

(8 September 2005 – to date)

SKILLS DEVELOPMENT ACT 97 OF 1998

*(Government Notice 1400 in Government Gazette 19420, dated 2 November 1998. Commencement date:
2 February 1999, unless otherwise indicated)*

APPROVAL OF CONSTITUTION OF WHOLESALE AND RETAIL SECTOR EDUCATION AND TRAINING AUTHORITY (SETA 27)

*Government Notice R901 in Government Gazette 28005 dated 8 September 2005. Commencement date:
8 September 2005.*

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

SCHEDULE

12 July 2005

The Honourable Minister
Mr. M. Mdladlana
Department of Labour
Private Bag x 117
Pretoria
0001

Dear Mr. Mdladlana

Re: W&R SETA Constitution

On behalf of the W&R SETA Board, we hereby submit the amended W&R SETA's Constitution which has been drafted after consultation with the Wholesale and Retail sector stakeholders.

The comments and changes proposed by the Department of Labour Legal Services have also been incorporated in this final document.

We confirm that the amended W&R SETA Constitution has been proof read and is ready for your approval and signature.

Yours sincerely

(signed)

Prof. M.C. Mehl

Chairman Chief

(signed)

Mr T. J. Dikgole

Executive Officer

CONSTITUTION OF THE SECTORAL EDUCATION AND TRAINING AUTHORITY FOR THE WHOLESALE AND RETAIL SECTOR

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1. PREAMBLE

WHEREAS pursuant to section 9(2) of the Skills Development Act 97,1998 (“the Act”) the Minister of Labour established under notice dated 31 March 2005 known as the wholesale and retail sector.

AND WHEREAS pursuant to section 13(1) of the Act a Constitution must be drafted by the Sector Education and Training Authority for the Wholesale and Retail Sector, and approved by the Minister.

AND WHEREAS the Minister published his approved Constitution of the Wholesale and Retail Sector Education and Training Authority under Notice GN 24036 R 1424.

AND WHEREAS the W&R SETA has adopted a resolution to amend certain provisions of its Constitution.

NOW THEREFORE

This Constitution is adopted by the Sector Education and Training Authority for the Wholesale and Retail sector.

2. PURPOSE

2.1. The purpose of this Constitution is to:

2.1.1. Establish the legal parameters within which the W&R SETA can exercise its authority; and to

2.1.2. Establish a legal institutional framework within which the W&R SETA is enabled and empowered to execute its mandate and carry out the functions for which it was created in terms of the Act.

3. NAME

The name of this Sectoral Education and Training Authority (SETA) shall be the WHOLESALE AND RETAIL SECTOR EDUCATION AND TRAINING AUTHORITY herein referred to as W&R SETA.

4. LEGAL STATUS

4.1. The W&R SETA is a body corporate with an identity and existence distinct from its office bearers or Board members. It will continue to exist notwithstanding changes in the composition of its Board members. It may sue and/or be sued in its own name and is capable of being a bearer of its own rights, and obligations.

4.2. It is an association not for gain.

4.3. The income and the property of the W&R SETA, where-so-ever 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 Board members of the W&R SETA, provided that nothing herein contained shall prevent the payment in good faith of reasonable compensation in return for any services actually rendered to the W&R SETA. None of the Board members has any rights in the property or other assets of the W&R SETA solely by virtue of their being Board members

5. DEFINITIONS

5.1. Any expression which is not specifically defined hereunder, but which is defined in the Act, shall, unless contrary intention is apparent from the wording contained herein, bear the meaning assigned to it in the Act. The following expressions shall have the following meanings assigned to them below and cognate expressions shall have the corresponding meanings:

5.1.1. “**Act**” means the Skills Development Act, 1998 (Act No. 97 of 1998)

5.1.2. “**Board**” means the governing body of the W & R SETA made up of members appointed in terms of Section 9 of the Act.

5.1.3. “**Board members**” means representatives of constituencies appointed to the authority in terms of section 11 of the Skills Development Act. For purposes of clarity the word

5.1.4. “**Constituencies**” means employer and employee organisation

5.1.5. “**CEO**” means the Chief Executive Officer

5.1.6. “**Department**” means the Department of Labour.

5.1.7. “**Director-General**” means the Director-General of Labour.

