dispute by the party referring the dispute.
- (3) The Chief Executive Officer must, as soon as 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.
- (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 for arbitration by an arbitrator approved in terms of the Arbitration Act, 1965 (Act No. **42** of **1965**).
- (5) The arbitrator must be agreed to by the parties to the dispute with the approval of the Chairperson of the Authority or, failing such agreement or approval, by an arbitrator appointed by the Chairperson of the Authority.
- (6) The arbitrator must first attempt to conciliate the dispute. If conciliation is not possible, then the arbitrator must arbitrate the dispute.
- (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.
- (8) Within **14** days of conclusion of the arbitration proceedings:
 - (a) the arbitrator must issue a signed arbitration award with reasons; and
 - (b) the Chairperson must provide a copy of the award to every party to the dispute.
- (9) The arbitration award is final and binding on the parties to the dispute.
- (10) The costs of the arbitration must be borne equally by the parties to the dispute. The arbitrator may however make a different and appropriate award of costs if:
 - (a) a party to the dispute, without reasonable cause, refuses or fails to attend the arbitration or unduly delays arbitration proceedings; or

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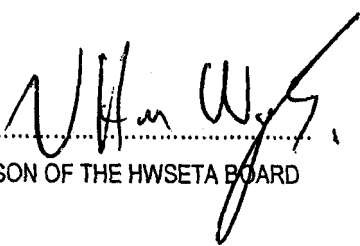
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- (b) the arbitrator finds that a **party** pursuing **or** resisting the dispute did so vexatiously or frivolously or had no reasonable prospect of succeeding.
- (1 1) **An** arbitrator may, at his or her own initiative or as a result of an application 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.

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SIGNED AT JOHANNESBURG ON THIS 12TH DAY OF JULY 2005.


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CHAIRPERSON OF THE HWSETA BOARD