

No. R. 828**11 August 2006**

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

**APPROVAL OF CONSTITUTION FOR: ENERGY SECTOR EDUCATION &
TRAINING EDUCATION (ESETA)**

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 ENERGY SECTOR EDUCATION & TRAINING AUTHORITY as set out in the Schedule.

SCHEDULE

CONSTITUTION
of the
ENERGY SECTOR EDUCATION & TRAINING
AUTHORITY

1. NAME

The name of this Sector Education and Training Authority shall be the **Energy Sector Education and Training Authority**, hereinafter referred to as the **ESETA**.

2. PURPOSE OF THE CONSTITUTION

To provide an institutional framework whereby the **Energy and Water Sectors** of South Africa are able to devise and implement sectoral and workplace strategies for skills development in terms of the **Skills Development Act, 97 of 1998**.

3. VISION AND MISSION OF THE ENERGY SETA

Our vision is: "**ESETA** the leading facilitator of world-class skills for energy and water" Our mission is: "To facilitate skills development for **Energy and Water Sector** stakeholders, through providing integrated, value-added education and training services".

4. OBJECTIVES OF THE ESETA

In performing the functions contemplated in the **Skills Development Act** and in this Constitution, the SETA must seek to promote the objectives contemplated in the Act and this Constitution, and must comply with the **Skills Development Levies Act, 1999** and to the extent that it is necessary with the Public Finance Management Act, 1999 and the **SAQA Act**.

4.1 General Objectives

The paragraphs lines constitute the general objectives of the **ESETA** are to –

- 4.1.1 develop the skills of employees and employers in energy, water and related services;

- 4.1.2 improve the quality of life, prospects and labour mobility of employees in energy, water and related services;
- 4.1.3 strengthen the institutional capacity of organisations involved in the supply of energy, water and related services in order to improve productivity and the quality of services thereby enhancing the quality of life of the community and the country at large;
- 4.1.4 increase the levels of investment in skills development and to improve returns on such investment;
- 4.1.5 promote the inclusion of contextual knowledge in respect of issues of local government and governance within learnerships and skills development programmes.
- 4.1.6 co-operate and develop relationships with other SETAs and ETQAs to ensure coherence and portability.
- 4.1.7 develop and implement integrated and coherent learnership, education and training programs; and sector and company skills plans which allow for maximum coherence within the sectors and maximum portability and mobility of skills and workers within the sectors and with other sectors.
- 4.1.8 promote, facilitate and prioritise education and training for the unemployed and workers in SMME's and in the informal sector that meets their needs and assists them in gaining access to formal employment mainly within the sector.
- 4.1.9 promote, facilitate and prioritise the eradication of illiteracy and innumeracy in the sector.
- 4.1.10 promote the principles of black economic empowerment

4.2 Objectives in relation to employers

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

- 4.2.1 develop their capacity to manage and provide education and training;
- 4.2.2 use their workplaces and facilities to create active learning environments;
- 4.2.3 develop workplace skills plans in the context of integrated development planning;
- 4.2.4 provide new entrants to the labour market with opportunities to learn through exposure to work experience in learnership programmes;
- 4.2.5 provide appropriate education and training interventions in relation to job creation or local economic development initiatives;
- 4.2.6 provide employment opportunities for persons who might otherwise find it difficult to obtain employment;
- 4.2.7 support education and training interventions linked to the objectives and mechanisms of the Employment Equity Act, 1998; and which supports the fulfilment of Bargaining Council agreements;
- 4.2.8 develop appropriate partnerships between themselves and other public, private and non-governmental organisations.

4.3 Objectives in relation to employees

The objectives of the **ESETA** in relation to employees are to –

- 4.3.1 promote and facilitate the development of mechanisms to encourage workers to participate in learnerships and other education and training programmes;
- 4.3.2 encourage workers to participate in the governance and evaluation of the programmes they undertake;
- 4.3.3 facilitate the ongoing recognition of skills, knowledge and ability of workers

4.4 Objectives in relation to local communities

The objectives of the **ESETA** in relation to the communities served by energy, water and related services are to –

- 4.4.1 assist work-seekers to gain access to work experience;

- 4.4.2 assist retrenched workers to re-enter the labour market;
- 4.4.3 promote skills for self-employment

5. LEGAL STATUS OF THE ESETA

- 5.1 The **ESETA** is established under Sections 9 (1) of the Skills Development Act No. 97 of 1998, (the Act) read together with;
 - (i) The Skills Development Levies Act No. **9** of **1999**;
 - (ii) The South African Qualifications Authority Act No. **58** of **1995**;and is governed by the Act and by this constitution
- 5.2 The **ESETA** is a body corporate.
- 5.3 The **ESETA** is an association not for gain.
- 5.4 The **Authority/ Board** shall be the respondent against all legal actions, suits or other proceedings at law brought against the members of the **ESETA Board**, its committee members and employees in matters that relate to their official **ESETA** capacity.