5.1.8. “**Designated groups**” mean black people, women and people with disabilities.

5.1.9. “**Employee's organization**” means organised labour including any trade union or federation of trade unions registered as such under the provisions of the Labour Relations Act.

5.1.10. “**Employer's organization**” means organised employers, including small business; including any organization registered as such in terms of the Labour Relations Act together with any other associations which are or have been formed to promote or advance or represent the interests of their members, as employers.

5.1.11. “**General Consultative Meetings**” means meeting [*sic*] held between the W&R SETA and broader members of its constituencies to obtain input on their views and suggestions, and such meeting [*sic*] are not decision making forums but are aimed at creating a participative process for the Board.

5.1.12. “**Stakeholders**” means the employers organisations, employees organisations, employers who are not members of an employers organisation, employees who are not members of an employees organisation, professional bodies and government departments

which by virtue of their main function or Board membership have a direct interest in the affairs of the sector and the skills training and development of persons within the sector.

5.1.13. “**Labour Relations Act**” means the Labour Relations Act, 1995 (Act No. 66 of 1995) (as amended) herein referred to as “LRA”.

5.1.14. “**Levies Act**” means the Skills Development Levies Act, 1999 (Act No. 9 of 1999) (as amended).

5.1.15. “**Minister**” means the Minister of Labour.

5.1.16. “**National Skills Authority**” means the National Skills Authority established in terms of Section 4 of the Act.

5.1.17. “**N S D S**” means the National Skills Development Strategy referred to in section 5(1)(a)(ii) of the Act.

5.1.18. “**Sector**” means W & R SETA as contemplated in Government notice R136 of 31 March 2005.

5.1.18.1. And the word “**sectoral**” shall have a corresponding meaning.

5.1.19. “**SETA**” means the sector education and training authority

5.1.20. “**SAQA**” means the South African Qualifications Authority established by Section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995) (as amended).

5.1.21. The W&R SETA means the Wholesale and Retail Education and Training Authority.

6. SCOPE OF OPERATIONS OF W&R SETA

6.1. The area of operation of the W&R SETA is national, with regional offices as determined. The scope of coverage of the W&R SETA is the Wholesale and Retail Sector determined by the Minister in terms of the Government Notice R316 of March 2005.

7. POWERS

7.1. The W&R SETA, subject to the provisions of the Act and the Levies Act has all such powers as may be necessary to enable it to carry out its functions and fulfil its objectives and without limiting the generality thereof it shall have the following powers:

7.1.1 To receive funds in terms of section 14(1) of the Act;

- 7.1.2. To open banking accounts at registered banks and to deposit all funds received in terms of the Levies Act into the said banking accounts in accordance with the provisions of section 14(2) of the Act;
- 7.1.3. Register learnership agreements concluded in terms of Section 17(3) of the Act;
- 7.1.4. Monitor education and training in the sector whether conducted within the ambit of the National Skills Framework or otherwise;
- 7.1.5. Establish learnerships within the sector and to register learnerships with the Director-General as contemplated in Section 16(d) of the Act;
- 7.1.6. Approve or reject workplace skills plans in the prescribed manner;
- 7.1.7. Allocate grants in the prescribed manner to employers, education and training providers and workers as determined in the funding regulations;
- 7.1.8. Purchase, sell, donate, exchange, take on lease, hire or otherwise acquire or dispose of movable or immovable property or any right therein and to improve and develop any of its property or assets in such manner as it deems fit;
- 7.1.9. To appoint an agent or agents to represent it for any specific purpose, including the power to employ accountants, attorneys, advocates and other professional persons for any specific purpose and to remunerate such persons at the usual professional or business rate;
- 7.1.10. To take action in a court of law for the recovery of any amounts due to it or to compel the fulfilment of obligations in its favour and to defend any proceedings that may be instituted against it;
- 7.1.11. To pay all expenses incurred in connection with its proper and efficient administration and subject to any limits which may be prescribed from time to time
- 7.1.12. Establish and dissolve committees or chambers as is more specifically provided for in Section 12 and 13(3)(a)(vii) of the Act;
- 7.1.13. Appoint a CEO and employ staff and to contract with persons to assist it in the carrying out of its functions and to remunerate such staff or persons from funds allocated to it in the prescribed manner for its administration expenses; necessary for the effective running of the W&R SETA

