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CONTENTS • INHOUD*No.**Page
No. Gazette
No.***GOVERNMENT NOTICE****Labour, Department of***Government Notice*

443	Constitution of the Education, Training and Development Practices: Sector Education and Training Authority	3	28826
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GOVERNMENT NOTICE

DEPARTMENT OF LABOUR

No. 443

15 May 2006



CONSTITUTION

of the

EDUCATION, TRAINING AND DEVELOPMENT PRACTICES
SECTOR EDUCATION AND TRAINING AUTHORITY

TABLE OF CONTENTS

CHAPTER 1 : NAME AND LEGAL STATUS.....	5
Name	5
Scope of coverage	5
Legal status.....	5
CHAPTER 2 : INTERPRETATION	5
CHAPTER 3 : VISION, OBJECTS, FUNCTIONS AND DUTIES.....	8
Vision of the <u>ETDP SETA</u>	8
Mission of the <u>ETDP SETA</u>	8
Objectives of the <u>ETDP SETA</u>	8
Functions and Duties of the <u>ETDP SETA</u>	10
CHAPTER 4 : COMPOSITION OF THE SECTOR.....	12
Admission to the Constituency of the Sector	12
Annual General Meeting.....	13
Attendance	14
Chairperson.....	14
Quorum	15
Matters raised for discussion	15
Annual Report and Financial Report.....	15
Resolutions relating to matters raised for discussion	16
Voting on resolutions of the annual general meeting	16
CHAPTER 5 : THE BOARD	17
Powers of the Board.....	17
<u>Financial and general responsibilities of the Board</u>	18
Membership of the Board	19
Liability of members	21



Terms and conditions of office of members of the Board	21
Meetings of the Board	22
Procedure	23
Quorum	23
Voting	24
Notice of Meetings of the Board	25
Extraordinary meetings of the Board	26
CHAPTER 6 : OFFICE-BEARERS OF THE BOARD	27
Office-bearers	27
Absence or vacant office	27
CHAPTER 7 : EXECUTIVE COMMITTEE.....	28
Duties and functions.....	28
Composition	29
Term of office	30
Meetings and procedure.....	30
Quorum	31
CHAPTER 8 : THE CHIEF EXECUTIVE OFFICER	31
CHAPTER 9 : CHAMBERS.....	32
General	32
Duties and functions.....	33
Chamber roles and functions.....	33
Composition	35
Term of office	35
Meetings and procedures	35
Chamber management.....	36
The functions of the management committee	36



Composition of the management committee.....	36
Term of office of the management committee.....	36
Officers of the management committee	36
Meetings of the management committee	37
Chamber staff.....	37
CHAPTER 10 : COMMITTEES	37
Permanent technical committees.....	37
General	37
<u>Audit Committee</u>	37
ETDQA Permanent Committee	38
Delegation of powers on behalf of the Board	39
Composition	39
Term of office	40
Conduct of meetings	41
Sub-committees of the ETDQA Permanent Committee	41
Joint Standing Committees.....	41
Functions of Joint Standing Committees	42
Composition of Joint Standing Committees	42
Term of office of Joint Standing Committees	42
Meetings and procedure of Joint Standing Committees.....	43
General committees	43
CHAPTER 11 : FINANCIAL PROVISIONS.....	44
<u>Fiduciary duties of Board</u>	47
CHAPTER 12 : CONDUCT OF MEMBERS	48
Disclosure of interest.....	49
Confidentiality.....	50



CHAPTER 13 : AMENDMENT OF THIS CONSTITUTION	50
CHAPTER 14 : DISPUTE RESOLUTION	50
<u>SCHEDULE "A": SCOPE OF ETDP-SETA</u>	55
<u>SCHEDULE "B": ORGANISATIONS IN THE SECTOR</u>	54
<u>SCHEDULE "C": ETDP SETA BOARD REPRESENTATION.....</u>	56



CHAPTER 1 : NAME AND LEGAL STATUS

Name

- 1 The name of the authority is the *Education, Training and Development Practices Sector Education and Training Authority* (the “ETDP SETA”).

Scope of coverage

- 2 The scope of coverage of the *ETDP SETA* is the education sector as determined by the Minister of Labour in terms of section 9 (2) of the *Skills Development Act*, 1998 (Act No, 87 of 1998). The Minister’s determination is reproduced as Schedule “A” to this Constitution.¹

Legal status

- 3 The ETDP SETA is a sector education and training authority, established by the Minister under section 9 of the Act. It is a body corporate with an identity and existence distinct from its office-bearers or members. It will continue to exist notwithstanding changes in the composition of its membership or office bearers. It may sue or be sued in its own name and is capable of having its own rights, duties and obligations.
- 4 It is an association not for gain.

CHAPTER 2 : INTERPRETATION

- 5 In this constitution, unless inconsistent with the context or subject matter:
 - 5.1 Chapter, article, paragraph and paragraph headings are for purposes of reference only and shall not be used in interpretation.
 - 5.2 Unless the context clearly indicates a contrary intention, words connoting:
 - 5.2.1 the singular includes the plural and *vice versa*;
 - 5.3 The following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings:

¹ We have reproduced the schedule from GG No. 27445 of 31 March 2005.



- 5.3.1 Act** means the Skills Development Act, 1998 (Act No. 97 of 1998) (as amended);
- 5.3.2 Board** means the governing body of the ETDP SETA;
- 5.3.3 Director-General** means the Director-General of Labour;
- 5.3.4 Department** means the Department of Labour;
- 5.3.5 Employers' Organisation** means the Department of Education, any employers' organisation registered as such under the provisions of the Labour Relations Act, 1995, and any other associations which can show that they, by means of a constitution, promote, or advance, or represent the interests of their members, as employers;
- 5.3.6 Employees' Organisation** means any trade union or federation of trade unions registered as such under the provisions of the Labour Relations Act, 1995 (Act No, 66 of 1995) (as amended);
- 5.3.7 ETDP** means Education Training and Development Practices
- 5.3.8 ETDP SETA** means the Education, Training and Development Practices Sector Education and Training Authority;
- 5.3.9 Levies Act** means the Skills Development Levies Act 1999 (Act No. 9 of 1999) (as amended);
- 5.3.10 Labour Relations Act** means the Labour Relations Act (Act No. 66 of 1995) (as amended);
- 5.3.11 Minister** means the Minister of Labour;
- 5.3.12 NSA** means National Skills Authority, as established by Section 4 of the Act.
- 5.3.13 PERSAL** means Personnel Salary Database System;
- 5.3.14 Public Finance Management Act** means the Public Finance Management Act 1999 (Act No. 1 of 1999) (as amended);



5.3.15 SAQA means South African Qualifications Authority, as established by section 3 of the South Africa Qualifications Authority Act-1999 (Act No. 1 of 1995);

the SAQA Act means the South African Qualifications Authority Act, 1995 (Act No 1 of 1995)

5.3.16 Sector means the Education, Training and Development Practices national economic sector as determined by the Minister in terms of section 9 of the Act;

5.3.17 sub-sector means a sub-sector referred to in paragraph 13;

5.3.18 worker includes an employee, an unemployed person and a work-seeker; and

5.3.19 WSP means Workplace Skills Plan. (In this constitution any word or expression that is defined in the Act or in the Levies Act has that meaning unless the context indicates otherwise);

5.4 Any person applying this constitution must interpret its provisions to give effect to the vision, mission and objects of the ETDP SETA as set out in Chapter 3.



CHAPTER 3 : VISION, OBJECTS, FUNCTIONS AND DUTIES

Vision of the ETDP SETA

- 6** The vision of the ETDP SETA is to be a promoter and facilitator in the development and improvement of the skills profile of the sector's workforce in order to benefit employers, workers and employees in the sector.

Mission of the ETDP SETA

- 7** To support its vision the ETDP SETA holds as its mission the promotion, facilitation and development of an education, training and development sector in which:
 - 7.1** the skill levels of employees and workers are raised;
 - 7.2** there is a healthy balance between supply and demand in the labour market;
 - 7.3** there are diverse, flexible routes for initial and in-service education and training;
 - 7.4** a variety of career paths are available;
 - 7.5** the quality of education and training provision is improved;
 - 7.6** the levy grant scheme is efficiently administered;
 - 7.7** there is regular liaison with providers, other SETAs, the Department, the NSA and SAQA and its structures;
 - 7.8** internal and external communication is effective in order to advance national human resource and skills development;
 - 7.9** dialogue and interaction between public and private entities in the sector with regard to skills transfer and training delivery is encouraged; and,
 - 7.10** employers, workers and employees in the sector benefit from quality training, higher productivity and harmonious mutual dependencies.



