

(h) Accepted

(i) Accepted

- Should there not be references to the three QCs and/or the three subframeworks?

2. Section 2 (p3)

(a) Definition of (g) to (h): These subsections and clauses all refer to finding employment and regulating employment services. NAPTOSA is not entirely convinced that the functions relating finding employment should be removed. This is a critical function of the SETAs which would make use of the NSF. Does this mean that the NSF will cease to be used for funding skills development and, after that, employment? The deletion of the references to employment services are accepted if there is **close cooperation** between the SETAs and the Career Advice Service offered by SAQA.

(b) If the Act will no longer provide for services in respect of finding employment, then the deletion of references to labour centres and the SDPU is accepted.

(c) Accepted

3. Section 3 (p3)

Accepted

4. Section 5 (p3)

Accepted

5. Section 9 (p3)

(1) (a) Accepted

(b) Accepted

6. Section 9A (p4)

(a) Accepted

(b) The protection of conditions of service of employees of the SETAs is supported.

7. Section 9B (p4)

(1) Accepted

(2) (a) Accepted

(b) Whilst an agreement is essential, it is also important for such an agreement to be a workable solution. The lines of accountability in respect of the consequences of such a ruling by the Minister need to be made clear.

8. Section 10A (p5)

(1) Accepted

(d) Supported

9. **Section 11 (p5)**

"Composition of the Accounting Authority of a SETA"

11. (1) (a) Accepted

(b) Accepted, but NAPTOSA suggests that (a) and (b) should be swapped, with the reference to calling for nominations **preceding** the reference to making the appointment.

(2) (a) Agreed

(b) (i) to (iii) NAPTOSA is not convinced of and questions the following:

- Whilst the rationale for smaller Accounting Authorities is acknowledged, NAPTOSA strongly recommends that there should be **some flexibility** in respect of the number of members to serve on the Accounting Authorities and that the number, size (membership) and complexity of constituencies in a particular SETA sector should be taken into account in order to ensure that constituencies are fairly represented. The ETDP SETA is an example of a SETA which, NAPTOSA believes, will need more than 14 members serving on the Authority.
- The **six** persons from **organised labour** (for example, in the Education Sector (for the ETDP SETA)) would these nominations be at the level of Federations such as COSATU, FEDUSA and CONSAWU (2 each? or will "vote weights" be taken into consideration?) **or** at the level of Unions in the Education Sector such as SADTU, NAPTOSA and SAOU (i.e. **national** unions or would all unions be recognised?...including NATU, PEU and CTPA? and would "vote weights" be taken into consideration?) **or** would **all** unions, be entitled to nominate people, irrespective of the sector in which they operate? Would it not be advisable to specify that the "organised labour" referred to should be limited to those operating in each of the "SETA sectors"?
- Whilst "vote weights" are dealt with the Annexure to the Constitution, this fact needs to be mentioned in the Act.
- The **six** persons who must be nominated by **organised employers**: it is not clear what is meant by "**organised employers**" and whether employers are organised in this way in all of the "SETA sectors"? For example, for SETAs operating mainly in the public sector, would they be **organised**, with any private sector employers, in this way? What happens if there are **no** "organised employers" in a sector?

- **two** persons who must be nominated from **four** different constituencies:
 - (aa) any **government department** that has an interest in the relevant sector and that is not an organised employer: Surely, this applies to all government departments?
 - (bb) any interested professional body: There may be **more** than one in some sectors, and **none** in others.
 - (cc) any bargaining council etc: accepted.
 - (dd) any organisation in a community...etc: accepted.

However, there may be worthy nominations from **all four** of these constituencies and it is therefore suggested that the legislation be written in such a way that it can also be applied with some flexibility in respect of (2) (b)(iii) (aa) to (dd).

- NAPTOSA is also suggesting that it would be important for the Minister to consider the quality of the nominations received from the various constituencies and that, if insufficient quality nominations are received from, for example (2)(b)(i) or (ii) that these places are allocated in (2)(b)(iii)...depending on the circumstances...or else that the overall number of members may need to be increased by 2 to accommodate all the constituencies.