- 7.1.14. Formulate the general policy of the W&R SETA;
- 7.1.15. Approve the annual budget of the W&R SETA;
- 7.1.16. Approve the business plan of the W&R SETA
- 7.1.17. Determine the scale of remuneration and other related matters for the W&R SETA, committee Board members and employees;
- 7.1.18. Determine the terms and conditions of employment of the CEO and other employees of the W&R SETA;
- 7.1.19. Make rules relating to the W&R SETA's meetings, financial matters, general procurement and administrative matters which are in accordance with the provisions of this constitution, the Act or any other law; and
- 7.1.20. Report on skills development within the sector.

8. FUNCTIONS OF THE W&R SETA

- 8.1. THE W&R SETA shall, subject to the provisions of the Act, have the following functions and all such other functions as it may be required to perform in terms of the Act;
- 8.2. To develop a sector skills plan within the framework of the national skills development strategy for the sector.
- 8.3. To increase the levels of investment in education and training in the sector and to improve the return on that investment.
- 8.4. To implement the sector skills plan by:
 - 8.4.1. Approving workplace skills plans;
 - 8.4.2. Establishing learnerships
 - 8.4.3. Allocating grants in the prescribed manner to employers, education and training service providers and workers in the sector;
 - 8.4.4. Monitoring education and training in the sector; and
- 8.5. To promote learnerships by:

- 8.5.1. Identifying the relevant workplace where individuals can gain practical work experience;
- 8.5.2. Improving the facilitation of learning;
- 8.5.3. Encouraging workers in the sector to participate in learnership and other training programmes;
- 8.5.4. Encouraging employers in the sector to use the workplace as an active learning environment;
- 8.5.5. Supporting learning and the development of learning materials; and
- 8.5.6. Assisting in the conclusion and registration of learnership agreements.
- 8.5.7. To perform the functions of an Education and Training Quality Assurance body.
- 8.5.8. To liaise with the National Skills Authority as well as other SETAs on issues including *inter alia*:
 - 8.5.8.1. A national skills development strategy;
 - 8.5.8.2. A skills development policy; and
 - 8.5.8.3. Its own sector skills plan.
- 8.6. To report to the Director-General on the implementation of its sector skills plan, its income and expenditure and to consolidate its reports;
- 8.7. To submit to the Director-General
 - 8.7.1. 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, (Act No. 1 of 1999) and
 - 8.7.2. plans, reports on the implementation of its sector skills plan and service level agreement.
- 8.8. To liaise with employment services of the Department of Labour and any educational body established in terms of educational laws of South Africa in order to improve the quality of information:
 - 8.8.1. about employment opportunities;

8.8.2. between educational providers and the labour market; and

8.8.3. quality assurance functions as contemplated in Section 10 of the Act.

8.9. To facilitate the involvement of the relevant government departments and employer and employee organisations in the activities of the W&R SETA to:

8.9.1. Address the competency requirements for social delivery;

8.9.2. Address the learning needs of the sector; and

8.9.3. Promote training in small, medium and micro enterprises to enable them to qualify for public contracts,

8.10. To register learnership agreements;

8.10.1. To apply for accreditation to the SAQA.

8.10.2. To disburse the skills development levies in the sector in terms of the Levies Act and its prescribed regulations;

8.10.3. To appoint an Executive Committee and such other committees, sub committees or chambers as it may from time to time determine necessary for the due performance of its duties; and

8.11. To perform any other duties imposed by the Act, the Levies Act and, the Constitution or any other function not specifically mentioned, in order to fulfil the objectives of W&R SETA.

8.12. To comply with provision of the Act by concluding a service level agreements [sic] as prescribed for each financial year.

9. COMPOSITION OF THE BOARD

9.1. The Board shall comprise of members appointed by the constituent employer and employee organisations in terms of the Act.

9.2. The specified constituent employer and employee organisations in the sector listed in Annexure "A" of this Constitution.