Objectives of the ETDP SETA

- 8** The objectives of the ETDP SETA are to promote and facilitate:
- 8.1** identification of skills shortages and training needs in the sector;
 - 8.2** development of the skills of workers in the sector at all levels, through –
 - 8.2.1** promotion of the quality of life of workers, their prospects for employment and labour mobility;
 - 8.2.2** promotion of productivity in the workplace and the competitiveness of employers;
 - 8.2.3** promotion of self-employment; and,
 - 8.2.4** improving the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education;
 - 8.3** qualifications and learning pathways in the sector for education, training and development practitioners;
 - 8.4** the increased levels of investment in education and training in the sector labour market and to improve the return on that investment; and,
 - 8.5** to encourage employers in the sector –
 - 8.5.1** to use the workplace as an active learning environment;
 - 8.5.2** to provide employees with the opportunities to acquire new skills;
 - 8.5.3** to provide opportunities for new entrants to the sector labour market to gain work experience; and,
 - 8.5.4** to employ persons who find it difficult to be employed in the sector, particularly black people, women and people with disabilities; and,



- 8.6 to encourage workers in the sector to participate in learnerships and other training programmes;
- 8.7 to ensure the quality of education and training in and for the sector workplaces;
- 8.8 to encourage partnerships between the public and private sectors of the economy to provide education and training in and for the workplace; and,
- 8.9 to report to SAQA and to co-operate with its structures.

Functions and Duties of the ETDP SETA

- 9 The functions and duties of the ETDP SETA are to:
 - 9.1 develop a skills plan for the sector within the framework of the national skills development strategy;
 - 9.2 implement its sector skills plan by –
 - 9.2.1 establishing learnerships;
 - 9.2.2 approving workplace skills plans;
 - 9.2.3 allocating grants in the prescribed manner and in accordance with any prescribed standards and criteria to employers, education and training providers and workers;²
 - 9.2.4 monitoring education and training in the sector;
 - 9.2.5 disseminating models of good practice; and,
 - 9.2.6 ensuring that providers develop and deliver accredited learning programmes.
 - 9.3 promote learnerships by –
 - 9.3.1 identifying workplaces in the sector for practical work experience;
 - 9.3.2 supporting the development of learning materials;

² to comply with section 10(1)(b)(iii) of the Act.



- 9.3.3** improving the facilitation of learning; and,
 - 9.3.4** assisting in the conclusion of learnership agreements.
 - 9.4** register learnership agreements;
 - 9.5** perform the functions of an accredited education and training quality assurance body for monitoring and auditing the achievement in the sector of the established education and training standards or qualifications as provided for in the SAQA Act and the Education and Training Quality Assurance Bodies Regulations, 1998;
 - 9.6** when required to do so as contemplated in the Levies Act, collect the skills development levies and disburse the levies allocated to it in terms of that Act in its sector;
 - 9.7** submit to the Director-General :
 - 9.7.1** any budgets, reports and financial statements on its income and expenditure that it is required to prepare in terms of the Public Finance Management Act; and,
 - 9.7.2** plans and reports on the implementation of its sector skills plan and service level agreement with the Director-General.³
 - 9.8** co-operate and maintain close liaison with the NSA and other SETAs whose scope overlaps with that of the ETDP SETA on :
 - 9.8.1** the national skills development policy and strategy; and,
 - 9.8.2** its sector skills plan.
 - 9.9** develop a database on skills supply and demand and to maintain liaison with the employment services of the Department and any education body established under any law regulating education or training in the Republic to improve information :
 - 9.9.1** about employment opportunities in the sector;

³ to comply with section 10(1)(h) of the Act.



- 9.9.2 between education and training providers and the labour market; and
- 9.9.3 about the effects of HIV and AIDS in the workplace;
- 9.10 promote and facilitate education and training provision for small, micro and medium enterprises and their employees in the sector,;
- 9.11 promote the national standard established in terms of section 30B of the Act;⁴
- 9.12 conclude with the Director-General a service level agreement concerning the ETDP SETA's performance of its functions in terms of the Act and the national skills development strategy and the ETDP SETA's annual business plan; and ⁵
- 9.13 perform any other duties imposed by the Act or by the Levies Act or consistent with the purposes of these Acts.

CHAPTER 4 : COMPOSITION OF THE SECTOR

Admission to the Constituency of the Sector

10 The composition of the sector shall be determined as follows:

- 10.1 The ETDP SETA shall compile and shall maintain from time to time a schedule of employer and employee organisations whose members carry on their business activities or are employed, as the case may be, in each sub-sector, together with government departments relevant to the sub-sector.

The recognised employer and employee organisations and relevant government departments in the sector are set out in Schedule B attached to this constitution.

- 10.2 The ETDP SETA may recognise any employers' or employees' organisation, which applies for recognition, if it is satisfied that such recognition will make the sector more representative of the training and education needs of employers or employees in the sector, as the case may be. The ETDP SETA must develop criteria for such recognition.

⁴ to comply with section 10(jA) of the Act.

⁵ to comply with section 10A(1) of the Act.



- 10.3** An application for recognition by an employers' or employees' organisation shall be in such form as may be determined by the ETDP SETA and shall include:
- 10.3.1** details of the applicants' membership within the sector and, if the applicant is an employers' organisation, the number of employees that its members employ within the sector;
 - 10.3.2** the reasons why the applicant ought to be recognised; and
 - 10.3.3** any other information on which the applicant relies in support of its application.
- 10.4** The name of any recognised employees' or employers' organisation will be removed from the schedule –
- 10.4.1** upon the written request of that organisation; or,
 - 10.4.2** by the ETDP SETA if, after giving the organisation a reasonable opportunity to demonstrate otherwise, the ETDP SETA is satisfied that the organisation in question no longer meets the criteria for recognition in the sector.

Annual General Meeting

- 11** The ETDP SETA shall meet for its annual general meeting once in each year within not more than nine months after the end of each financial year of the Authority and within not more than 15 months after the date of the last preceding annual general meeting of the ETDP SETA. The time, date and place of such meeting shall be determined by the chairperson in consultation with the Executive Committee.

Attendance

- 11.1** In addition to members of the Board and 4 nominated members (two employer, two employee) of each of the chambers of the ETDP SETA, the following shall be able to attend the annual general meeting: one representative of each constituent member organisation of the ETDP SETA as defined in paragraph 10 above and Schedule B of this constitution.
- 11.1.1** Written notice of attendance, duly authorised by the constituent member organisation, shall be registered with the ETDP SETA, through the chief



executive officer, at least 21 days prior to the event. Board and nominated chamber members shall be deemed to be duly authorised to attend.

- 11.2** Costs of attendance at the annual general meeting shall be borne by the attending constituent member organisations. Costs of attendance of Board and nominated chamber members shall be borne by the ETDP SETA.

Chairperson

- 11.3** The annual general meeting shall be chaired by the incumbent chairperson of the Board.

- 11.3.1** In the event of the chairperson being unavailable one of the deputy chairpersons shall preside or if none is available then the meeting shall choose a Board member present to preside.

Quorum

- 11.4** Quorum for the annual general meeting shall be at least 50% plus one Board member present at the venue on the appointed day and time without accounting for names of notified representatives and which persons are absent on the appointed day.

Matters Raised For Discussion

- 11.5** Written matters notified for discussion according to paragraph 12.3 shall be allocated a number which shall reflect the year of the annual general meeting and a unique identifying code for that matter which shall be referred to in the agenda and minutes documents.

- 11.5.1** Agenda, discussion matters and documentation ancillary to the annual general meeting shall be supplied to attending delegates 14 calendar days prior to the meeting.

- 11.5.2** No matter shall be raised from the floor on the day of the meeting.



Annual Report And Financial Report

- 11.6** The Annual and Financial Reports of the ETDP SETA shall stand alone, without identifying code, and the chairperson shall at the appropriate time call for a proposer and seconder for a "Resolution of Acceptance of the Annual Report and the Financial Report of the ETDP SETA", at the same time calling for consensus or failing consensus a vote in terms of paragraph 11.6.1.

- 11.6.1** Acceptance or rejection shall be by general consensus, where there is no consensus by a simple majority.

The chairperson shall declare the result and an entry reflecting this in the minute-book of the annual general meeting shall be conclusive evidence of the fact, without proof of the number or proportion of the vote recorded in favour or against any such resolution being necessary.

