

DEPARTMENT OF HIGHER EDUCATION AND TRAINING

NO. 3431

19 May 2023

**SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 OF 1998)**  
**DRAFT REGULATIONS FOR NATIONAL SKILLS AUTHORITY TO CONDUCT**  
**INVESTIGATIONS**

I, Bonginkosi Emmanuel Nzimande, Minister of Higher Education, Science and Innovation intend after consultation with the National Skills Authority, in terms of section 36(s) of the Skills Development Act, 1998 (Act No. 97 of 1998), to intend to make the Regulations in the Schedule.

Interested persons are invited to submit, within 60 days from the date of the publication of this Notice, any written comments or representations on the proposed Regulations to the National Skills Authority by email or post to:

**E-mail:** [Lehula.D@dhet.gov.za](mailto:Lehula.D@dhet.gov.za) or [Mahlo.M@dhet.gov.za](mailto:Mahlo.M@dhet.gov.za)

**Post:** The Executive Officer: National Skills Authority  
Department of Higher Education and Training  
178 Francis Baard Street  
Private Bag X174  
Pretoria  
0001

Any enquiries in connection with this gazette notice can be directed to Ms. D Lehula,  
telephone: 012 312 6115/ 079 725 3295

**MINISTER OF HIGHER EDUCATION, SCIENCE AND INNOVATION**

**DATE:**

## **SCHEDULE**

### **ARRANGEMENT OF REGULATIONS**

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## Definitions

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act has the meaning so assigned and, unless the context otherwise indicates—

**“chairperson”** means the Chairperson of the National Skills Authority, unless stated otherwise;

**“day(s)”** means any day other than a Saturday, Sunday or public holiday, which shall be calculated excluding the first and including the last day.

**“entity”** means an institution or organisation established by the Act;

**“Executive Officer”** means a person appointed in terms of section 8 (2)(a) of the Act;

**“investigation letter”** means a letter which indicates the initiation of an investigation as contemplated in section 5(1)(d) of the Act;

**“investigation”** means an investigation as contemplated in section 5(1)(d) of the Act;

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

## Application

2. These Regulations apply to all entities established or individuals appointed in accordance with the Act

### **Investigation by NSA**

**3.** The NSA may—

- (a) investigate, on its own initiative, on receipt of a complaint, or request by the Minister, of any alleged—
  - (i) maladministration in connection with the affairs of SETAs and other entities established in terms of the Act;
  - (ii) abuse or unjustifiable exercise of power or other improper conduct or undue delay by any person performing a function in accordance with the Act;
  - (iii) improper or unlawful enrichment of members of the Accounting Authority of SETAs and any other entities established in terms of the Act.
  - (iv) mismanagement of finances of a SETA or any other entity established in terms of the Act; and
  - (v) reported poor performance of a SETA; and
- (b) to investigate any other matter related to the application of the Act, including matters not specified in paragraph (a) above, if directed to by the Minister in terms of section 14A(4)(c) of the Act.

### **Determination of merits of complaint**

**4.** (1) Upon receipt of a complaint and before deciding to investigate, the NSA—

- (a) may request additional information from the complainant as the NSA may deem necessary;

- (b) must inform the person or entity against whom the complaint is made of the nature of the complaint and enquire whether he, she or it desires to provide a written submission on the complaint; and
- (c) may make enquiries as it may deem necessary to determine the merits of the complaint.
- (2) Complaints must be lodged in writing and addressed to the Executive Officer or the Chairperson.
- (3) If requested by the NSA, the complainant must, when a complaint is lodged, provide credible evidence to the NSA in support his or her submission and representation.

#### **Decision to investigate**

- 5. (1) When the NSA decides to investigate a matter, the NSA must, within seven days from the date of taking a decision to investigate, send an investigation letter to the Minister. The NSA must also, within 7 days from date of taking a decision to investigate, inform the complainant as well as the person, SETA or entity to be investigated, in writing, of such decision.
- (2) The investigation letter referred to in sub-regulation (1) must—
  - (a) be signed by the Chairperson of the NSA;
  - (b) reflect the details of the issues and allegations giving rise to the investigation;

- (c) indicate whether the decision to investigate is due to the NSA's own initiative, or as a result of a complaint received, or upon direction of the Minister; and
  - (d) the Terms of Reference for the investigation.
- (3) The processing of personal information during the investigation must comply with the provisions of POPIA.

### **Format of Investigations**

- 6.
  - (1) The NSA must develop and approve the Terms of Reference for each investigation and set out an investigation plan.
  - (2) The Terms of Reference must include details of the allegations and issues that will be investigated.
  - (3) The investigation plan may provide for a preliminary investigation for the purpose of determining the merits of a complaint or a formal investigation.
  - (4) The NSA may request, in writing, at any time after an investigation is initiated, for the individual, SETA or entity being investigated, to attend a meeting with the NSA and/or to produce, and make available for inspection, within 14 days from the date of request, any document as may be determined by the NSA, relating to the investigation.
  - (5) The individual, SETA or other entity being investigated must notify the NSA, at least three days prior to the proposed meeting date, if the date identified for the meeting is not suitable.