9.3. The Board must consist of an equal number of Board members representing:

9.3.1. Employee organizations with Board seat distributed as per Annexure "B"; and

9.3.2. Employer organizations with Board seat distributed as per Annexure “B”.

9.4. The Board may include members representing.

9.4.1. A Government Department having a direct interest in the affairs of the W&R SETA; and

9.4.2. If the Minister after consultation with the Board, deems it appropriate;

9.4.2.1. Any interested professional body including a body representing unemployed persons or work seekers in the sector or

9.4.2.2. Any bargaining council within the jurisdiction of the sector.

9.5. Every constituency which is entitled to appoint representatives on the Board is obliged to ensure that its representatives include designated groups.

9.6. Each constituency should provide written assurance that in selecting its representation to the Board, due process was followed.

9.7. Board members who are appointed in terms of clause 9.2 above shall not be voting board members.

9.8. The Board shall consist of:

9.8.1. Six (6) members representing employer organizations in the sector;

9.8.2. Six (6) members representing employee organizations in the sector; and

9.8.3. Such other non-voting Board members appointed from time to time in terms of clause 9.2.

9.9. All Board members shall have a term of office not exceeding 2 (two) years from the date of their appointment.

9.10. The constituent employer and employee organisations shall:

9.10.1. through a transparent and objective process appoint new members to the Board at or prior to the Annual General Meeting of the W & R SETA, and the appointees shall be inaugurated at the Annual General Meeting.

9.10.2. have the power to replace their appointed representative should the appointed member resign or for any reason be unable to continue to serve on the board.

10. ROLES AND RESPONSIBILITIES OF THE BOARD

10.1. Those responsibilities and functions of the W&R SETA that are reserved for the Board shall be to:

10.1.1. Determine the strategic direction of the W&R SETA

10.1.2. Formulate the general policy of the W&R SETA.

10.1.3. To appoint a CEO on such terms as may be stipulated in the Constitution and subject to the LRA and other labour legislation

10.1.4. Determine the remuneration terms and conditions of the employment of the CEO and other permanent employees of the W&R SETA.

10.1.5. Approve the annual budget and business plan of the W&R SETA including the establishment of unallocated fund projects and funding thereof, in terms of relevant legislation.

10.1.6. Approve the Sector Skills Plan of the W&R SETA.

10.1.7. Establish and dissolve committees or chambers as is more specifically provided for in sections 12 and 13(3)(vii) of the Act.

10.1.8. Approve the financial strategy and financial standards of the W&R SETA.

10.1.9. Elect an Executive Committee and such other Committees and structures or chambers as it may deem necessary from time to time for the due performance of its duties.

11. THE EXECUTIVE COMMITTEE

11.1. The Board shall elect from its members an Executive Committee which shall comprise four (4) Board members, two from each constituency subject to its delegation and terms of reference.

11.2. The term of office of members of the Executive Committee shall terminate as and when that member's membership of W&R SETA terminates.

12. THE CHIEF EXECUTIVE OFFICER (CEO)

12.1. The Board shall appoint a person who has specific experience and expertise in matters relating to the functions of W&R SETA

- 12.2. The powers, functions, rights, duties and delegated powers of the CEO together with his or her conditions of service shall be as determined from time to time.
- 12.3. The CEO shall attend all meetings of the Board and the Executive Committee. If the CEO is not able to attend a meeting for whatever reason he or she shall delegate Chief Operations Officer or in his or her absence Chief Financial Officer, as the case may be to attend the meeting on his or her behalf.
- 12.4. The CEO shall report to and be accountable to the Board.
- 12.5. Without derogating from the powers that the Board may choose to delegate to the CEO the power to employ persons to serve THE W&R SETA on such terms and conditions as he or she sees fit.

13. COMMITTEES

- 13.1. The Board shall establish committees as may be necessary to implement, supervise or otherwise perform any of the functions of the Board. The committees may establish other structures as defined in their Terms of Reference in order to perform their functions.
- 13.2. The Board shall appoint members of the Committees it establishes and shall be entitled to remove and replace members thereof subject to the provision of clause 17 in this Constitution and the Act.
- 13.3. The Committee established in terms of this clause shall appoint members of any subcommittee it establishes and shall be entitled to remove and replace members thereof subject to the provisions of clause 17 in this constitution and the Act.
- 13.4. The Board shall determine at its own discretion whether to establish a standing or ad hoc committee, as the case may be.
- 13.5. The Board shall determine at its own discretion whether a Committee shall perform its functions on a national basis or whether its functions shall exclusively serve the interests of a specific province or provinces or other specified geographical area.
- 13.6. All Committees or subcommittees established pursuant to this Constitution excluding the Audit Committee shall comprise an equal number of voting Board members representing employer's organisations and employee organisations and such other non-voting Board members as the establishing authority from time to time deems necessary or appropriate
- 13.7. The Board shall be empowered to dissolve a Committee and/or its related structures at its discretion where the purpose for which the committee and/or its related structure was established