Resolutions Relating To Matters Raised For Discussion

- 11.7** Subject to paragraph 11.9, the chairperson at the meeting shall declare that a resolution has, on a show of hands, been carried or carried by a particular majority, or lost or not carried by a particular majority, and an entry to that effect in the minute-book of the annual general meeting shall be conclusive evidence of the fact, without proof of the number or proportion of the vote recorded in favour or against any such resolution being necessary.

- 11.8** Proxy votes will not be allowed.

Voting On Resolutions Of The Annual General Meeting

- 11.9** Should a matter submitted in accordance with paragraph 12.3 require, in the view of the Chairperson, a vote to indicate acceptance of a resolution, each Board member shall have one vote, and if standing in more than one capacity shall still have only one vote.

- 11.9.1** The chairperson shall call in relation to the unique identifying code of the matter as allocated in terms of paragraph 11.5 above for general consensus, or, failing consensus, a vote by show of hands upon a call, consecutively, for



those in favour, those against and those abstaining from the resolution, to indicate.

11.9.2 Acceptance by general consensus or a majority of votes in favour or against the matter, shall carry the resolution. If those abstaining are the majority then the resolution shall fall away.

11.9.3 If necessary, counters from at least four of the constituent member organisations represented shall be chosen by the chairperson to count and verify the voting against the number of voting members registered and present.

11.9.4 The chairperson shall not have a deliberative vote but shall have a casting vote in the event of an equality of votes.

11.9.5 The chairperson, as a member with only a casting vote in the context of the annual general meeting, shall oversee the voting process and shall at the end of the process announce the votes in favour of, against and abstaining from, the resolution, and, if necessary, make a casting vote.

12 The business of the annual general meeting shall include:

12.1 the consideration of the annual financial statements of the ETDP SETA, the annual report of the ETDP SETA's affairs and the report of the Auditor-General;

12.2 the discussion of any matter referred to in or arising out of the financial statements or the reports;

12.3 the discussion of any matter of which notice shall have been given to the chief executive officer at least twenty eight days before the date of the annual general meeting;

12.4 the transaction of such other business as is required to be transacted by the AGM under this constitution or the Act.

13 Notice of the AGM shall be advertised at least thirty five days prior to the meeting.



CHAPTER 5: THE BOARD

Powers of the Board

- 14 The Board has all such powers as are necessary to enable it to achieve the ETDP SETA's objectives and perform its duties and functions, together with such other powers as may be conferred upon it by the Act or by the Levies Act. The Board must perform its functions in accordance with the Act, the Levies Act and this constitution.
- 15 Subject to any limitations imposed by the Act, the Levies Act and this constitution, the Board may delegate to its members, committees, chambers or the chief executive officer any of its powers, duties and functions provided that:
 - 15.1 it cannot sub-delegate the power of delegation;
 - 15.2 any delegation must be recorded in the Board's minutes and given in writing and must specify –
 - 15.2.1 the period for which it is valid; and,
 - 15.2.2 any limitations or conditions on the delegation.
 - 15.3 The Board may revoke or vary a delegation at any time and may vary or set aside any decision made under any delegation;
 - 15.4 The Board may continue to exercise or perform a power, duty or function which it has delegated.,
 - 15.5 The Board remains responsible for actions taken under a delegation.

Financial and general responsibilities of Board⁶

- 16 The Board as the accounting authority must ensure that the ETDP SETA has and maintains:
 - 16.1 effective, efficient and transparent systems of financial and risk management and internal control;

⁶ Section 51 of the Public Finance Management Act.



- 16.2** a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77 of the Public Finance Management Act;
 - 16.3** an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; and
 - 16.4** a system for properly evaluating all major capital projects prior to a final decision on the project.
- 17** The Board must take effective and appropriate steps to:
 - 17.1** collect all revenue due to the ETDP SETA ; and
 - 17.2** prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the ETDP SETA; and
 - 17.3** manage available working capital efficiently and economically.
- 18** The Board is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the ETDP SETA.
- 19** The Board must comply with any tax, levy, duty, pension and audit commitments as required by legislation.
- 20** The Board must take effective and appropriate disciplinary steps against any employee of the ETDP SETA who:
 - 20.1** contravenes or fails to comply with a provision of this Act;
 - 20.2** commits an act which undermines the financial management and internal control system of the ETDP SETA; or
 - 20.3** makes or permits an irregular expenditure or a fruitless and wasteful expenditure.
- 21** The Board is responsible for the submission by the ETDP SETA of all reports, returns, notices and other information to Parliament or the Minister, as may be required by the Public Finance Management Act.



- 22 The Board must ensure compliance by the ETDP SETA, with the provisions of the Public Finance Management Act and any other legislation applicable to the ETDP SETA.

Membership of the Board

- 23 The Board consists of forty-two members.
- 24 The organisations entitled to nominate representatives as members are set out in Schedule "C" annexed to this constitution.
- 25 The Board shall consist of the following members:
- 25.1 to represent organised employers in the levy sub-sector, ten persons who shall be appointed by the employers' organisations which are recognised by the ETDP SETA and are listed in Schedule "C";
 - 25.2 to represent organised employers in the budget sub-sector, ten persons who shall be appointed by the Department of Education;
 - 25.3 to represent organised labour, ten persons from the Budget sub-sector and ten persons from the Levy sub-sector who shall be appointed by the employees' organisations which are recognised by the ETDP SETA and are listed in Schedule "C";
 - 25.4 if the Minister, after consultation with the members referred to in paragraphs 25.1, to 25.3 considers it appropriate for the sector, two persons representing:
 - 25.5 any interested professional body; or
 - 25.6 any bargaining council with jurisdiction in the sector⁷
- then such persons may be invited to sit on Board structures in an ex-officio capacity, and shall not have voting rights.
- 26 The chief executive officer (*ex officio*) must attend all Board meetings but may not vote at the meetings.⁸

⁸ The CEO is not a member of the Board as contemplated in section 11 of the Act.



- 27** The constituencies referred to in paragraphs 25.1 to 25.3 shall nominate the persons to be appointed by each employers' and employees' organisation as listed in the schedule and taking into account –
- 27.1** the number of members of each employers' organisation;
- 27.2** the number of employees of the members of each employers' organisation;
- 27.3** the number of members of each employees' organisation.
- 28** The Board shall ensure that it consists at all times of an equal number of members representing employees and employers. The principle shall apply to all chambers and committees of the Board.
- 29** Members must be sufficiently representative of designated groups.⁹

Liability of members

- 30** No member or office-bearer of the Board shall be liable for any of the obligations and liabilities of the ETDP SETA solely by virtue of Board membership or status as an office-bearer.
- 31** No office-bearer or member of the Board shall in any way be personally liable for any loss or damage suffered by any person as a result of the execution, attempted execution or non-execution in good faith of the office bearer's or member's duties and powers under this constitution while that person was performing functions, for, or on, behalf of the ETDP SETA, and members will be indemnified by the ETDP SETA for any such loss or damage.

Terms and conditions of office of members of the Board

- 32** Members of the Board shall hold office for a period of four years from the date of appointment until the:
- 32.1** term of office ends;

⁹ to comply with section 13(4) of the Act. Designated groups mean black people, women and people with disabilities.



- 32.2** appointment is revoked by notice in writing to the ETDP SETA, or the Board, by the Minister or appointing organisation;
- 32.3** member resigns, dies or otherwise becomes incapable of discharging the relevant duties;
- 32.4** member becomes insolvent or commits any act of insolvency; or,
- 32.5** member is removed from office by the Board, after being afforded an opportunity to be heard as a result of:
- 32.5.1** serious misconduct;
 - 32.5.2** any violation of the Code of Conduct approved by the Board or any provisions of this constitution;
 - 32.5.3** being absent from three consecutive meetings of the Board without good cause or the prior permission of the chairperson; or
 - 32.5.4** any conduct that may undermine the integrity of the Board or which may bring the ETDP SETA or any of its members into disrepute; or
 - 32.5.5** any other good reason.
- 33** Whenever a vacancy occurs in any organised labour or employer position, the Board must as soon as practicable invite the organisation which appointed the person whose position has become vacant to appoint another person to fill the vacancy.
- 34** Any person appointed to fill a vacancy under paragraph 33 shall occupy such position from the date of appointment until the next general meeting of the Board when that appointment will lapse.
- 35** Any person elected or appointed to hold any position or office under this constitution shall be eligible for re-election to that position or office for a maximum of two consecutive terms of office. The fact that such persons have served two consecutive terms shall not preclude them from holding any other position or office on the Board after retiring therefrom nor shall it preclude them from holding that office again after the expiry of the term of office of any successor.