6. DEFINITIONS

Any expression which is not specifically defined herein, but which is defined in the Skills Development Act No. **97** of **1998** shall, unless the contrary intention is apparent from the wording contained herein, bear the meaning assigned to it in **the Act**. Those expressions that are defined in **the Act** and used that context in this constitution appear in *italics*.

In this constitution, the following definitions apply:

“The Act” means the Skills Development Act No.97 of 1998 and covers its related regulations.

“Alternate” means a person appointed to act on behalf of a member of the **Authority** in the absence of the latter.

“Authority” means the Board of the **ESETA**.

“BEE” means Black Economic Empowerment.

“Constituency” means employers, labour and government as broad groupings of stakeholders.

“Chairperson” means the **Chairperson** of the **Authority** elected in terms of section 14 of this constitution.

“Chamber” means a chamber of the **ESETA** established in terms of clause 15.7 of this constitution.

“Chief Executive Officer” means the Chief Executive Officer of the **ESETA** who is appointed under section 17 of this constitution.

“Committee” means any permanent committee, ad-hoc or sub-committee of the **ESETA**.

“Department” means the Department of Labour

“Deputy-Chairperson” means the **Deputy-Chairperson** of the **Authority** elected in accordance with section 14 of this constitution.

“Director General” means the Director General of the Department of Labour

“Education and training standards” means registered statements of desired education and training outcomes and their associated assessment criteria as defined in the **SAQA Act**.

“Energy and Water Sector” means the sector, which has a scope of coverage, determined by the Minister in terms of the Act and its related regulations, and as detailed in **Schedule 1** of this constitution. This scope and coverage may be amended by the *Minister* from time to time.

“ESETA” means the Sector Education and Training Authority for the **Energy and Water Sector** established by the *Minister* under **section 9** of the Act.

“Executive Committee” means the committee established in terms of section 15 of this constitution for the management of the operational affairs of the SETA.

“Functional Committee” means a committee established in terms of section 15 of this constitution to oversee the main functions of the **Energy SETA**.

“LRA” means the Labour Relations Act No. **66** of **1995** (as amended).

“Member” means any person(s) nominated by a Stakeholder to serve on the **ESETA Board** or any of the sub-structures of the **SETA**.

“Minister” means the Minister of Labour

“NSA” means the National Skills Authority established in terms of section 4 of the Act;

“Organised labour” means any trade union or federation of trade unions registered as such under the provisions of **the LRA**.

“Organised employers” means any employers’ organisation registered as such under the provisions of **the LRA** or major companies or any other associations that are or have been formed to promote, advance or represent the interests of their members, where their members are employers.

“Qualification” means the formal recognition of the achievement of the required number and range of credits and such other requirements at specific levels of the National Qualifications Framework as may be determined by the relevant bodies registered for such purpose by the South African Qualifications Authority.

“Regional Committee” means a committee established in terms of section 15 of this constitution.

“Stakeholder” means organised employer bodies including small business, organised labour unions, relevant government departments and other bodies as contemplated in **Section 11** of the Act who are directly involved in the Energy and Water Sector. Stakeholders are listed in **Schedule 2** of this constitution.

“SAQA Act” means the South African Qualifications Authority Act No **58 of 1995** and its related regulations

7. AREA OF JURISDICTION

The national economic sector for which the **ESETA** is constituted by the **Energy and Water Related Services Sector**. It comprises the **organised employers** and **organised labour** in the sector with the scope of coverage as defined in **Schedule 1** of this constitution, as amended from time to time.

8. POWERS OF THE AUTHORITY

8.1 The **Authority** shall, subject to the provisions of the Act, have all such powers as may be necessary to enable it to achieve its objectives and perform its functions and, without limiting the generalities thereof, it shall have the following powers:

- a) Recommend to the *Minister* organisations that may be considered for admission as stakeholders of the **ESETA**.
- b) Establish committees in addition to those referred to in this constitution;
- c) Dissolve any committee and amend or revoke the terms of reference thereof.
- d) Appoint a Chief Executive Officer and such other staff necessary for the effective running of the **ESETA**. The terms governing the appointment of the **Chief Executive Officer** and other officers and staff are contained in the Human Resource policies of the **Authority**;
- e) Formulate general policy of the **ESETA**;

- f) Approve the annual budget of the **ESETA**;
- g) Approve the business plan of the **ESETA**;
- h) Determine the remuneration and conditions of employment of the Chief Executive Officer and other staff of the **ESETA**;
- i) Determine the scale of reimbursement of expenses and other related matters for the **ESETA** and committee members;
- j) Make rules relating to **ESETA** meetings, financial matters, procurement and administrative matters which are in accordance with provisions of this constitution, **the Act** and of any other law;
- k) Report on its income and expenditure to the *Director-General*.
- l) Report on skills development within the **Sector** to the *Director-General*.