3(a) Accepted, in principle

(b) Accepted

4(a) Accepted

(b)(i) to (iv) Accepted, especially in respect of the application of clause (iv) in the light of the issues raised at (2)(b)(iii)

(c) This clause may be the problematical and NAPTOSA suggests rewording this clause as follows:

“ is drawn from the ranks and/or members of the organisations in question and the experience and expertise of the nominees be considered when making the selections”.

(5) Accepted: the issue here is about the period needed to ensure a smooth transition from one Authority to the next.

10 Sections 11A and 11B (p6)

11A (a) Supported

(b) Supported

(c) Supported

(d) (i) to (ii) Supported

(e) Supported

11B (1) (a) Supported

(b) Supported

(2) (a) Strongly supported

(b) Supported

(3) This sanction is, in effect, against the Accounting Authority whilst the Accounting Authority has no control over individual members of the Authority not acting in terms of rules. So, whilst it is appropriate to impose some sanctions on the Authority itself, it will be more important to impose an appropriate sanction on such an individual. This may be to suspend membership for a specific period e.g. 6 months. The point is that the Act should also made provision for sanctioning the individual concerned.

11. Section 13 (p7)

13 (1) Accepted, provided "must be in line" means that there is sufficient flexibility for different SETAs to develop constitutions that meet their particular individual needs.

(2) Accepted

(3) Supported

(4) (a) Strongly supported

(b) Supported

(c) Accepted

12. Sections 13 A and 13 B (p7)

The sentiments expressed in Section 13 A are supported in principle. However NAPTOSA is of the view that the issue of the conduct of members of the Accounting Authority is different from the issue of the conduct of members of the **staff**. Members of the Accounting Authority are, essentially, **volunteers** on a governance structure and there are specific ways in which transgressions can be dealt with. Staff members are appointed permanently and paid by the Authority. They are part of the management and day to day running of the office of the Authority. Different sanctions can therefore be imposed on staff members which may include dismissal.

NAPTOSA therefore recommends that these two categories be dealt with separately in two different sections with separate headings—even though the transgressions (in this case) may be similar.

In addition, there may be other issues regarding the code of conduct of staff that have not been mentioned and that will need to be addressed in the legislation.

Clause 3(a) will, for example mainly apply to members of the Accounting Authority and are less likely to apply to staff and the rules of conduct do not only apply to meetings, the declaration of conflict of interest and recusing oneself from a meeting.

13B Appointment of Chief Executive Officer (p7)

(1) Strongly supported

(2) Supported

(3) Accepted. This will ensure that there is some continuity.

(4) (a) (i) to (iii) Accepted

(b) Accepted—however, NAPTOSA is concerned that there appear to be no restrictions in this regard. NAPTOSA is suggesting that there should be negotiated salary ranges, depending on the “size” of the SETA and the constituencies it serves and that CEOs should be appointed within the agreed upon range for a particular SETA.

NAPTOSA also believes that whilst the salaries should be such that they attract people with the necessary experience and expertise, they cannot be open ended. It is therefore suggested that salary ranges should be benchmarked against the salaries associated with posts/appointments which carry similar responsibilities.

(c) Accepted—but not only the conditions of service, also the performance agreement.

(5) This is an extension of what NAPTOSA has suggested under (4)(c) and is accepted.

13. Section 20 (p8)

(1) (b) Accepted as this is required to ensure the alignment across legislation.

Note: NAPTOSA welcomes the retention of the notion of **Skills Programmes** in Chapter 5. However, it is also felt that the notion of “Part-Qualifications”, provided for in the NQF Act, also needs to be addressed in the Skills Development Act. It is especially important to clarify the relationships between a Skills Programme and a Part Qualification as well as the similarities/differences between them.

14. Section 22 (p8)

Accepted, if this intended to remove the previous connection between the SETAs and the Department of Labour and to accommodate the deletion of references to services relating to finding employment.

It is assumed that the rest of Section 22 will be renumbered to accommodate the change.