Meetings of the Board

- 36** The Board shall meet at least twice in each year. The time, dates and place of such meetings shall be determined by the chairperson in consultation with the Executive Committee.
- 37** The business of the Board, shall include, as and when required:
- 37.1** the discussion of any matter of which notice shall have been given to the chief executive officer before the meeting;
 - 37.2** the transaction of such other business as is required to be transacted by the Board under this constitution or the Act;
 - 37.3** the appointment of the office-bearers of the Board and members of standing committees and chambers;
 - 37.4** the receipt and discussion of the periodic reports of the Executive Committee and the chief executive officer when applicable;
 - 37.5** the approval of the annual budget and business plan prepared by the Executive Committee for submission to the Minister when applicable; and,
 - 37.6** the review and determination of the policy and programmes of the ETDP SETA.

Procedure

- 38** The Board shall regulate its meetings, as it deems fit.
- 39** The Board may act despite vacancies in its membership, which shall not count towards a quorum, so long as a quorum is present at the start of the meeting.
- 40** Acts or decisions of the Board will not be invalid only because of a defect or irregularity in the appointment of a member or the election of the chairperson or other office-holder or in choosing a member to chair a meeting.



Quorum

- 41** The quorum necessary for the transaction of business shall be fifty percent plus one of its voting members counted at the start of the meeting. If within half an hour after the time appointed for the meeting a quorum is not present, the meeting, if convened upon a requisition of members, shall be dissolved.
- 41.1** In any other case, the meeting shall stand adjourned to a day not earlier than seven days and not later than twenty-one days after the date of the meeting at the same time and place. If there is no quorum within half an hour after the time appointed for the meeting, the members then present shall constitute a quorum and may transact the business for which the meeting was called. If the same place is not available, the members present shall by majority vote adjourn to an available place.
- 42** The chairperson of the Board or such person as shall be acting in the place of the chairperson under paragraph 52 shall preside at all meetings of the Board.
- 43** The person presiding at any meeting of the Board shall ensure that minutes of such meetings are kept.

Voting

- 44** While the members of the Board will at all times attempt to reach consensus, if consensus cannot be reached, then, at all meetings of the Board:
- 44.1** Each member of the Board referred to in paragraphs 25.1, 25.2 and 25.3 shall have one vote. Other participants shall have the right to attend and speak at all meetings of the Board, but shall not vote.
- 44.2** Any member who attends a meeting in more than one capacity shall be entitled to exercise one vote only.
- 44.3** All questions shall be determined by a majority of votes. In the case of an equality of votes, whether on a show of hands or on a poll, the presiding officer of the meeting shall have a second or casting vote.
- 44.4** All questions shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the presiding officer of



the meeting or by five members personally present. The demand for a poll may be withdrawn.

44.5 Unless a poll is demanded, the presiding officer at the meeting shall declare that a resolution has, on a show of hands, been carried or carried by a particular majority, or lost or not carried by a particular majority, and an entry to that effect in the minute book of the Board shall be conclusive evidence of the fact, without proof of the number or proportion of the vote recorded in favour or against any such resolution being necessary.

44.6 If a poll is duly demanded, it shall be taken in such manner and either at once or after an interval or adjournment as the presiding officer at the meeting directs.

44.6.1 The result of such poll shall be deemed to be the resolution of the Board.

44.6.2 Scrutineers shall be elected to determine the result of the poll.

44.6.3 The number or proportion of the polled vote in favour or against any resolution shall be recorded in the minute book.

44.7 Proxy votes will not be allowed.

Notice of Meetings of the Board

45 Meetings of the Board shall be called by not less than twenty-one days' notice in writing. In extraordinary circumstances, not less than forty eight hours notice of a meeting may be given together with the nature of the business to be discussed.

46 The notice shall be exclusive of the day on which it is served or deemed to have been served and of the day set for the meeting. It shall specify the place, the day, the hour and the business of the meeting and shall be given in the manner provided for in this constitution to each member of the Board.

47 Any notice required or permitted to be given to any member of the Board under this constitution shall be given in the manner and in accordance with the provisions of this paragraph.



- 47.1** A written notice may be given by the Board to any member either personally, by telefax or electronic mail or by sending it by post in a pre-paid letter addressed to such member at the telefax, electronic mail or delivery address, as the case may be, supplied to the ETDP SETA from time-to-time by the member.
- 47.2** Any written notice by post shall be deemed to have been served on the seventh day after the day when the letter containing it was posted. Notice sent by telefax or by electronic mail shall be deemed to have been received on the next business day after transmission. In proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed, pre-paid and posted. In the case of telefax or electronic mail, it shall be sufficient to prove that the notice was successfully transmitted to the correct address.

Extraordinary meetings of the Board

- 48** The chairperson shall, on the requisition of not less than one-third of the members of the Board, within fourteen days of the lodging of the requisition issue a notice to members of the Board convening a meeting of the Board for a date not less than twenty one and not more than thirty five days from the date of the notice.
- 48.1** The requisition shall state the objects of the meeting; which shall be the only business of the meeting, and which, by this constitution is required or permitted to be transacted by the Board. The requisition shall be signed by all the applicants and lodged at the registered office of the ETDP SETA. It may consist of several documents in like form; each signed by one or more applicants.
- 48.2** If the chairperson does not within fourteen days from the date of the lodging of the requisition issue a notice as required under paragraph 48, the applicants may, themselves, on twenty one days' notice, convene a meeting, stating the objects thereof, but no meeting so convened shall be held after the expiration of three months from the date upon which the requisition was lodged.
- 48.2.1** Any meeting convened by the applicants under paragraph 48.2 shall be convened in the same manner as nearly as possible as that in which meetings of the Board are to be convened by the chairperson.



- 48.3 Any reasonable expenses incurred by the applicants by reason of the failure of the chairperson to convene a meeting shall be repaid to the applicants by the ETDP SETA.

CHAPTER 6 : OFFICE-BEARERS OF THE BOARD

Office-bearers

- 49 The Board shall appoint four office-bearers in terms of paragraphs 50.1, 50.2, 50.3 and 50.4 below for a period of four years, one of whom shall serve as chairperson and the other three as deputy chairpersons.
- 50 Each of the office-bearers of the Board shall be appointed by the Board from amongst its members based on nominations as follows:
- 50.1 organised employers in the levy sub-sector (1);
 - 50.2 organised employers in the budget sub-sector (1);
 - 50.3 organised labour in the levy sub-sector (1); and,
 - 50.4 organised labour in the budget sub-sector (1).
- 51 The position of the chairperson shall alternate between employer and employee and rotate between sub-sectors on an annual basis, so that each office bearer during the term of office will be a chairperson for one year and a deputy chairperson for three years.

Absence or vacant office

- 52 In the absence of the chairperson or should the office of chairperson be vacant, one of the deputy-chairpersons shall act as chairperson. If the chairperson and the deputy chairpersons are absent, or if all of these offices are vacant, the Executive Committee shall appoint an acting chairperson and an acting deputy-chairperson from amongst the members of the Board representing organised employers and organised labour.
- 52.1 Such acting office-bearers shall hold office during the absence of the officer in whose place they stand, or until the next meeting of the Board, as the case may be. During this period, the acting office-bearers shall have all the powers, rights, duties



and privileges that this constitution confers upon the officer in whose place they stand.

CHAPTER 7 : EXECUTIVE COMMITTEE

Duties and functions

- 53 The Executive Committee shall exercise the powers and functions as may be entrusted or delegated to it by the Board. The Executive Committee shall be responsible to and shall report to the Board.
- 54 In particular, but without limiting the generality of this, the Executive Committee shall:
- 54.1 with the approval of the Board:
 - 54.1.1 appoint and agree to the terms of service of the chief executive officer of the ETDP SETA subject to section 14(3A)(b)(ii) and (iii) of the Act¹⁰;
 - 54.1.2 determine the functions, rights and duties of the chief executive officer.
 - 54.2 give the chief executive officer such direction, supervision and support as may be necessary to perform the function of the position in a fit and proper manner;
 - 54.3 appoint such *ad hoc* committees as may be required;
 - 54.4 seek and consider the advice of the chambers and the standing committees;
 - 54.5 prepare and present the annual budget, business plan, sector skills plan and quality plan for the approval of the Board;
 - 54.6 manage and co-ordinate the activities of the standing committees and the chambers;
 - 54.7 whenever any question or issue or business arises, to determine which standing committee or chamber should deal with it;
 - 54.8 establish, in conjunction with the Board, the management structures of the ETDP SETA which shall perform, *inter alia*, the following functions:



- 54.8.1** the administration of the ETDP SETA;
- 54.8.2** the management and control of the financial affairs of the ETDP SETA;
- 54.8.3** the quality management system of the ETDP SETA;
- 54.9** liaise with other SETAs, the Department, the NSA and SAQA and its structures;
- 54.10** monitor the performance of the functions of the ETDP SETA as an education and training quality assurance body; and,
- 54.11** submit, for the consideration of the Board, an annual report on the affairs of the ETDP SETA and of its own activities.
- 55** The Executive Committee shall have the power to refer such matters as it may deem fit to any standing committee or to any *ad hoc* committee it may establish or to any chamber and to withdraw or vary such reference at any time.
- 56** The Executive Committee shall not be entitled to decide questions of general policy.