8.2 Subject to any limitation imposed by the Act, and this constitution, the **Authority** may delegate to its chambers, members, staff, committees, or the Chief Executive Officer, any of its powers, duties and functions provided that:

- a) The **Authority** cannot delegate the power of delegation;
- b) Any delegation must be recorded in the minutes of the **Authority** and given in writing, specifying:
 - i) *The period for which it is valid;*
 - ii) *Any limitation or conditions of the delegation;*
- c) The **Authority** may revoke or vary the delegation at any time and may vary or set aside any decision made under any delegation;

- d) The **Authority** may continue to exercise or perform a power, duty or function which it has delegated;
- e) The **Authority** remains responsible for actions taken under a delegation.

9. FUNCTIONS AND DUTIES OF THE AUTHORITY

9.1 The **Authority** must perform its functions in accordance with **the Act**, and this constitution;

9.2 The **Authority**, in terms of section 10 of **the Act** must:

- a) Develop a sector skills plan within the framework of the national skills development strategy;
- b) Implement the sector skills plan by:
 - i) Establishing learnerships;
 - ii) Approving workplace skills plans;
 - iii) Allocating grants in the prescribed manner to employers, education and training providers and workers; and
 - iv) Monitoring education and training in the sector.
- c) Promote learnerships by:
 - i) Identifying workplaces for practical work experience;
 - ii) Supporting the development of learning materials;
 - iii) Improving the facilitation of learning; and
 - iv) Assisting in the conclusion of learnership agreements.
- d) Register learnership agreements;

-
- e) Perform the functions of an Education and Training Quality Assurance body in terms of **the SAQA Act**;
 - f) Liaise with the National Skills Authority on:
 - i) The national skills development strategy;
 - ii) The national skills development policy; and
 - iii) The sector skills plan of the **ESETA**.
 - g) Report to the *Director-General* on:
 - i) The income and expenditure of the **ESETA**; and
 - ii) The implementation of the skills plan of the **ESETA**;
 - h) Liaise with the Employment Services of the *Department* and any education body established under any law regulating education in the Republic to improve information:
 - i) About employment opportunities; and
 - ii) Between education and training providers and the Labour Market.
- 9.3** Facilitate the involvement of the relevant government departments in the activities of the **ESETA** to:
- i) Address competency requirements for social delivery;
 - ii) Address the learning needs of the most vulnerable segments of the sector; and
 - iii) Promote training in Small, Medium and Micro Enterprises and, *inter alia*, to enable them to qualify for public contracts.
- 9.4** It is the duty of the **Authority** to consider and/or approve (or otherwise) the "limits of delegation of authority" requested by the relevant committees.
- 9.5** The **Authority** must perform any other duties imposed by the Act or any other functions not specifically mentioned, in order to fulfil the objectives of the **ESETA**.

10. SERVICE LEVEL AGREEMENT

- 10.1 For every financial year the Authority shall conclude with the Director-General a service level agreement concerning –
- (i) the Authority's performance of its functions in terms of the Act and the national skills development strategy;
 - (ii) the Authority's annual business plan;
 - (iii) any assistance the Director-General is to provide to the Authority in order to enable it to perform its functions; and
 - (iv) any other prescribed matters.
- 10.2 The service level agreement must be concluded in the prescribed manner and within the prescribed period.
- 10.3 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.
- 10.4 The determination by the Minister in respect of the service level agreement is final and binding.

11. COMPOSITION OF THE ENERGY SETA

- 11.1 The **ESETA** is composed of **Members** representing the following **stakeholders** in the **Energy and Water Sector(s)**:
- a) **Organised labour**;
 - b) **Organised employers**, including small business;
 - c) Relevant government departments;
- 11.2 The **stakeholders** of the **ESETA** at the date of its establishment are listed in **Schedule 2** of this constitution.
- 11.3 Any registered trade union or employer's organisation may, in the prescribed manner, apply to the **Authority** for admission as a **stakeholder** of the **ESETA**. The **Authority** may admit any trade union, employer organisation, or, interested professional body or bargaining council within the **Energy and**

Water Sector as a **stakeholder**, after consultation with the **Authority**, and if satisfied that the admission of the said body will make the **Authority** more representatives of the interests in the **Energy and Water Sector**.

- 11.4** The **Authority** may remove a **stakeholder** from the **ESETA** only for a good reason and after affording the **stakeholder** an opportunity to be heard.
- 11.5** The name of any **stakeholder** may be removed from the schedule upon written request to the **Authority** by the **stakeholder**.
- 11.6** The **Authority** shall, from time-to-time, compile a schedule of **organised labour** and **organised employers** whose members carry on their business in the **Energy and Water Sector**, together with the government departments relevant to the **Energy and Water Sector**.

12. COMPOSITION OF THE AUTHORITY

- 12.1** The **Authority** is responsible for the acceptance of nominees to serve on the Authority of the SETA.
- 12.2** Each stakeholder listed on Schedule 3 of this constitution may nominate representative to serve on the **Authority**.
- 12.3** The representivity of the interests of **organised employers** and **organised labour** in the **Authority** must be equal.
- 12.4** The **Authority** shall consist of 24 members:
- i) A maximum of ten (10) persons, each with one vote, who shall be nominated to represent **organised labour**. The criteria used for nomination shall be agreed amongst the organisations representing organised labour;

- ii) Maximum of (10) persons, each with one vote, who shall be nominated to represent **organised employers**. The criteria used for nomination shall be agreed amongst the **organised employers**;
- iii) A maximum of three (3) persons, who shall be nominated to represent the relevant government departments. Each of these persons shall have one (1) vote; and
- iv) The **Chief Executive Officer** of the SETA, who may not vote.