15. Section 23 (p8)

With regard to **Employment Services**, dealt with in this section , it is not clear why Sub sections 1(a), 1(d) and (2) and (3) are all deleted whilst Subsections 1(b) and 1(c) will be all that remain of the Section. As all other references to Employment Services have been removed from various parts of the Bill, it would probably be appropriate to also change the heading to be more relevant/appropriate for the two subsections that now remain i.e. (1)(b) and (1)(c).

16. Repeal of Section 24 (p8)

Accepted. This will probably still fall under the function of the Department of Labour but does no longer apply to the functioning of SETAs under the Department of Higher Education and Training.

17. Repeal of Section 25 (p8)

Accepted. See comment above

18. Repeal of Section 26 (p8)

Accepted. See comment above.

19. Section 26 H (p8)

(2) Accepted

20. Repeal of Section 26 K (p9)

Question: Although the repeal of Section 26 K makes sense, it is not clear where these functions would not be located—if at all?

21. Repeal of Section 26 L (p9)

Accepted: See question above.

22. Repeal of Section 26 M (p9)

Accepted

23. Repeal of Section 26 N (p9)

Accepted

24. Section 32 (p9)

Accepted

25. Section 36 (p9)

(o) Accepted

(p) Accepted

(q) Accepted

26. Schedule 2A (p9)

(a) Definition of ETQA:

Please note that the “new” definition in the SDA Amendment Bill is **exactly** the same as the “old” definition in the current SDA. The intention was obviously to replace the reference to the SAQA Act with a reference to the new NQF Act. Somehow, in the Bill, this is not reflected.

(b) Again, the amendments do not remove references to the SAQA Act in (b) and (c) and replace these with appropriate references to the NQF Act.

27. Repeal of Schedule 4 (p9)

Accepted because this has been repealed/deleted elsewhere.

28. Addition of Schedule 5 (p9)

As these relate to the template for development of constitutions for the SETAs, this is accepted.

29. Long title (p9)

Accepted. See NAPTOSA's comments at 26.

30. Transitional Provisions (p10)

(1) (a) and (b) Accepted

(2) Accepted

(3) Accepted, but should there be a time-frame during which the Minister would consider that the ruling, regarding the constitution as a deviation, should apply. When would a new, aligned constitution need to be developed?

(4) (a) Accepted

(c) There is no mention of a time-frame in which this should happen.

(5) Accepted. What would reasonable timeframes be?

(6) Accepted.

31. Short title and commencement (p10)

(1) Supported

(2) Accepted

(3) Accepted. (It becomes clear then what functions remain with the DoL)

CONSTITUTION

1. Definitions (p14)

Accepted

2. Background (p14)

Accepted

3. Executive Authority (p15)

Accepted

4. Identification (p15)

Accepted.

5. Objectives (p15)

(1) And (2) Accepted

(2) Should there not be references to part-qualifications?

6. Powers and Functions (p16)

Accepted

7. Service level Agreement/Strategic Plan (p17)

Accepted

8. Accounting Authority (p18)

(1) Duties

(a) **Surely**, the Accounting Authority is a **governance** structure and **cannot** be involved in managing the SETA?

(b) to (i) Accepted

Note: There is no reference to the fiduciary responsibility of the Accounting Authority. NAPTOSA believes that this is an omission.

(2) Powers (p18)

Accepted

(3) Delegation (p18)

Accepted

(4) Size (p18)

Accepted

(5) Composition (p18)

See NAPTOSA's earlier comments at 9.

(6) Nominations and Appointment of members (p19)

Accepted.

(7) Consultation and Proportional Representation (p19)

In the Bill/Act itself there is no mention of any need for proportional representation in respect of the Authority. If the constitution demands it, then this requirement should also be mentioned in the Act itself.

(8) Alternates (p19)

(a) to (e) Accepted, but should the alternates not be individuals who serve on other structures of the SETA?

(9) Term of Office (p20)

Accepted

(10) Induction (p20)

Accepted

(11) First meeting (p20)

Accepted

(12) Suspension (p20)

Accepted

(13) Vacation (p20)

Accepted

(14) Vacancies (p21)

Accepted

(15) Applications (p21)

Accepted

9. EXCO (p21)

(1) and (2) Establishment and composition of EXCO (p21)

There is no mention of a requirement that all Chambers should be represented on the EXCO. NAPTOSA believes that by including the chairpersons of all the Chambers, the interests of the various constituencies will be more effectively accommodated and that it will be possible for the EXCO to have a "birds-eye" view of the activities of the SETA. The number of members of EXCO will therefore be determined by the number of Chambers in the SETA.