Composition

- 57** The Executive Committee shall consist of:
 - 57.1** the chairperson of the Board;
 - 57.2** the deputy chairpersons of the Board;
 - 57.3** four members who shall be elected by the Board representing :
 - 57.3.1** organised employers in the levy sub-sector;
 - 57.3.2** organised employers in the budget sub-sector
 - 57.3.3** organised labour in the levy sub-sector
 - 57.3.4** organised labour in the budget sub-sector
 - 57.4** the chief executive officer (ex officio) without voting rights; and,

¹⁰ The Minister may prescribe salary bands, maximum payments and performance related payments.



- 58 While in an acting capacity, any acting officer appointed under paragraph 52 shall substitute for either of the members noted in paragraph 57.1 or 57.2.

Term of office

- 59 The office-bearers of the Board shall hold office as members of the Executive Committee for as long as they hold the position or office referred to in paragraphs 57.1 and 57.2. The members of the Executive Committee referred to in paragraph 57.3 shall hold office from the conclusion of the meeting at which they were appointed for a period of four years.
- 60 The provisions of paragraph 35 with the changes required by the context, shall apply to the members of the Executive Committee.

Meetings and procedure

- 61 The Executive Committee shall meet as often as necessary for the proper conduct of its affairs but at least once in every two months and shall regulate its meetings, as it deems fit.
- 62 Extra meetings of the Executive Committee may be convened by the chairperson, after consultation with the deputy chairpersons and the chief executive officer, if they are available, or, whenever required to do so by at least one-third of the remaining members of the committee.
- 63 At meetings of the committee, each member present shall have one vote and all questions shall be decided by a majority of votes. In the case of an equality of votes, the presiding officer of the meeting shall have a second or casting vote.
- 64 A resolution in writing signed by all the members of the Executive Committee and inserted in the minute book of that committee shall be as valid and effective as if it had been passed at a meeting of the committee, duly convened and held.
- 64.1 Any such resolution may consist of several documents in the same form, each of which is signed by one or more members of the committee and shall be deemed (unless the contrary appears from the resolution) to have been passed on the date on which it was signed by the last member of the committee entitled to sign it.



- 64.2** A resolution shall be deemed to have been signed if consent thereto has been given in a message sent by post, transmitted by telefax or electronic mail and purporting to emanate from the person whose signature to such resolution is required.
- 65** The chairperson of the Board or such person as shall be acting in the place of the chairperson under paragraph 52 shall preside at all meetings of the Executive Committee.
- 66** The person presiding at any meeting of a committee shall ensure that minutes of such meetings are kept.

Quorum

- 67** The quorum necessary for the transaction of business shall be 50% plus one, provided that one of those members is either the chairperson or a deputy chairperson of the committee and one of those members is either the chief executive officer or a nominee.

CHAPTER 8 : THE CHIEF EXECUTIVE OFFICER

- 68** The chief executive officer of the ETDP SETA shall be appointed by the Board on such terms of service as may be determined by the Executive Committee subject to section 14(3A)(b)(ii) and (iii) of the Act ¹¹;
- 68.1** The Executive Committee shall publicly advertise the position whenever it becomes vacant so as to ensure that there is open competition for it.
- 69** The chief executive officer shall be responsible to and shall report to the Board through the Executive Committee.
- 70** The powers, functions, rights, duties and delegated powers of the chief executive officer shall be as determined by the Board.
- 71** The chief executive officer shall be responsible and accountable for :
- 71.1** the management of all ETDP SETA employees and is expected to attend all meetings, subject to delegation;

¹¹ The Minister may prescribe salary bands, maximum payments and performance related payments.



71.2 the management structures of the ETDP SETA which shall perform the functions as in paragraph 54.8.

72 In terms of the policies and procedures determined by the Board, the chief executive officer, shall recruit and appoint such staff as may be necessary and determine the duties and fix the remuneration of such staff subject to section 14(3A)(b)(ii) and (iii) of the Act.¹²

¹² The Minister may prescribe salary bands, maximum payments and performance related payments.



CHAPTER 9 : CHAMBERS

General

- 73** For the purpose of achieving its objects and performing its duties and functions, and with the approval of the Minister, the Board shall establish:
- 73.1** the Levy Chamber for the levy paying sub-sector which comprises those employer and employee organisations representing employers and their employees in the sub-sector who pay the skills development levy imposed by the Levies Act; and,
- 73.2** the Budget Chamber for the budget sub-sector which comprises:
- 73.2.1** those public service employers in the national or provincial sphere of government in the sector and the employees in the sub-sector; and,
- 73.2.2** any national or provincial public entity in the sector, if 80 per cent or more of its expenditure is defrayed directly or indirectly from funds voted by Parliament.
- 74** The Board may, for the purpose of achieving its objects and performing its duties and functions, and, with the approval of the Minister, establish chambers in addition to those referred to in this constitution.
- 75** The Board may at any time dissolve any of these chambers and may amend or revoke their terms of reference and organisational structures.

Duties and functions

- 76** Each chamber shall have the duties, functions and composition as determined by the Board. The chambers shall be responsible to and shall report to the Board.

Chamber roles and functions

- 77** In order to promote the education training and development interests in relation to the sub-sector for which it is established, and, subject to this constitution and the general policy and direction determined from time to time by the Board, each chamber shall have the following functions, to:



- 77.1** provide an inclusive forum for the sector to interact and share information on the sector's training needs and strategies;
- 77.2** identify possible projects and facilitate stakeholder participation in project planning in support of chamber constituency needs;
- 77.3** ensure the identification of appropriate research topics and diagnosis of needs of the various constituencies; and, ensure that the results of research commissioned or performed by the ETDP SETA are disseminated to constituencies in the sector in a format suited to each target audience;
- 77.4** facilitate the establishment, maintenance and monitoring of a database on labour market and skills needs for the chamber constituencies, in conjunction with the Department of Education Management Information System (EMIS), PERSAL and other relevant data base systems;
- 77.5** provide regular reports and feedback to chamber constituencies;
- 77.6** develop a chamber activity plan in consultation with relevant stakeholders;
- 77.7** build the capacity of representatives of the sector to participate in ETDP SETA activities;
- 77.8** participate in providing input on relevant policy issues related to the governance of the ETDP SETA, on the basis of reports on developments in the sector that are relevant to the ETDP SETA;
- 77.9** monitor and evaluate the impact of the implementation of the Act on the sector and make recommendations on ways in which the ETDP SETA could improve service delivery in the sub-sectors;
- 77.10** contribute to the Sector Skills Plan (SSP), in conjunction with stakeholders and the ETDP SETA's secretariats;
- 77.11** participate in study groups and other appropriate advisory and technical structures;
- 77.12** monitor disbursement of grants;



- 77.13** ensure that constituencies are provided with appropriate assistance to develop and implement WSPs and to perform other administrative procedures identified by the ETDP SETA;
 - 77.14** ensure appropriate procedures are followed at chamber meetings in support of good governance and the Code of Conduct for governance bodies of the ETDP SETA;
 - 77.15** ensure synergy between activities involving the ETDP SETA's secretariats and the chamber;
 - 77.16** ensure that the chamber's activities are appropriately and accountably managed within the ETDP SETA;
 - 77.17** report to the Executive Committee, Board and ETDP SETA AGM as required; and,
 - 77.18** oversee such aspects of the work of the ETDP SETA as the Board may decide from time to time.
- 78** In the performance of its functions, a chamber may, with the approval of the Executive Committee, establish committees with the functions, composition and terms of reference, it may determine. The provisions of paragraphs 89, 90 and 91, with the changes required by the context, will apply to such committees.