12.5 An **alternate member** shall be nominated for each member of the Authority in the same manner and by the same stakeholders, as for **members**. Such nominations shall be in writing and shall be subject to the approval of the **Authority**. **Alternate member** shall act in place of the **member**, if the member is unable to attend a meeting.

12.6 **Members** and **alternate members** shall hold office on the **Authority** for a period of 3 years from the date of acceptance of their nomination and shall be eligible for re-nomination on expiry of their term of office.

12.7 The **Chief Executive Officer** must notify **members** and **alternate members** of their appointment.

12.8 A **member** or **alternate member** vacates office:

- i) On expiry of his/her term of office;
- ii) Under the conditions listed in section **12.10** and **12.11** of the constitution;
- iii) Resignation. Such a resignation must be submitted to the **Chief Executive Officer** in writing; and
- iv) In the event of death in service

12.9 The **Authority** may remove a **member** or **alternate member** from office under any one of the following conditions:

**CONSTITUTION
OF THE ENERGY EDUCATION & TRAINING AUTHORITY**

TABLE OF CONTENTS

1. NAME	3
2. PURPOSE OF THE CONSTITUTION.....	3
3. VISION AND MISSION OF THE ENERGY SETA.....	3
4. OBJECTIVES OF THE ESETA.....	3
5. LEGAL STATUS OF THE ESETA.....	6
6. DEFINITIONS	6
7. AREA OF JURISDICTION.....	10
8. POWERS OF THE AUTHORITY.....	10
9. FUNCTIONS AND DUTIES OF THE AUTHORITY.....	12
10. SERVICE LEVEL AGREEMENT.....	14
11. COMPOSITION OF THE ENERGY SETA	14
12. COMPOSITION OF THE AUTHORITY.....	15
13. MEETINGS OF THE AUTHORITY	17
14. OFFICE BEARERS OF THE AUTHORITY.....	19
15. COMMITTEES OF THE AUTHORITY.....	21
17. CHIEF EXECUTIVE OFFICER	24
18. CODE OF CONDUCT	24
19. LIMITATION OF LIABILITY.....	25
20. DISPUTE RESOLUTION.....	25
21. FINANCES OF THE SETA.....	27
22. TAKING OVER ADMINISTRATION OF THE SETA	28
23. AMENDMENT OF THIS CONSTITUTION	29
THE STATEMENT OF APPROVAL.....	
SCHEDULE 1	32
SCHEDULE 2	33
SCHEDULE 3	34
SCHEDULE 4	

- i) Submission of written notice to the **Chief Executive Officer** of the **Authority** by the **member's stakeholder**;
- ii) Serious misconduct;
- iii) Permanent incapacity;
- iv) Failure to disclose a conflict of interest in any affair of the **ESETA**, over which he/she may have an influence;
- v) Engaging in any activity that may undermine the integrity of the **Authority**; and
- vi) Absence from **two consecutive** meetings of the **Authority** without good cause and not having made prior apology through the **Chief Executive Officer** or an office bearer of the **Authority**.

12.10 If a **member** is dismissed or vacates his/her position before the end of his/her term of office, that **stakeholder** may, subject to this constitution, nominate a replacement to complete the term of office.

12.11 If the membership of a stakeholder of the **ESETA** that is represented on the **Authority** is terminated for whatever reason, then the **stakeholders** of that constituent grouping (labour, employers or government) must agree amongst themselves, using predetermined criteria, as to who shall be entitled to replace the **member(s)** on the **Authority**.

13. MEETINGS OF THE AUTHORITY

13.1 The **Authority** must meet at least six (6) times per year, one meeting of which shall be the Annual General Meeting, which must be held not later than six months after the end of the financial year of the **Authority**. Another should be a meeting to consider the strategy, business plan and budget of the Energy and Water SETA. Special Meetings of the **Authority** may also be convened to consider resolutions that are raised by **members** concerning issues that affect the **ESETA**.