has been served or where it is no longer conducive to the efficient and due performance of the functions of the Board. Without derogating from the foregoing, the Board may amend or revoke the Terms of Reference of the powers delegated to a committee.

14. FINANCE COMMITTEE

14.1. The Board hereby establishes a Finance Committee to serve in the manner as envisaged in clause 13 above.

14.2. The finance committee shall consist of 4 (four) voting members and the CEO

14.3. The purpose of the Finance Committee is to monitor the income and expenditure of THE W&R SETA and to make recommendations to the Executive Committee and the Chief Executive regarding any aspect of the finances of THE W&R SETA

14.4. The Board may delegate any further powers to the Finance Committee it may deem appropriate from time to time.

15. AUDIT COMMITTEE

15.1. The audit committee shall consist of 4 (four) voting members and the CEO

15.2. The voting members will include:

15.2.1. A chairperson (who shall ideally be a Board member), 3 members of the Board; and

15.2.2. 2 (two) external members appointed by the Board

15.3. The following persons are normally invited to attend all Audit Committee meetings:

15.3.1.1. An invitee from the office of the Auditor General;

15.3.1.2. The Chief Financial Officer;

15.3.1.3. Head of Internal Audit (and any other person it deems necessary); and

15.3.1.4. A head of a department when he/she has a functional responsibility to be discussed at the Audit Committee

16. CHAMBERS

- 16.1. The Board shall, establish any number of Chambers which shall represent the exclusive interests, views and expertise of any of the major sub-sectors within the sector as may be determined by the Board from time to time.
- 16.2. Any Chambers established by the Board in terms hereof shall provide the Board with expert advice and strategic information to enable appropriate recognition of that sub sector's education and training needs in the sector skills plan, business plan and budget, learnerships, quality assurance activities and such other activities undertaken by the W&R SETA

17. REMOVAL FROM THE BOARD

- 17.1. A member shall be removed from the Board, the Executive Committee, and any other committee or sub committee established in terms of this Constitution and no person shall be entitled to hold any office established in terms of this constitution where such person or Board members:
- 17.1.1. Commits an act of fraud or dishonesty which impairs the integrity of W&R SETA, or any committee or chamber established in terms of this constitution;
 - 17.1.2. Becomes of unsound mind;
 - 17.1.3. Is convicted of an offence of which dishonesty is an element;
 - 17.1.4. Is unfit or incapable of acting as a Board member;
 - 17.1.5. Becomes insolvent or assigns his/her estate for the benefit of or compounds with his creditors;
 - 17.1.6. Becomes disqualified in terms of the Companies Act, 1973 (Act No. 61 of 1973) as amended from time to time to act as a Director of a company;
 - 17.1.7. Is absent from any 3 (three) consecutive meetings of the relevant and/or committee meeting without good cause;
 - 17.1.8. Was appointed by a constituency to serve on the Board and such constituency wishes to withdraw that appointment pursuant and to replace that nominee with another appointee;
or
- 17.2. A Board members [sic] may resign from the Board, any committee, sub committee or chamber by giving the Chairperson not less than 1 (one) month's notice in writing.
- 17.3. Where a person resigns or is removed from the Board in terms of this clause he or she shall be replaced by the constituency which appointed that Board members [sic] within 30 (thirty) days

from effective date of the resignation or removal for the remaining term of office of the original Board members.