Composition

- 79** Each chamber shall consist of an equal number of employer and employee representatives:
- 79.1** at least one member of the Board representing each of organised employees and employers in the chamber concerned; an agreed upon number of persons, who need not be members of the Board, and who shall be appointed by, in the case of the:
 - 79.1.1** Levy Chamber, the employees' and employers' organisations in the levy paying sub-sector; and,
 - 79.1.2** Budget Chamber, the employees' and employers' organisations in the budgeting sub-sector, which are recognised by the ETDP SETA.



- 80 The provisions of paragraphs 27.1 to 27.3 with the changes required by the context shall apply in the case of each chamber.
- 81 The chamber shall appoint a chairperson and a co-chairperson from amongst the members of the chambers as referred to in paragraphs 73 and 74.
- 81.1 One shall be appointed by the employers and the other one by the employees.
- 82 The chairperson of the chamber, or if absent, the co-chairperson of the chamber, shall preside at all meetings of the chamber.
- 8.2.1 In the absence of both the chairperson and the co-chairperson, the meeting shall elect a member present; who is a member of the management committee of the chamber as referred to in paragraph 87 to preside at the meeting.

Term of office

- 83 The members of the chambers referred to in paragraphs 73 and 74 shall hold office for two years which may be renewed subject to the endorsement of the appointing constituency.
- 84 The provisions of paragraphs 32, 33, 34 and 35, with the changes required by the context, shall apply in the case of each chamber.

Meetings and procedures

- 85 The quorum necessary for the transaction of the business of a chamber shall be fifty per cent plus one of its members.
- 86 Except by agreement, the remaining provisions of paragraphs 36 and 38 to 47, with the changes required by the context, shall apply to all meetings of a chamber.



Chamber management

- 87 Each chamber shall appoint, from amongst its members, a management committee.

The functions of the management committee

- 88 The management committee shall be responsible for the management of the operational affairs of the chamber and the performance of its functions. It shall deal with such matters as may be referred to it by the chamber. It shall be responsible to and shall report to the chamber.

Composition of the management committee

- 89 The management committee shall consist of:
- 89.1 the chairperson of the chamber;
 - 89.2 the co-chairperson of the chamber;
 - 89.3 two members of the chamber representing organised employers who shall be elected by the chamber;
 - 89.4 two members of the chamber representing organised labour who shall be elected by the chamber; and, the chief executive officer, or a nominee.

Term of office of the management committee

- 90 The office-bearers of the chamber shall hold office as members of the management committee for as long as they hold the position or office referred to in paragraph 89.1 and 89.2. The members of the management committee referred to in paragraphs 89.3 and 89.4 shall hold office for a period of two years renewable for one term.

Officers of the management committee

- 91 The chairperson of the chamber, or if absent, the co-chairperson of the chamber, shall preside at all meetings of the management committee.
- 91.1 In the absence of both the chairperson and the co-chairperson, the meeting shall elect a member present to preside at the meeting of the management committee.



Meetings of the management committee

- 92 Except by agreement, the provisions of paragraph 86 shall apply, with the changes required by the context, to all meetings of the management committee.

Chamber staff

- 93 The Board may, on the recommendation of the management committee of a chamber, appoint such chamber employees as may be required. The Board will determine the functions and duties of these employees.

CHAPTER 10 : COMMITTEES

Permanent technical committees

- 94 The Board shall establish such permanent committees as it may be required to, or as it may require to perform the function of the ETDP SETA and an ETQA Body.
- 95 The terms of reference and conditions of such committees shall be as determined in this constitution, by the Board or by the requirement of any applicable legislation or regulation.

General

- 96 A Permanent Committee may establish, subject to the budgetary approval of the Executive Committee, any other sub-committee as it may require.

Audit Committee¹³

97 Composition

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

98 Duties and functions

- 98.1 The audit committee must, amongst others, review the following:

- 98.1.1 the effectiveness of the internal control systems;

¹³ GG No. 23463, Treasury Regulations of 25 May 2002 issued in terms of the Public Finance Management Act.



98.1.2 the effectiveness of internal audit;

98.1.3 the risk areas of ETDP SETA's operations to be covered in the scope of internal and external audits;

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

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

98.1.6 the ETDP SETA's compliance with legal and regulatory provisions; and

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

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

98.2 The audit committee must:

98.2.1 report and make recommendations to the ETDP SETA;

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

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

ETDQA Permanent Committee

99 The Board shall establish, as a body distinct within the ETDP SETA, in accordance with the SAQA Act, and, while being an accredited Education and Training Quality Assurance body, maintain a permanent technical committee to perform the duties and functions of quality assurance on its behalf.

100 The terms of reference of the ETDQA Permanent Committee shall be as determined by SAQA and the Board from time-to-time.



- 101** The Board shall in conjunction with the Executive Committee maintain a staff complement to support the functions of an accredited Education and Training Quality Assurance body and the work of the ETDQA Permanent Committee.

Delegation of powers on behalf of the Board

- 102** The ETDQA Permanent Committee shall have all the delegated powers of decision-making, as described by SAQA and the SAQA Act, so as to perform the functions of the accreditation, de-accreditation, monitoring and auditing of providers, and programme evaluation and whatsoever other quality assurance functions as may be appropriate.

102.1 The Board may at its own initiative make additional duties, function and terms of reference as it may see fit.

- 103** The Board may not revoke the terms of reference, duties or functions of the ETDQA Permanent Committee while the ETDP SETA remains an accredited ETQA body, save that it may revoke any additional duties, functions or terms of reference that it had imposed of its own accord.

Composition

- 104** The composition of the ETDQA Permanent Committee shall be as follows :

104.1 Four members, two appointed from amongst the employer, and two appointed from amongst the employee organisations in the Levy Chamber (such members shall be chosen by reason of their expertise, knowledge and experience in the relevant field);

104.2 Four members, two appointed from amongst the employer, and two appointed from amongst the employee organisations in the Budget Chamber (such members shall be chosen by reason of their expertise, knowledge and experience in the relevant field); .

104.3 The Manager of the Unit, and any other staff as may be required (ex officio) in an advisory capacity.

- 105** The committee may, as necessary co-opt members, totalling not more than three.



- 106** The ETDQA Permanent Committee shall elect from amongst its number a chairperson and a deputy chairperson.

Term of office

- 107** In order to maintain continuity each member of the ETDQA Permanent Committee shall hold office for four years, which term may be renewed once, and provided that those members referred to in paragraphs 104.1 and 104.2 may be reaffirmed should they cease to hold position in the relevant chamber structure.
- 108** The terms of paragraph 107 shall apply to the position of chairperson and deputy chairperson except that either may :
- 108.1** resign from the position;
 - 108.2** be removed from the position by the Executive Committee on its own initiative or at the request of the Levy Chamber or five voting members of the committee for any good reason.
- 109** The term of office of any member may be terminated by :
- 109.1** resignation;
 - 109.2** removal at the request of the Levy or Budget Chamber as may be applicable to the member;
 - 109.3** removal by the Executive Committee on its own initiative, in consultation with the co-chairpersons of the relevant chamber, for any good reason;
- 110** Generally, the provisions of paragraph 32, with the changes required by the context, shall apply.
- 111** Vacancies on the ETDQA Permanent Committee shall be notified to the Executive Committee which shall request the relevant chamber for a replacement as soon as is practicable.
- 111.1** Any person appointed under paragraph 111 shall hold office for the remainder of the antecedent member's term of office.



Conduct of meetings

- 112** The Permanent Committee shall meet at least twice in each year.
- 112.1** Quorum for meetings of the ETDQA Permanent Committee shall be 50% plus one of its voting members counted at the start of the meeting.
- 113** The chairperson or, if absent, the deputy chairperson shall preside over meetings save that in the absence of both the meeting shall select an acting chairperson for the duration that meeting.
- 114** Decisions of the ETDQA Permanent Committee shall be made by consensus and the minute book shall, *inter alia*, reflect the :
- 114.1** decision tracking number;
- 114.2** applicant's unique provider database number;
- 114.3** conditions agreed upon by the committee for accreditation;
- 114.4** nature of the accreditation;
- 114.5** term of the accreditation period;
- 114.6** any other relevant detail or concern of the committee.

Sub-committees of the ETDQA Permanent Committee

- 115** The ETDQA Permanent Committee shall establish an appeals sub-committee with terms of reference and composition as it shall see fit.

Joint Standing Committees

- 116** For the purposes of achieving its objects and performing its duties and functions, the Board may establish such joint standing committees as may be required. Such joint standing committees will be established in accordance with the provision of this chapter.