- 13.2** The **ESETA** must give written notice of meetings, either personally or by electronic mail, together with the agenda to representatives, on the instructions of the chairperson, at least twenty-one (21) days in advance, unless the **Chairperson** decides there are good grounds for calling a meeting at shorter notice.
- 13.3** The business of the **Authority** when meeting as an Annual General Meeting of the **Authority** shall include but not be limited to:
- a) Consideration of the financial statements of the **Authority**, the Annual Report of the **Authority** and the report of the Auditor-General.
 - b) The appointment of an auditor.
 - c) Discussion of any matter referred to in or arising from the financial statements or reports.
 - d) Discussion of any matter of which notice shall be given to the **Chief Executive Officer** at least 30 days prior to the date of the Annual General Meeting for inclusion with the notification for the meeting.
 - e) The election of office bearers of the **Authority**.
- 13.4** The **Chairperson** will preside over meetings of the **Authority**. In the event of the **Chairperson** being absent, the **Deputy-Chairperson** will preside. If the **Deputy-Chairperson** is absent, then the **Authority** will appoint one of the **members** to preside.
- 13.5** Items may be added to the agenda of any meeting if the meeting so decides.
- 13.6** Any person in attendance at a meeting of the **Authority** who has a direct or personal interest in any matter before the meeting must, before the matter is discussed by the meeting, declare such interest to the meeting. The **Chairperson** must determine whether such a person may participate in the consideration of the matter.

- 13.7** A minimum of fifty percent plus one (50% + 1 member) of the total **members of the Authority** shall constitute a quorum. If after one hour of the scheduled time for the meeting there is no quorum, the meeting must be adjourned to a later date, time and place determined by the **Chairperson**. The **members** present at the subsequent meeting will be deemed to constitute a quorum for that meeting.
- 13.8** A decision of the **Authority** shall be by consensus. If a consensus cannot be reached, then the decision will be determined by a majority vote of the representatives present at a properly constituted meeting of the **Authority**.
- 13.9** Voting on decisions to be made shall take place by a show of hands or by secret ballot if appropriate.
- 13.10** A decision may not be declared invalid due to a vacancy or the attendance of an unauthorised person at a meeting.
- 13.11** It is the duty of the **Authority** to ensure that proper minutes of all meetings are taken, formally documented and retained in an archive and record system.
- 13.12** A permanent employee of the **ESETA**, as allocated by the **Chief Executive Officer** shall perform the secretariat functions of the **Authority**.

14. OFFICE BEARERS OF THE AUTHORITY

14.1 The **Authority** shall comprise of the following office bearers:

- i) A **Chairperson**; and
- ii) A **Deputy-Chairperson**;

-
- 14.2** The **Chairperson** and **Deputy-Chairperson** shall be elected annually during an Annual General Meeting of the **Authority**, from among the **Organised employer** and **Organised labour** representatives. Where the Chairperson is elected from the **Organised labour** constituency, the **Deputy-Chairperson** must be elected from the **Organised employer** constituency and vice versa.
- 14.3** The Chairperson and the Deputy Chairperson shall not lose their voting right.
- 14.4** Both the **Chairperson** and the **Deputy-Chairperson** shall be eligible for re-election to that position of office.
- 14.5** Once a new **Chairperson** and **Deputy-Chairperson** have been elected, the duties of the current **Chairperson** and **Deputy-Chairperson** terminate.
- 14.6** In the absence of the **Chairperson**, the **Deputy-Chairperson** will perform the functions of chairperson at meetings of the **Authority**. In the event of both being absent, the **Authority** may appoint a temporary chairperson to perform these functions in accordance with section 13.4 of this constitution.
- 14.7** In the event of an office bearer of the **Authority** having to be replaced for whatever reason, before expiry of that person's period of office, the stakeholders of the respective constituent grouping (organised labour, organised employers or government departments) must elect a replacement from among their **members** on the **Authority**, to serve until the expiry of the current term of office for that office bearer.
- 14.8** Any vacancy left by an office bearer of the **Authority** may be filled in accordance with **Section 12. 10** of this constitution.

15. COMMITTEES OF THE AUTHORITY

15.1 The **Authority** hereby establishes the following sub-structures through which to conduct its business:

- a) **Executive Committee**
- b) **Audit Committee**
- c) **Remuneration Committee**
- d) **Functional Committees** as described in schedule 4 of this constitution.
- e) **Regional Committees** as described in schedule 4 of this constitution.

15.2 The **Authority** shall keep an updated schedule of the **Functional Committees** and **Regional Committees** established and the roles and responsibilities delegated to them.

15.3 The **Authority** has the power under this constitution to establish such standing and *ad-hoc* committees, as it may deem necessary to conduct its functions and duties. It may delegate any of its powers to these committees. It may also dissolve these committees when it deems this necessary.

15.4 A committee thus established shall have the terms of reference and organisational structures determined by the **Authority** and in addition must:

- a) Comprise of members appointed on the basis of their knowledge and expertise in the subject of the committee.
- b) Where possible comprise equal numbers of **organised labour** and **organised employer** representatives.
- c) Keep the **Authority** fully informed of all its activities.
- d) Meet at such intervals and frequency as determined by their activities and the dates for the completion of their tasks as specified in their terms of reference.
- e) Ensure that proper minutes of all meetings are taken, formally documented and retained in an archive and record system.
- f) Elect a chairperson from amongst its members.

g) Be supported by staff from the relevant **ESETA** department, who shall advise and assist the committee and act as the secretariat.