Alternatively, EXCO could also comprise the chairpersons of the various SETA subcommittees. The benefits would be similar to those associated with option 1 above.

NAPTOSA does **not** believe that the best option is to establish an EXCO based on the divide between organised labour and organised employers **nor** that the number should be limited to 5 members.

(3) Term of office (p21)

Accepted

(4) Functions (p22)

Accepted

10. AUDIT COMMITTEE (p22)

(1) Establishment (p22)

(a) to (j) Accepted

(2) Functions (p22)

Accepted

11. FINANCE COMMITTEE (p23)

(1) Establishment (p23)

Accepted

(2) Functions (p23)

Accepted

12. REMUNERATION COMMITTEE (p24)

(1) Establishment (p24)

Should they not be members of the Accounting Authority?

(2) Functions (p24)

Accepted

13. GOVERNANCE AND STRATEGY COMMITTEE (p24)

(1) **Establishment (p24)** and (2) **Functions (p24)**. Are these not the functions of the Authority itself? Why is a separate structure required?

14. CHAIRPERSON (p25)

Are (1) and (2) not covered in the Act?

(3) **Functions (p25)**

Accepted

(4) **Absence (p25)**

Accepted

(5) **Vacating the office (p25)**

Accepted

15. MEETING PROCEDURES (p25)

(1) **Authority (p25)**

Accepted

(2) **EXCO (p26)**

Accepted

(3) **Special meetings (p26)**

Accepted

(4) **Procedures (p26)**

Accepted

16. CEO AND EMPLOYEES (p27)

(1) **Appointments (p27)**

Accepted

(5) **Duties (p27)**

Should this not be number (2), or else, where are numbers (2), (3) and (4).

17. FINANCES (p27)

(1) **Sources (p27)**

Accepted

(2) **Investments (p27)**

Accepted

(3) **Purpose of funds (p27)**

Accepted

(4) **Financial Records (p28)**

(a) and (b) Accepted

(5) Audit (p28)

Accepted

(6) Financial responsibility of EXCO (p28)

Note: What is the fiduciary responsibility of the Authority?

What are the responsibilities of the Audit and Finance committees?

(7) Signatures (p28)

(a) and (b) Accepted

18. CODE OF CONDUCT (p29)

Accepted

19. DISPUTE RESOLUTION (p29)

See Annexure 3

20. INDEMNIFICATION (p29)

Who has fiduciary responsibility?

21. AMALGAMATIONS/DISSOLUTION (p29)

(1) and (2) Accepted

22. ADMINISTRATION OF SETA (p29)

(1) to (4) Accepted

23. AMENDMENT OF CONSTITUTION (p30)

(1) to (7) Accepted

ANNEXURE 1: SCOPE (p31)

Accepted

ANNEXURE 2: CODE OF CONDUCT (p32)

1. INTRODUCTION (p32)

Accepted

2. APPLICATION (p32)

(1) Accepted

(2) (a) Is this the only place that the issue of fiduciary responsibility needs to be mentioned?

Surely, it is a **responsibility**, rather than an aspect of the code of Conduct.

(b) to (f) Accepted

(3) (a) to (f) Accepted

3. CONFLICT OF INTERESTS (p32)

Since this has already been dealt with in the Act/ Bill, does it need to be covered in the Code of Conduct as well?

4. GIFTS AND BENEFITS (p33)

(1) to (4) Accepted

5. RESOURCES (p33)

(1) to (4) Accepted.

6. ACCOUNTING STANDARD (p33)

Does this section apply to the Code of Conduct for **members**? Surely, it applies to the management of finances within the SETA. Members of the Authority will not be responsible for doing the accounting – the relevant **staff** will do this!

7. SECURITY OF INFORMATION (p33)

(1) (a) is accepted, but it is not clear what is meant by 1(b) and even 1(c) if these relate to (1) (a). It is difficult to imagine under what circumstances the limitation of (b) and (c) would apply.