Functions of Joint Standing Committees

- 117** Each joint standing committee shall have the duties and functions as determined by the Board.
- 118** The joint standing committees shall obtain approval from the Board prior to incurring any liability to any third party in connection with the performance of their functions.
- 119** The costs of administration of the joint standing committees shall be borne by the ETDP SETA.

Composition of Joint Standing Committees

- 120** Each joint standing committee shall consist of:
 - 120.1** persons nominated by reason of their expertise, knowledge and experience in the relevant field, in accordance with the following principles:
 - 120.1.1** a number of persons, determined by the Board, who shall be elected by each of the chambers from amongst their members;
 - 120.1.2** a number of persons, equal to the number in paragraph 120.1.1, who need not be members of the chamber or of the Board, who shall be nominated by each chamber; and,
 - 120.1.3** the chief executive officer, or a nominee.
- 121** Each joint standing committee shall elect from amongst its members a chairperson and a deputy chairperson.

Term of office of Joint Standing Committees

- 122** The chairperson, deputy chairperson and members of each joint standing committee shall hold office for a period of two years, which may be renewable.
- 123** The appointment of members of each joint standing committee may be revoked by the sub-sector which appointed them or they may be removed from membership of the committee by the Board.



Meetings and procedure of Joint Standing Committees

- 124** Each joint standing committee shall meet as often as necessary for the proper performance of their duties and functions but at least once in every three months, and shall regulate their meetings as they deem fit or as otherwise determined by the Board.
- 125** Meetings of a joint standing committee may be convened either on the initiative of its chairperson, after consultation with the deputy chairperson; or, whenever required to do so by at least one-third of the remaining members of the committee.
- 126** The quorum necessary for the transaction of business by a joint standing committee shall be fifty per cent plus one of its members.
- 127** The chairperson of a joint standing committee or, if absent, the deputy chairperson, shall preside at all meetings of the committee.
- 127.1** In the absence of both the chairperson and the deputy chairperson, the meeting shall choose a member present who is a member of the joint standing committee to preside at the meeting.
- 128** At meetings of a joint standing committee, each member present shall have one vote and all questions shall be decided by a majority of votes.
- 129** In the case of an equality of votes, the presiding officer of the meeting shall have a second or casting vote. The person presiding at any meeting of a joint standing committee shall ensure that minutes of such meeting are kept.

General committees

- 130** The Board shall establish an audit committee, finance committee and a human resources committee whose composition and function shall be determined by the Board.
- 131** Other committees may be established by the Board from time to time as and when a need arises. They shall have the terms of reference and organisational structures determined by the Board.
- 132** All committees and sub-committees must, except where otherwise provided for herein or where the context suggests otherwise, consist of an equal number of members



representing employers and employees and such additional members as the Board may determine.

- 133** The Board may at any time dissolve any such committee, including a joint standing committee, and may amend or revoke its terms of reference and organisational structures.
- 134** A committee shall have powers and functions provided for in this constitution or delegated to it by the Board, subject to such conditions as may be imposed by the Board.

CHAPTER 11 : FINANCIAL PROVISIONS

- 135** The financial year of the ETDP SETA shall be from 1 April to 31 March in the following year in accordance with the Public Finance Management Act.
- 136** The ETDP SETA must be managed in accordance with the Public Finance Management Act.¹⁴
- 137** The final authority and responsibility in all matters relating to finance shall rest with the Board.¹⁵
- 138** The ETDP SETA shall be financed from:
- 138.1** the skills development levies, interest and penalties collected in its sector;
 - 138.2** monies paid to it by the Budget Chamber sub-sector;
 - 138.3** monies paid to it from the National Skills Fund;
 - 138.4** grants, donations and bequests made to it;
 - 138.5** monies received from any other legal source;
 - 138.6** income earned from surplus money invested as prescribed; and,
 - 138.7** income earned from services rendered in the prescribed manner.

¹⁴ to comply with section 14(4) of the Act.

¹⁵ The Board is the accounting authority of the ETDP SETA.



- 139** The Board shall, in accordance with the Act, establish a formula for the disbursement of collected levies which will ensure that as much of those funds as may be possible will be returned to employers for employee education, training and development and learnerships.
- 140** . The moneys received by the ETDP SETA may be used only in the prescribed manner and in accordance with any prescribed standards or criteria to
- 140.1.1** fund the performance of its functions; and
- 140.1.2** pay for its administration within the prescribed limit.¹⁶
- 141** The funds of the ETDP SETA which are permitted to be made available for administration and for the performance of its functions shall be allocated from time to time by the Board in accordance with the following principles :
- 141.1** the costs incurred by the Board and the Executive Committee in carrying out their functions and duties under this constitution, including the employment of the staff of the ETDP SETA and the costs incurred by permanent and joint standing committees shall be contributed by each sub-sector in proportion to the number of sub-sector representatives on the Board;
- 141.2** the costs incurred by the Levy Chamber in the performance of its functions and duties, including the appointment of staff shall be paid from the skills development levies, interest and penalties collected in the sub-sector; and,
- 141.3** the costs incurred by the Budget Chamber in the performance of its functions and duties, including the appointment of staff shall be paid from its own resources.
- 142** The income and property of the ETDP SETA, whencesoever derived, shall be applied solely towards the promotion of its objects, and no portion thereof shall be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, or otherwise howsoever, to the members of the ETDP SETA: provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the ETDP SETA or to any member thereof in return for any services actually rendered to the ETDP SETA.

¹⁶ to comply with section 14(3) of the Act.



- 142.1** None of its office bearers or members have any rights in the property or other assets of the ETDP SETA solely by virtue of their being members or office bearers.
- 143** All immovable property of the ETDP SETA shall be registered in the name of the ETDP SETA.
- 143.1** No acquisition, by purchase or otherwise, nor sale, transfer, mortgage or other alienation or encumbrance of or dealing with such immovable property shall take place save with the approval of the Executive Committee.
- 144** The financial transactions of the ETDP SETA, including those of the chambers and committees, must be conducted by means of registered banking accounts as approved by the Board.
- 144.1** All money received by the ETDP SETA must be paid into the registered bank.
- 144.2** Any banking account opened in the name of the ETDP SETA shall be operated in accordance with the authorised financial policy and procedure of the ETDP SETA.
- 145** The Executive Committee may invest the funds of the ETDP SETA in any appropriate and prudent way but only in –
- 145.1** savings accounts, permanent shares or fixed deposits in any registered bank or other financial institution;
- 145.2** internal registered stock contemplated in section 21(1) of the Exchequer Act, 1975 (Act 66 of 1975)¹⁷; and,
- 145.3** any other manner approved by the Minister.
- 146** The Board must, in accordance with the standards of generally accepted accounting practice :
- 146.1** keep a proper record of all its financial transactions, assets and liabilities;

¹⁷ to comply with section 14(2)(b) of the Act.



146.2 within six months after the end of each financial year, prepare accounts reflecting income and expenditure and a balance sheet showing its assets, liabilities and financial position as at the end of that financial year.

147 The ETDP SETA must -

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

147.2 furnish the Director-General with copies of all budgets, reports and statements contemplated in paragraph 146.1 and any other information that it is required to submit in terms of the Public Finance Management Act.¹⁸

148 it shall be the responsibility of the Executive Committee to ensure that the Board complies with its obligations under this paragraph.

149 The Executive Committee shall cause the annual financial statements of the ETDP SETA to be prepared and, through the Executive Committee, to be laid before a meeting of the ETDP SETA on an annual basis in accordance with paragraph 12 above.

150 The ETDP SETA may pay to members of the Board, its committees and chambers, other than employees of the ETDP SETA or Department of Education employees, an amount to cover the reasonable travel, accommodation and subsistence expenses incurred by them in connection with attending meetings and performing any of their functions as members subject to section 14(3A) of the Act¹⁹.

150.1 The amount to be paid and the procedures for claiming and authorising any such payment shall be determined from time to time by the Executive Committee.

Fiduciary duties of Board²⁰

151 The Board must:

151.1 exercise the duty of utmost care to ensure reasonable protection of the assets and records of ETDP SETA;

¹⁸ to comply with section 14(5) of the Act.

¹⁹ The Minister may prescribe the allowances that may be paid to members and office-bearers of SETAs or any other persons who serve on a committee or other structure of a SETA.

²⁰ to encourage compliance with section 50 of the Public Finance Management Act.



151.2 act with fidelity, honesty, integrity and in the best interest of ETDP SETA in managing the financial affairs of ETDP SETA;

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

151.4 seek, within the sphere of influence of ETDP SETA to prevent any prejudice to the financial interests of the state.