15.5 A quorum for a committee shall be in accordance with the Terms of Reference for the relevant committee under question. Decisions shall be by consensus. Where no consensus can be reached a decision shall be made by a simple majority vote. In the event of an equality of votes the presiding officer shall have a casting vote.

15.6 Any **member** of the **Authority** who is not an elected member of a **functional** or **regional** committee may attend and speak at meetings of a committee but may not vote

15.7 The **ESETA** Authority/ Board may establish **chambers** for specific sub sectors of the **Energy and Water sector**

a) Any such chambers will have the duties and functions assigned to it by the **Authority**

b) Chambers so established shall consist of equal numbers of members representing employees and employers and may include such other additional members as the **Authority** may decide; and

c) The **Authority** may at any time amend or revoke any of the duties and responsibilities of the chambers or dissolve such chambers.

16 Executive Committee

a) The voting members of the **Executive Committee** shall comprise of the **Chairperson** and **Deputy-Chairperson** of the **Authority** plus two **members** of the **Authority** chosen from amongst the **organised labour** representatives, two **members** of the **Authority** chosen from amongst from

the **organised employer** representatives and two **members** of the **Authority** drawn from the government Departments (Department of Minerals and Energy and Department of Water Affairs & Forestry).

- b) The **Chief Executive Officer** and the Financial Manager shall serve on the **Executive Committee**, however, may not vote.
- c) The **Executive Committee** shall meet at least once every month.
- d) The **Executive Committee** shall be responsible for the management of the operational affairs of the **ESETA**.
- e) The **Executive Committee** shall have the power to refer such matters as it may deem fit to any other functional committee or any ad-hoc committee it may establish and to withdraw or vary such reference at any time.
- f) In particular, but without limiting the generality of this, the **Executive Committee** shall have the following specific functions and duties:
 - i) Present the annual budget, business plan, and sector skills plan to the **Authority** for ratification;
 - ii) Manage, coordinate and report on the activities of all other committees of the **Authority**;
 - iii) Ensure that any issues and responsibilities are referred to the relevant committees of the **Authority** for appropriate action;
 - iv) Appoint such ad hoc committees as may be required;
 - v) Submit the annual report on the affairs of the **ESETA**, to the **Authority** for consideration and approval;
 - vi) Present the financial statements of the **ESETA** to the **Authority** for approval;
 - vii) Implement and monitor the decisions and policies of the **Authority**; and
 - viii) Receive reports on progress against targets from the **CEO** and management of the **ESETA** and present consolidated reports to the authority.

17. CHIEF EXECUTIVE OFFICER

17.1 The **Chief Executive Officer** for the **ESETA** shall be appointed by the Authority, on such terms as may be determined by the **Authority**.

17.2 The **Chief Executive Officer** shall be responsible to and report to the **Executive Committee**. The **Executive Committee** shall give the **Chief Executive Officer** such direction and supervision as may be necessary to enable him/her to perform the functions required of the position in a fit and proper manner.

17.3 The powers, delegated powers, duties, functions and rights of the **Chief Executive Officer** shall be as determined from time-to-time by the **Authority**. The **Chief Executive Officer** shall, in consultation with the **Executive Committee**, be responsible and accountable for the recruitment, appointment and management of all staff of the **ESETA** in accordance with the policies of the **Authority**.

18. CODE OF CONDUCT

All **stakeholders**, office bearers, **members**, and staff of the **ESETA** must in the exercise of their responsibilities:

- Be conversant with and comply with all applicable laws and regulations which relate to their activities for and on behalf of the **ESETA**;
- Act honestly and with the utmost good faith;
- Perform duties conscientiously and in the best interests of the **ESETA**;
- Ensure that a conflict of interest does not arise between **ESETA's** interest and their personal interests;
- Declare any such conflict as provided for in this constitution;
- Exercise reasonable care and diligence;

- Not make any improper use of information acquired as a stakeholder, member, or employee of the **ESETA**;
- Promote the interests of and advance the interests of the **ESETA**

18.1 Any person who is a member of any structure or sub-structure of the **ESETA** and has any connection with or is engaged in any activities that might constitute a conflict of interest must immediately inform the **Authority** of such an interest.

18.2 A detailed Code of Conduct can be found in **Schedule 6**.

19. LIMITATION OF LIABILITY

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. DISPUTE RESOLUTION

20.1 Any party to a dispute concerning the interpretation or application of this Constitution may refer the dispute to the Chief Executive Officer.

20.2 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.

20.3 The Chief Executive Officer must, (within 7 days) 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.

- 20.4** 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 appointed in terms of the Arbitration Act, 1965 (Act no.42 of 1965).
- 20.5** 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.
- 20.6** The arbitrator must first attempt to conciliate the dispute. If conciliation is not possible, then the arbitrator must arbitrate the dispute.
- 20.7** 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.
- 20.8** 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.
- 20.9** The arbitration award is final and binding on the parties to the dispute.
- 20.10** 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
 - (b) the arbitrator finds that a party pursuing or resisting the dispute did so vexatiously or frivolously or had no reasonable prospect of succeeding.
- 20.11** 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

21. FINANCES OF THE SETA

21.1 The ESETA shall be financed from:

- a) The skills development levies, interest and penalties collected in respect of the **ESETA** as allocated in terms of sections 8(3)(b) and 9(b) of **the Levies Act**;
- b) Monies paid to it from the National Skills Fund;
- c) Income earned on surplus monies deposited or invested;
- d) Income earned on services rendered in the prescribed manner;
- e) Monies received from any other legal source.