18. CHAIRPERSON, DEPUTY CHAIRPERSON AND BOARD MEMBERS

- 18.1. The voting members of the Board shall elect at its general meeting from amongst its voting Board members a Chairperson, Deputy Chairperson, and such other office bearers as it shall from time to time determine necessary.
- 18.2. The term of office of a Chairperson, deputy Chairperson and Board members and shall not exceed 2 (two) years from the date of his or her appointment.
- 18.3. If the appointed Chairperson is a representative from an employer's organisation only a representative of an employee's organisation may be elected as Deputy Chairperson and vice versa.
- 18.4. The role of a Chairperson and Deputy Chairperson will alternate between an employer representative and an employee representative every 2 (two) years subject to the provisions of this Constitution.
- 18.5. The voting members of each Committee or chamber shall no less than every two (2) years elect their own Chairperson and Deputy Chairperson at a meeting convened for this purpose or any other meeting contemplated in Clause 19.2.3 and the term of office of the Chairperson and the Deputy Chairperson shall not exceed 2 (two) years from the date of appointment.
- 18.6. In the absence of the Chairperson appointed in terms of Clauses 18.1 and 18.5 respectively, the Deputy Chairperson shall perform the functions of the Chairperson and in the absence of both the Chairperson and the Deputy Chairperson, the Board or the relevant Committee or chamber, shall be entitled to appoint a temporary Chairperson whose appointment shall automatically terminate upon the attendance of the Chairperson or Deputy Chairperson as the case may be.
- 18.7. The Chairperson shall:
- 18.7.1. Cause meetings to be convened;
- 18.7.2. Ensure the orderly conduct of meetings; and
- 18.7.3. Order Board members to leave a meeting if in the opinion of the Chairperson the behaviour of such Board members is disruptive to the orderly conduct of meetings.

19. MEETINGS

19.1. Annual General Meetings

- 19.1.1. An annual general meeting of the W&R SETA shall be held each year within six (6) months of the end of the preceding financial year of the W&R SETA at the W&R SETA's registered office or at such other place as shall be designated by the Board. This meeting shall be called by the Board and notice of the meeting shall be advertised in the press at a national level. The agenda and the matters that it shall deal with shall be determined by the Board.
- 19.1.2. General Consultative meetings between the Board and Stakeholder may be convened at any time by the Board or, if requested, by a Stakeholder.
- 19.1.3. The Annual General meetings and meetings with Stakeholders are consultative meetings at which no binding decisions will be taken on W&R SETA. The resolutions taken at such meetings will be adopted by the Board for them to have legal force and effect.
- 19.1.4. A quorum shall be constituted by 50% (fifty percent) of the representatives of Labour and 50% (fifty percent) the representations of Employer Organisations personally present or present through a duly authorised representative proxy at the commencement of and throughout the meeting.
- 19.1.5. A notice of the meeting on at least 14 days shall set out an agenda identifying in reasonable detail the matters to be discussed; unless otherwise agreed;
- 19.1.6. The chairperson shall have a casting vote.
- 19.1.7. If a quorum cannot be obtained within 1 (One) hour after the time appointed for the commencement of the holding of a general meeting, then such meeting shall stand adjourned until the same time and at the same place after the expiration of seven (7) days, provided that written notice is given to all Constituent Stakeholders that such meeting has been so adjourned.

19.2. Meetings of the Board and Committees

- 19.2.1. Save where otherwise stated or the context indicates the contrary the provisions of this Clause shall apply with the necessary changes apply to meetings held by the Board, the Executive Committee, any committee or chamber as the case may be.
- 19.2.2. The Board must meet at least four (4) times a year.
- 19.2.3. The Executive Committee, any Committee and the chambers shall meet as regularly as they are required to meet in accordance with the duties delegated by the Board.