152 A member may not:

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

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

153 A member must:

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

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

CHAPTER 12 : CONDUCT OF MEMBERS

154 The members of the Board and all governing committees/ structures of the ETDP SETA.

154.1 stand in a fiduciary relationship to the ETDP SETA;

154.2 must perform their functions in good faith giving full effect to the obligations, and spirit of the Act and this Constitution;

154.3 must avoid any material conflict between their own interests and those of the ETDP SETA, and in particular-



154.3.1 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 ETDP SETA; and

154.3.2 must notify the ETDP SETA in writing, 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 ETDP SETA;

154.4 must protect and promote the reputation and goodwill of the ETDP SETA;

154.5 must exercise their powers for the benefit and in the interests of the ETDP SETA;

154.6 must not abuse the resources of the ETDP SETA; and

154.7 must not disclose to any unauthorised person any privileged or confidential information of the ETDP SETA.

Disclosure of interest

155 A member of the Board or employee of the ETDP SETA or of any committee, chamber or structure of the Board who is directly or indirectly interested in any business of the ETDP SETA or the committee, chamber or structure, while being a standing member or employee of such, or who holds any office or possesses any property which might cause a conflict of duties or interest must declare that interest or potential conflict in writing.

155.1 A disclosure of any conflict of interest or duties made by a member of the Board or employee of the ETDP SETA or of any committee or chamber of the Board under paragraph 155 must be made to a meeting of the Board or the committee or chamber (as the case may be) as soon as practicable following the member or employee becoming aware of the relevant facts.

155.2 All disclosures made to a meeting of a committee or chamber pursuant to paragraph 155.1 must be reported to the next meeting of the Board, and all disclosures made pursuant to paragraph 155.2 must be recorded in the minutes of the Board.



Confidentiality

- 156** A member of the Board or employee of the ETDP SETA or of any of its chambers, committees or structures shall not, while being a standing or past member or employee of such, disclose to any person any information acquired while exercising or performing any function or duty under this constitution and which is confidential to the Board, any of its committees, chambers or structures, or any other member or to any employer or employee in the sector.

CHAPTER 13 : AMENDMENT OF THIS CONSTITUTION

- 157** This constitution, except for any attached schedule, may be amended by a resolution of not less than two-thirds of the members of the Board present at a meeting of which not less than twenty one days' notice setting out the proposed amendment shall have been given to all members of the Board.
- 158** No amendment shall have any force or effect until the Minister has approved it by notice in the Gazette.

CHAPTER 14 : DISPUTE RESOLUTION

- 159** Any party that wishes to lodge a dispute concerning the interpretation or application of this Constitution may refer the dispute to the Chief Executive Officer.
- 160** The referral must:
- 160.1** be in writing;
 - 160.2** adequately describe the dispute; and
 - 160.3** be delivered to every other party to the dispute by the party referring the dispute.
- 161** The Chief Executive Officer must, within seven days, refer the dispute to the Executive Committee, which must endeavour to resolve the dispute by conciliation within thirty days of referral of the dispute.
- 162** If the Executive Committee fails to resolve the dispute within thirty days of its referral, then any party to the dispute may refer it for conciliation/ arbitration.



- 163** The arbitrator must be agreed to by the parties to the dispute and the Chairperson should appoint the agreed upon conciliator/ arbitrator.
- 164** The arbitrator must first attempt to conciliate the dispute. If conciliation is not possible, then the arbitrator must arbitrate the dispute.
- 165** 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.
- 166** Within 14 days of conclusion of the arbitration proceedings:
- 166.1** the arbitrator must issue a signed arbitration award with reasons; and
- 166.2** the arbitrator must provide a copy of the award to every party to the dispute.
- 167** The arbitration award is final and binding on the parties to the dispute, however, any aggrieved party reserves the right for recession or review.
- 168** The costs of the arbitration must be borne by the ETDP SETA. The arbitrator may however make a different and appropriate award of costs if:
- 168.1** a party to the dispute, without reasonable cause, refuses or fails to attend the arbitration or unduly delays arbitration proceedings; or
- 168.2** the arbitrator finds that a party pursuing or resisting the dispute did so vexatiously or frivolously or had no reasonable prospect of succeeding.



SIGNATURES

Signed at: JHBthis 08 day of June 2005Signature [Signature]Full Name Nombulezo Ngesi

CHIEF EXECUTIVE OFFICER

Signed at: JHBthis 08 day of June 2005Signature [Signature]Full Name MARK HENNING

CHAIRPERSON OF THE ETDP SETA BOARD

**SCHEDULE "A" - SCOPE OF ETDP-SETA**

SETA CODE	SIC CODE	DESCRIPTION
07	87110	General Research : E.G. CSIR
07	87132	Research and Development
07	92001	Pre-primary education and activities of after-school centres
07	92002	Primary and Secondary Education
07	9200A	Education by Technical Colleges and Technical Institutions
07	92005	Education by Universities of Technology
07	92006	Education by Teachers, Training Colleges of Education for Further Training
07	92007	Education by Universities
07	92008	Education by Correspondence and Private Vocational Colleges
07	92009	Other Educational Services-Own Account Teachers, Motor Vehicle Driving Schools/Tutors and Music, Dancing and other Art Schools, etc
07	92004	NGOS involved in Education
07	92010	Examination and Assessment Bodies
07	95121	Professional Organizations in Education
07	95200	Activities of Trade Unions
07	95920	Activities of Political Organisations
07	96310	Library and Archives Activities
07	96311	Provision and operation of Libraries of all kinds



SCHEDULE B: ORGANISATIONS IN THE SECTOR

Profile of the ETD Sector as linked to the Constituencies of the ETDP SETA.

ORGANISATION	CONSTITUENCIES
1. Organised Labour as Employees	1.1 National Professional Teachers (NAPTOSA); 1.2 Suid Afrikanse Onderwyser Unie (SAOU); 1.3 South African Democratic Teachers Union (SADTU); 1.4 National Teachers Union (NATU); 1.5 National Education Health and Associated Workers Union (NEHAWU); 1.6 National Tertiary Educators Staff Union (NTESU) and 1.7 National Union of Technikon Educators of South Africa (NUTESA)
2. Organised Labour (as Employers)	2.1 Congress of South African Trade Unions (COSATU) and its affiliates as employer. 2.2 Federation of Democratic Unions of South Africa (FEDUSA) and its affiliates as employer. 2.3 National Council for Trade Unions (NACTU) and its affiliates as employer.
3. Organised Employer	3.1 Public Higher Education Institution (HESA); 3.2 Private Higher Education Institution (APPETD); 3.3 Independent Schools Association (NAISA); 3.4 SANGOCO (NGOs and CBOs in Education and Training); 3.5 Public Further Education and Training (represented by the DoE) 3.6 Research Organisations (MRC and HSRC as alternate)
4. Government Departments	4.1 Department of Education (National);



	4.2 Department of Education (Eastern Cape); 4.3 Department of Education (Free State); 4.4 Department of Education (Kwazulu Natal); 4.5 Department of Education (Limpopo); 4.6 Department of Education (Mpumalanga); 4.7 Department of Education (North West) 4.8 Department of Education (Northern Cape) 4.9 Department of Education (Gauteng) 4.10 Department of Education (Western Cape)
5. Professional Bodies in the Sector	5.1 South African Council for Educators (SACE) 5.2 Bargaining Council in the Sector (e.g. ELRC and PSC BC)



SCHEDULE "C" - ETDP SETA BOARD REPRESENTATION

CONSTITUENCIES		REPRESENTING ORGANISATIONS	NUMBER	TOTAL
PRIVATE Employers	PPRs	APPETD	3	3
	HEIs, Research, Libraries and Archives	HESA	3	3
	Independent Schools	NAISA	2	2
	NGO's, CBO's and ECDs	SANGOGO	1	
	Trade Unions and Political Parties	COSATU	1	1
Total:				10
Employees	Labour	NUTESA	3	3
		SADTU	1	1
		NEHAWU	3	3
		NTESU	1	1
Total:				8 (Shortfall of 2)
PUBLIC Employers	DOE	National	1	1
		Provincial	9	9
Total:				10
Employees	Labour	SADTU	4	4
		NEHAWU	2	2
		NAPTOSA	3	3
		SAOU	1	1
Total:				10
Additional Members without voting powers				
Professional Bodies		SACE	1	1
		SABPP	1	1
		ALN	1	1
		Ministerial Appointees	2	0
Total				3
Total Board Membership:				45
Current Membership:				41