21.2 The monies received by the **ESETA** must be managed as contemplated in sections 14(2) and 14(3) of **the Act**.

21.3 All money, funds, property or other assets owned, vested in, held, acquired or received by the **ESETA** shall be held, controlled and administered by the **Executive Committee**, and shall be applied to the achievement of the objectives of the **ESETA** in accordance with its policies and this constitution, to fund the performance of its functions and to pay for its administration.

21.4 Any banking account opened in the name of the **ESETA** shall be operated by the **Chief Executive Officer** and one other co-signatory appointed from the members of the **Executive Committee** by the **Authority**. In the event of the position of the **Chief Executive Officer** being vacant or of the **Chief Executive Officer** being unavailable due to incapacity or similar reason, the

Executive Committee shall appoint a co-signatory in his/her place until such time as the **Chief Executive Officer** returns to office.

21.5 The **Authority**, through the **Executive Committee** assisted by the Audit Committee, shall, in accordance with the standards of generally accepted accounting practice:

- a) Keep proper record of all its financial transactions; assets and liabilities;
- b) Submit annually to the Department, within one month after receipt of the audited financial statements from the Auditor-General, an original copy of such financial statements; and
- c) For purposes of sound financial management the **Authority** must comply with the applicable provisions of the Public Finance Management Act, 1999 (Act No.1 of 1999).

21.6 The books of account, statements of account and financial statements of the **Authority** must be audited annually by the Auditor-General. The Auditor-General will compile a report on the audit and submit a copy of it to the *Minister* and the **Chairperson** of the **Authority**. The **Chairperson** must provide each member of the **Authority** with a copy of the report of the Auditor General.

22. TAKING OVER ADMINISTRATION OF THE SETA

22.1 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 12;
- 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.

22.2 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 22.1
- 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.

22.3 If a notice is published in terms of clause 22.1 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 22.2
- d) on such conditions that the Minister considers appropriate.

22.4 The Minister may act in terms of clause 22.1 without consulting the NSA and the Authority if there is financial mismanagement of the Authority and the delay cause by the consultation would be detrimental to the Authority's capacity to perform its functions.

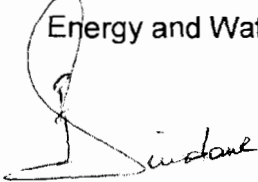
23. AMENDMENT OF THIS CONSTITUTION

23.1 The constitution (excluding schedules 3, 4, 5 and 6) may be amended only by a resolution of at least two-thirds (2/3) of the **members** present at an Annual General Meeting or a General Meeting of the **Authority** constituted in terms of clause 13.7 and after the approval of the *Minister*.

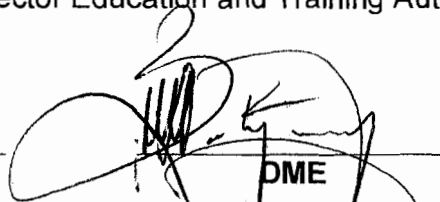
- 23.2** The Chief Executive Office of the **ESETA** must ensure that copies of the proposed amendment, notifications for the meeting and the meeting agenda are dispatched to all members of the **ESETA** at least 30 days prior to the meeting at which an amendment of the constitution is to be considered.
- 23.3** No amendment referred to in Section 22.1 of this Constitution shall have any force or effect until it has been approved by the *Minister*.
- 23.4** Schedules 3, 4, 5 and 6 of this Constitution may be amended by a simple majority of the **Authority**.

THE STATEMENT OF STAKEHOLDER ENDORSEMENT

Duly authorised representatives of the State, **organised employers**, and **organised labour** in this economic sector, hereby endorse this Constitution of the Energy and Water Sector Education and Training Authority (ESETA).



