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AUDITOR-GENERAL
SOUTH AFRICA

FINAL MANAGEMENT REPORT

Department of Higher Education & Training

31 March 2020

Communicated to the accounting officer on: 15 September 2020





MANAGEMENT REPORT

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3. Appointments not in line with Public Service Regulations

Legislation

In terms of Chapter IV, Section 9 of the Public Service Act, the executive authority may appoint any person in his or her department in accordance with this Act and in such manner and on such conditions as may be prescribed.

Section 57(2) of the Public Service Regulations (PSR) of 2016 states that an executive authority may, unless otherwise authorised by the Act, within the available budget and at a salary level linked to a grade determined through job evaluation or as determined in an OSD, employ persons additional to the establishment,

- a) where the incumbent of a post is expected to be absent for such a period that his or her duties cannot be performed by other employees,
- b) a temporary increase in work occurs or it is necessary for any other reason to temporarily increase the staff of the department,
- c) an employee's post has been abolished and he or she cannot be transferred into another post; or
- d) an employee is part of a development programme as contemplated in regulation 58.

In terms of Section 57(3) of the PSR of 2016, before making a decision on an appointment of a person additional to the establishment, an executive authority shall satisfy himself or herself that the person qualifies in all respects for the position and that his or her claims in his or her application for the position have been verified; and record that verification in writing.

In terms of Section 65(1) of the PSR of 2016, an executive authority shall ensure that vacant posts in the department are advertised, as efficiently and effectively as possible, to reach the entire pool of potential applicants, including designated groups

Section 67(1) of the PSR of 2016 states that an executive authority shall appoint a selection committee to make a recommendation on the appointment to a post. The selection committee shall consist of at least three members who are employees of a grade equal to or higher than the grade of the post to be filled or suitable persons from outside the public service.

Furthermore, section 40 (1)(a) of the PFMA states that the accounting officer for a department, trading entity or constitutional institution must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards

Audit finding

During the audit it was identified that there were employees that were appointed as additional to the department's establishment. A memorandum dated 23 March 2020 approved by the Director General (DG) and the Minister was obtained, detailing the appointment of the five employees (refer to the table for the details of the employees) for a period of 12 months additional to the department establishment. Supporting documentation was however not submitted as evidence that the following processes were followed during the appointment process of these employees:

- There was no supporting evidence to confirm that the employees were appointed for any of the reasons as specified in section 57(2) of the PSR

- There was no evidence to support that verifications were performed to confirm that the employees appointed qualified in all respects for the position, there also no evidence that a selection committee was appointed to make recommendations on suitable candidates as required by section 57(3) of the PSR
- There was no evidence to support that verifications were performed of the applications for the positions as required by section 57(3) of the PSR
- There was no evidence to support that the posts were advertised as required by section 65(1) of the PSR
- There was no evidence to support that competency assessments were conducted before the candidates were appointed for senior management posts as required by section 67(1) of the PSR, and
- There was no evidence to support that verification checks for qualifications, financial/assets records and previous employment were performed as required by section 57(3) of the PSR.

No	Persal No.	Sumame	Initi als	Salary level	Level	Period of appointment	Appointment Notch (R)	Job Description
1	28385217	Pillay	Y	13	SMS	12 months	1 057 326	Director
2	52148441	Tunyiswa	B	13	SMS	12 months	1 057 326	Director
3	26860252	Gqangeni	BG	12	MMS	12 months	869 007	Deputy director
4	65867050	Dayi	SB	12	Operational	12 months	470 040	Assistant director.
5	28935209	Moloja	TP	10	Operational	12 months	470 040	Assistant director.

Furthermore, a letter of request for contract appointment of the Deputy Director-General: Planning, policy and Training (refer to the table below for the details) states that there is a request to approve the appointment of the employee as additional to the staff establishment of the department for a period of 12 months. However, this is not in line with the requirement of the regulations in terms of section 57(2) of the PSR as the post already exist in the department establishment and it was vacant.

Supporting documentation was also not submitted as evidence that the following processes were followed during the appointment process of this employee:

- There was no evidence to support that verifications were performed to confirm that the employees appointed qualified in all respects for the position, there also no evidence that a selection committee was appointed to make recommendations on suitable candidates as required by section 57(3) of the PSR
- There was no evidence to support that verifications were performed of the applications for the positions as required by section 57(3) of the PSR
- There was no evidence to support that the posts were advertised as required by section 65(1) of the PSR
- There was no evidence to support that competency assessments were conducted before the candidates were appointed for senior management posts as required by section 67(1) of the PSR, and
- There was no evidence to support that verification checks for qualifications, financial/assets records and previous employment were performed as required by section 57(3) of the PSR

No	Persal No.	Surname	Initials	Salary level	Level	Appointment notch (R)	Job Description
1	61638803	GASA	NBK	15	SMS	1 714 074	DDG: PLANNING POLICY AND STRATEGY

There is no evidence that the department has complied with the requirements of the PSR during the appointment process of the employees listed above. Section 40(1)(a) of the PFMA has therefore not been complied with by the department.