- 19.2.4. The Chairperson with assistance of the CEO must give written notice of meetings together with the agenda to Board members on at least fourteen (14) days written notice unless the chairperson decides that there are good grounds for calling a meeting at short notice.
- 19.2.5. A meeting shall, notwithstanding the fact that it is called at short notice than that specified in Clause 19.2.4. above, be deemed to have been duly called if it is so agreed by 80% (eighty percent) of the Board members then present.
- 19.2.6. The CEO shall ensure that the Board secretariat takes and keeps minutes of all meetings and distributes such minutes to the members of the Board and the relevant Committees or chamber within seven (7) days calendar days of the date of the meeting.
- 19.2.7. The quorum necessary for the transaction of business shall be 50% (fifty percent) of both employers and employees representatives respectively. If after 1 (one) hour of the scheduled time for the meeting there is no quorum the meeting must be adjourned for a later date. If at the next meeting having given fourteen (14) calendar days notice of such meeting those present shall constitute a quorum provided 2 (two) employer representatives and two (2) employee representatives are present.
- 19.2.8. The decision of the majority of the voting Board members at a meeting will constitute the decision of the Board, the Executive Committee, any Committee, subcommittee or chamber as the case may be save in circumstances involving a decision to amend this constitution for which a two-third (2/3rd) majority of the voting members of the Board is required.
- 19.2.9. Notwithstanding Clause 19.2.8. a decision to amend any provision of the Constitution shall be preceded by at least fourteen (14) calendar days' written notice to all members of the Board which notice shall contain all relevant details relating to the proposed amendment. Any proposed amendment to the Constitution must be approved by the Minister in terms of the relevant legislation.
- 19.2.10. Voting at a meeting for decisions to be made will take place by a show of hands of the voting members and each voting members [sic] shall have 1 (one) vote. In the event of an equality of votes, the Chairperson will have a second casting vote.
- 19.2.11. Voting for decisions to be made between meetings may be indicated in a written format.
- 19.2.12. A decision taken at a meeting cannot be rendered invalid due to vacancy.

20. DELEGATION AND ASSIGNMENT OF FUNCTIONS

- 20.1. The Board may delegate any of its powers or assign any of its functions by or under this Constitution to any Committee, chamber or the CEO.
- 20.2. Any Committee may delegate or assign any of its functions to any of its subcommittees.
- 20.3. The CEO may delegate or assign the performance of any function conferred or imposed upon the CEO to senior employee of the W&R SETA.
- 20.4. A delegation or assignment made under this clause:
 - 20.4.1. Must be in writing;
 - 20.4.2. May be subject to such conditions or restrictions as determined by the Board, a Committee or CEO as the case may be; and
 - 20.4.3. May not prevent the exercise of that power or performance of that function by the relevant delegating authority.

21. DISPUTE RESOLUTION

- 21.1. Any dispute relating to the interpretation or implementation of this constitution shall be referred by the parties thereto to arbitration, to be conducted by an arbitrator duly appointed by the parties in dispute from a list of arbitrators determined by the Board from time to time for the full and final determination of the dispute.
- 21.2. Any dispute relating to a matter of interest to the parties shall be referred by the parties thereto to arbitration. The parties in dispute shall appoint an arbitrator from a list of Arbitrators as determined by the Board from time to time with both parties agreeing upon the procedure for the arbitration proceedings.
- 21.3. The arbitrator shall be entitled to resolve the dispute by way of conciliation before proceeding with arbitration.
- 21.4. In the event that conciliation is unsuccessful after a period of seven (7) days after the dispute was referred to the Arbitrator, the Arbitrator must arbitrate the dispute.
- 21.5. The Arbitrator must issue an arbitration award within fourteen (14) days after the conclusion of the arbitration proceedings. The cost of arbitration shall be borne by the parties to the dispute.
- 21.6. The Arbitrator's award will be final and binding on the parties thereto.

22. CONDUCT OF BOARD MEMBERS

Prepared by:

- 22.1. A member of the Board or any of its Committees or chambers must in the exercise of his or her functions:
- 22.1.1. Act honestly with due care and in the utmost good faith.
 - 22.1.2. Give effect to the spirit and obligations of the Act.
 - 22.1.3. Exercise reasonable care and diligence.
 - 22.1.4. Not make improper use of any information acquired as Board members.
 - 22.1.5. Avoid any conflict between their personal interests and those of the W&R SETA.
 - 22.1.6. Declare any such conflict of interest or duties provided in Clause 22.2; and
 - 22.1.7. Promote the interests of and advance the objectives of THE W&R SETA.
- 22.2. A member of the Board or any of its Committees or chambers who is directly or indirectly involved in any business of the W&R SETA or any committee or chamber of which he or she is a Board member or who holds any office or possesses any property, which might cause a conflict of interest, must declare that interest or potential conflict.
- 22.3. A disclosure of any conflict of interest or duties made by a member of the Board or any Committee or chamber of the W&R SETA under Clause 20 (2) must be made at a meeting of the Board or the committee or chamber of which he or she is a Board member as soon as practicable after the Board member becomes aware of such facts.
- 22.4. All disclosures made in accordance with Clause 22.3 must be reported to the W&R SETA at the next meeting of the Board
- 22.5. A member of the Board or employee of the W&R SETA or any of its chambers or Committees or employees shall not, while he or she is a Board member or employee or thereafter, disclose to any person any information which he or she acquired while exercising or performing any function or duty under this constitution and which is confidential to the W&R SETA, any of its Committees or chambers, or any other Board members or to any employer or employee in the sector. Such information may be disclosed only if it must be disclosed in terms of the Act, the Levies Act or any other law or order out of court.