- (6) The NSA may, if good cause is shown, postpone a scheduled meeting to a later date not more than 14 days from the proposed meeting.

### **Preliminary Investigation**

7. (1) A preliminary investigation may take place by way of a meeting between the NSA and the individual, the SETA or other entity being investigated and may include a consultation with the complainant.
- (2) The meeting will be held at the venue identified by the NSA.
- (3) The NSA must give written notice of the meeting scheduled in terms of sub-regulation (1) to the individual, SETA or other entity being investigated, at least 14 days before the proposed meeting.
- (4) The preliminary investigation Terms of Reference must be provided to the individual, SETA or other entity being investigated, at least 14 days prior to the meeting.
- (5) The NSA may, at any stage during the preliminary investigation, refer the matter for a formal investigation.

### **Formal Investigation**

8. (1) A formal investigation shall take place at an investigation hearing, on a date, and at a time and venue determined by the NSA.

- (2) Once the matter has been referred for a formal investigation, the Chairperson of the NSA must issue a notice to every person required to attend the investigation hearing.
- (3) The notice contemplated in sub-regulation (2) must contain—
  - (a) the date, time and venue where the hearing is to be held;
  - (b) the formal investigation Terms of Reference;
  - (c) notice of the right to be represented; and
  - (d) notice of the right to call witnesses.
- (4) The NSA may—
  - (a) question the complainant and any possible witnesses; and
  - (b) inspect any evidence relevant to the investigation.

#### **Powers of entry**

- 9. (1) The NSA may, for purposes of the investigation and after providing 14 days written notice and a copy of the investigation letter to the SETA, individual or other entity being investigated, enter at a reasonable time any building or premises of an individual, SETA or other entity on or in which anything connected with the investigation is or is suspected to be.
- (2) No person, SETA or entity shall, after receipt of the notice in sub-regulation (1), refuse the NSA entry to premises unless that person, SETA or entity is legally authorized to do so.



- (3) Upon entry to the premises, the NSA shall conduct itself in a professional manner, with due consideration for the staff and operations of the individual, SETA or entity in question.
- (4) The NSA must take all reasonable steps to ensure that it does not hinder the continued operations of the individual, SETA or entity in question, during the investigation.

**Power to question and inspect**

- 10.** (1) The NSA has the authority to—
- (i) inspect all books, documents and records relating to the individual, SETA or the entity in question;
  - (ii) question any person whom it reasonably suspects of having information which has a bearing on a matter or person being investigated; and
  - (iii) request any person whom it reasonably suspects of having documentation, to produce or deliver to the NSA any book, document or record that must be kept in terms of this Act, or that is or was in the possession or in the custody or under the control of such person or employee of an individual, SETA or entity being investigated.
- (2) No individual, SETA or entity shall refuse the NSA access to:
- (i) inspect books, documents and records relating to the individual, SETA or the entity in question unless legally authorized to do so; and

- (ii) question any person whom it reasonably suspects of having information which has a bearing on a matter involving an individual, SETA or entity being investigated.
- (3) If, during an investigation, it appears to the NSA that any other person is implicated in the matter being investigated and that such implication may be to the detriment of that person, the NSA shall afford such person the same rights as the individual, SETA or entity under investigation.

### **Investigation report**

- 11. (1) Within 14 days after the completion of an investigation, the NSA must compile an investigation report and submit a copy thereof to the person, SETA or entity under investigation.
- (2) Where a preliminary investigation was conducted, the NSA must compile and submit a report of the preliminary investigation to the Minister, which may include a final close-out investigation report.
- (3) Where a formal investigation was conducted, the NSA must compile and submit a report of the formal investigation to the Minister which must include a final close-out investigation report.
- (4) An investigation will be deemed to be concluded if a final close-out investigation report is provided to the Minister.
- (5) The investigation close – out report must include—
  - (a) details of the allegations investigated;

- (b) details of the investigation as the NSA may deem relevant;
  - (c) the findings of the NSA;
  - (d) a recommendation and advice to the Minister; and
  - (e) full and transparent details of the investigation as undertaken by the NSA.
- (6) The NSA will take reasonable measures to ensure that all investigations are concluded at their earliest convenience.

### **Liability of the NSA**

12. A member, the Executive Officer or secretariat of the NSA and its delegation, shall not be liable in respect of any information reflected in any report, finding, point of view, advice or recommendation made or expressed in good faith and submitted to the Minister or made known in terms of the Act.

### **Short title and commencement**

13. These Regulations are called the Regulations for the National Skills Authority to Conduct Investigations and come into operation on the date of publication in the *Government Gazette*.