DWAF



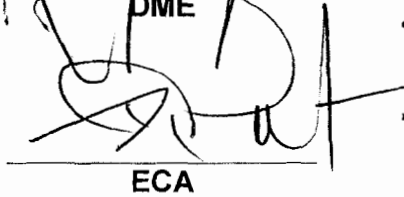
DME



DPE



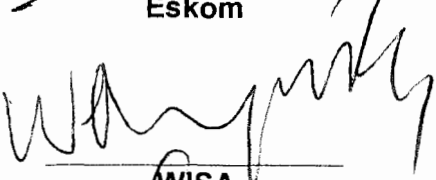
Eskom



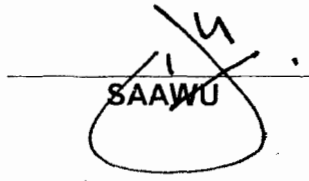
ECA



CEF




WISA



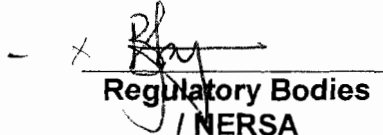
SAAWU



SALGA



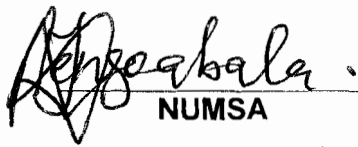
BEE



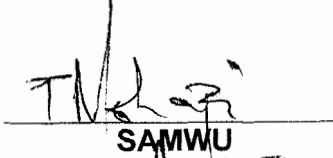
Regulatory Bodies
/ NERSA



NUM



NUMSA



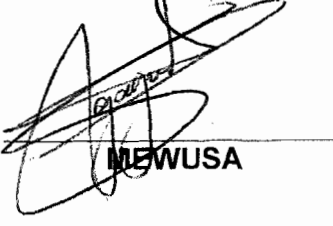
SAMWU



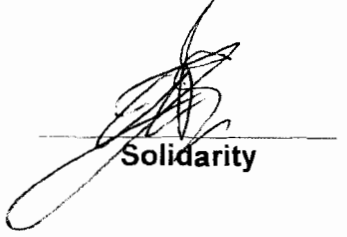
IMATU



SAEWA



MEWUSA



Solidarity

SCHEDULE 1

**UPDATED SCOPE AND COVERAGE OF THE ENERGY AND WATER
SECTOR EDUCATION AND TRAINING AUTHORITY (SETA)**

AREA	SIC CODE *
Generation of Energy	41111
Generation of renewable Energy	4111 4
Transmission of Energy	4111 5
Distribution of purchased electric Energy	41112
Manufacture of gas; distribution of gaseous fuels through mains	41200
Project management, maintenance and operation of electrical generation, transmission and distribution plants, networks and systems	41116
Construction of pylons for electric transmission lines	50222
Electrical contracting	50320
Marketing of Energy	41118
Industrial research for electrical Energy	87141
Collection, Purification & Distribution of Water	42000
Steam and Hot Water Supply	41300
Public Water Enterprises: Collection, Purification and Distribution of Water, Including Potable Water Supply, Domestic Waste and Sewage Systems, Refuse and Sanitation Services	42001
Private Water Companies: Collections, Purification and Distribution of Water, Including Portable Water Supply, Domestic Waste and Sewage Systems, Refuse and Sanitation Services	42002
Irrigation Boards: Collections, Purification and Distribution of Water, Including Portable Water Supply, Domestic Waste and Sewage Systems, Refuse and Sanitation Services	42003
Water and Sanitation Services	94003

* SIC is the acronym for **Standard Industry Classification**

SCHEDULE 2**THE ESETA STAKEHOLDERS****Organised labour**

National Union of Mine Workers	NUM
National Union of Metal Workers of South Africa	NUMSA
Solidarity	Solidarity
South African Electrical Workers Association	SAEWA
Metal & Electrical Workers Union of South Africa	MEWUSA
Independent Municipal and Allied Trade Union	IMATU
South African Municipal Workers Union	SAMWU

Organised Employers

Central Energy Fund	CEF
Electrical Contractors Association ECA(SA)	ECA
South African Local Government Association	SALGA
Eskom Holdings	Eskom
South African Association of Water Utilities	SAAWU
Water Institute of Southern Africa	WISA
Black Economic Empowerment	BEE
National Energy Regulator of South Africa	NERSA

Government Departments

Department of Minerals & Energy	DME
Department of Public Enterprises	DPE
Department of Water Affairs and Forestry	DWAF

SCHEDULE 3**STAKEHOLDER REPRESENTATION ON THE AUTHORITY OF THE
ENERGY AND WATER SETA**

REVISION DATE: July 2005 (To include Water)

ESETA BOARD MEMBERSHIP
Organised labour - 10 SEATS
<i>National Union of Mine Workers (NUM)</i> <i>National Union of Metal Workers of South Africa (NUMSA)</i> <i>Solidarity</i> <i>South African Electrical Workers Association (SAEWA)</i> <i>South African Municipal Workers Union (SAMWU)</i> <i>Independent Municipal and Allied Trade Union (IMATU)</i> <i>Metal & Electrical Workers Union of South Africa (MEWUSA)</i>
Organised Employers - 10 SEATS
<i>Electrical Contractors Association (ECA)</i> <i>Eskom Holdings</i> <i>BEE Organisations Representative</i> <i>Central Energy Fund (CEF)</i> <i>South African Local Government Association SALGA</i> <i>National Energy Regulator of South Africa (NERSA)</i> <i>South African Association of Water Utilities (SAAWU)</i> <i>Water Institute of Southern Africa (WISA)</i>
Government Departments 3 SEATS
<i>Department of Minerals & Energy (DME)</i> <i>Department of Public Enterprises (DPE)</i> <i>Department of Water Affairs & Forestry (DWAF)</i>