23. LIABILITY OF BOARD MEMBERS

23.1 Save for the provisions of Section 51 of the PFMA no member of the Board or any of its Committees or chambers shall be liable for any of the obligations and liabilities of the W&R SETA or that committee or chamber solely by virtue of his or her status as a Board member.

23.2 Save for the provisions of Section 51 of the PFMA no member of the Board or any of its committees or chambers 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 Board member's duties and powers under this Constitution while that person was performing functions for or on behalf of the W&R SETA or the committee or chamber as the case may be and the W&R SETA indemnifies such Board members for such loss or damage except conduct which was intention, unlawful and results in prejudice to the interest of the W&R SETA in a material respect

24. FINANCES OF THE W&R SETA

24.1. THE W&R SETA shall be financed as prescribed in section 14 of the Act:

24.2. The funds received by THE W&R SETA shall be audited in terms of relevant legislation

THUS DONE AND SIGNED AT _____ ON THE _____ DAY OF _____ 20____

**DULY NOMINATED AND AUTHORISED REPRESENTATIVE
OF EMPLOYERS ORGANISATION**

**DULY NOMINATED AND AUTHORISED BY EMPLOYEES
ORGANISATION**

CHAIRPERSON OF THE W&R SETA

**EXECUTIVE OFFICER OF THE AUTHORITY DULY AUTHORISED
THERETO DULY APPROVED BY THE MINISTER OF LABOUR IN
ACCORDANCE WITH THE PROVISIONS OF SECTION 13(1) OF ACT 97
OF 1998 ON THIS DAY OF..... TO BE
COMPLETED AND SIGNED BY THE AUTHORITY UPON REGISTRATION
OF THE AMENDED CONSTITUTION.**

MINISTER OF LABOUR

STATEMENT OF ENDORSEMENT BY CONSTITUENCIES

Duly authorised representatives of employers and organised labour in this economic sector hereby endorse this constitution of the Wholesale and Retail Sector Education and Training Authority (W&RSETA).

FOR ORGANISED LABOUR

ECCAWUSA

SACCAWU

HOTELICA

SACTWU

FEDCRAW

DICHAWU

Prepared by:

FOR EMPLOYERS

RETAILERS ASSOCIATION

SAISA

SOINSA

HOST

FURNITURE TRADERS ASSOCIATION

Annexure A

The following parties are entitled to appoint members to the W&RSETA Board

1. Employee bodies

Any Trade Union with membership in the Wholesale and Retail sector including but not limited to the following known bodies:

- SACCAWU (South African Commercial Catering & Allied Workers Union)
- FEDCRAW (Federal Council of Retail & Allied Workers)
- SERTAWU (Security, Retail Transport & Allied Workers Union)
- ECCAWUSA (Entertainment, Catering, Commercial Allied Workers Union of South Africa)
- SACTWU (South African Commercial Trade Workers Union)

2. Employer bodies

- Retailers Association
- Furniture Traders Association
- SOINSA (Soweto Independent Shopkeepers Association)
- SAISA (South African Independent Shopkeepers Association)
- HOST (Home of SMME's Business Trust)

Annexure B

ALLOCATION OF BOARD SEATS AS AGREED BY EMPLOYEE ORGANISATIONS

- 1 Number of seats allocated for COSATU affiliated unions is three (3)
- 2 Number of Seats allocated to other trade unions is three (3)

ALLOCATION OF BOARD SEATS AS AGREED BY EMPLOYER ORGANISATION

1. The parties have not agreed to any formal process; however as matters stand at present, the parties have agreed to 3 seats for the large employers and 3 for SMME employers. The parties moreover agree that any changes to the allocation, criteria and number of Board seats will be subject to negotiation between the employer bodies as listed on Annexure A”