(2) (a) and (b) Accepted

(3) Accepted

(4) (a) and (b) Accepted

8. CONTRAVENTION OF CODE (p34)

Note: Should this not read" OF THE CODE"?

(1) to (6) Accepted

ANNEXURE 3 (p35)

DISPUTE RESOLUTION

Note: It is not clear whether “party”, in this instance, refers to disputes declared by staff or whether these are disputes between the SETA and its “clients”. Would these steps apply equally in both circumstances?

- (1) Accepted
- (2) Accepted
- (3) Accepted
- (4) Accepted
- (5) Accepted
- (6) Accepted

Question: Would there be circumstances in which SETA/ “client” disputes could be referred to the QCTO and or SAQA—depending on the nature of the difference?

ANNEXURE 4 (p 36)

REPRESENTATION ON THE ACCOUNTING AUTHORITY

1. CONSTITUENCY IN SECTOR

Note: Should this not read “constituencies”?

Important note:

It is **not** clear why all of Annexure 4 has been attached to the constitution. Other than “4 FORMULA FOR PROPORTIONAL ALLOCATION OF MEMBERS”, **ALL** of Annexure 4 has ALREADY been included in the Bill itself and so all Sections 1 to 3 are duplications/repetition of what is included in the Act itself! This makes no sense.

Also in the Act/Bill, there is **no** mention of the need for proportional representation on a SETA Accounting Authority.

NAPTOSA suggests the following:

1. Delete Section 1 to 3 in Annexure 4
2. Include (in section 11 of Bill/ Act,) reference to the need for proportional representation.
3. In Annexure 4, include only Section 4 and the calculation.

ANNEXURE 5 (p39)

COMMITTEES OF SETA

1. GENERAL GUIDE LINES FOR ALL SETA COMMITTEES

Should the "compulsory" committees listed in the constitution (Sections 9,10, 11 and 12) not be listed on the Bill/Act?

NAPTOSA recommends that the content of Annexure 5 be included in the Act at the appropriate place and that number "2 COMMITTEES TO BE ESTABLISHED BY SETA" should **precede** "1 GENERAL GUIDELINES FOR ALL SETA COMMITTEES".

(2) (1) states that "The Accounting Authority **must** establish the following committees".

- (a) An Executive committee
- (b) An Audit Committee
- (c) A Finance Committee
- (d) A Remuneration Committee
- (e) A Governance and strategy Committee.

These are **compulsory**, statutory committees of SETAs and are unlikely to change. It makes little sense to **only** refer to them in an Annexure!

ANNEXURE 6 (p40)

CHAMBERS OF THE SETA

Whilst the details of Chambers (members, chairpersons) can be dealt with in an Annexure to the constitution, the Bill/Act **must** make provision for the establishment of Chambers. It is therefore suggested that the following be inserted into the Act:

ESTABLISHMENT OF CHAMBERS

- (1) The SETA must, with approval from the Minister, establish the relevant and appropriate Chambers that will enable the SETA to fulfil the scope of its functions in its constituencies.
- (2) The chairperson of a chamber must be a member of the Accounting Authority,

- (3) (a) The Chambers must perform those functions of the SETA delegated to them by the Accounting Authority in terms of item(?) 8(3)
- (4) The General Guidelines for Committees of the SETA contained in Item 1 of Annexure 4 also apply to Chambers.

ANNEXURE 7 (p41)

PROCEDURE FOR AMENDING CONSTITUTION

Accepted

Note: OMISSION

The Annexures (Annexure 8?) should also provide a template for the applications to the Minister for establishing Chambers

MEMORANDUM ON THE OBJECTS OF THE SKILLS DEVELOPMENT AMENDMENT BILL,2011 (p42)

1. MAIN OBJECT

Accepted

2. MAIN FEATURES

Accepted—See NAPTOSA's comments on each of the amendments.

3. CONSULTATION

Accepted, however it is important that the unions (organised labour) be added to the list for formal consultations.

4. IMPLICATIONS

Accepted

5. PROCEDURE

Accepted