All remunerations towards these employees are therefore irregular expenditure and should be accounted for as such in the year that the expenditure occurs.

Internal control deficiency

Leadership

Exercise oversight responsibility regarding financial and performance reporting and compliance and related internal controls.

Leadership did not adequately exercise oversight on the implementation of provisions of the PSR relating to the appointments of officials listed above

Recommendation

The department should ensure that the requirements of the PSR are adhered to in the recruitment and the appointment of employees of the department and this should be supported by sufficient and appropriate supporting documentation.

Management should further ensure that any employee related costs towards these officials, in terms of the appointments stipulated above, are disclosed as irregular expenditure in the financial statement of the department in the year that the expenditures occur or provide evidence that the processes highlighted above have been complied with.

Management response

Management agrees with the findings, however see the attached letter from the DPSA which the Executive Authority had forwarded to the Administration as a basis to effect these appointments (Annexure A).

Name: Mr SJ Reyneke

Position: Director: HRMA

Date: 26/08/2020

Does management agree with the finding? [tick Y/N]	Yes x	No
Management agrees with the findings, however see the attached letter from the DPSA which the Executive Authority had forwarded to the Administration as a basis to effect these appointments (Annexure A).		
Does management agree with the internal control deficiency? [tick Y/N]	Yes	No x
Management disagrees with the internal control deficiency comment, on the basis that the Administration has advised the Executive Authority on the risk non-compliance, however the Executive Authority gave a directive to proceed, submission documents are attached as Annexure A.		
Does management agree with the recommendations? [tick Y/N]	Yes X	No
The department will in future ensure that the requirements of the PSR are adhered to in the recruitment and the appointment of employees of the department and this should be supported by sufficient and appropriate supporting documentation		
Confirm planned date of implementation		
1 April 2021		

Auditor's conclusion

Management response noted which agrees with the finding and the supporting evidence provided. The annexure A, referred to on the management response, from the Minister of Public Service and Administration specifically states that Regulation 57 of the PSR should be used for appointments additional to the establishment. This annexure therefore agrees with the basis that this finding was raised on.

It can therefore be concluded that the above mentioned provisions of the PSR have not been complied with by the department when these employees were appointed. This non-compliance will be reported further in the audit and all remunerations towards these employees are therefore **irregular expenditure** and should be accounted for as such in the year that the expenditure occurs.

It should further be noted that this finding relates to a sample that was selected. Management should therefore go back to the population and determine the full extent of the irregular expenditure due to not following all the requirements of the PSR.

Does management agree with the finding? [tick Y/N]	Yes	No
		X
Management disagrees with the finding: The personnel suitability checks (Competency Assessment only for SMS, citizenship, SAQA, security screening results, financial checks and reference forms) for the above-mentioned employees are attached to this COF14 as Annexure C and Annexure D respectively.		
Does management agree with the internal control deficiency? [tick Y/N]	Yes	No
		X
Sufficient controls are implemented by the department in ensuring that all employees are subject to adequate vetting.		
Does management agree with the recommendations? [tick Y/N]	Yes	No
		X
Management do track the audit findings on HR processes and enforce the implementation of action plans to address prior year findings. Management has enhanced monitoring controls to ensure that the department complies with all required appointment processes in terms of the public service regulations. A service provider has been appointed to deal with personnel suitability checks prior to the appointment in the Department.		
Please Indicate steps to be taken by management to address the matter		
None		
Confirm planned date of implementation		
NA		

Auditor's conclusion

Management response noted and the information that is subsequently submitted. The finding that relates to the verification check of the previous employment is resolved.

However, there was no supporting evidence provided to confirm that the verification check of the financial/asset records of the employees was performed. Therefore, that portion of the finding will remain and it will be reported in the management report.

5. Non-compliance identified on the appointment of Chairpersons of the Accounting Authorities for various SETAs.

Audit Finding

In terms of Section 11 (1)(a) of the Skills Development Act (SDA), subject to paragraph (b), the Minister must appoint the Chairperson of the Accounting Authority of a SETA after consultation with the National Skills Authority.

Section 11 (1) (b) further states that the Minister must by notice in the Gazette invite nominations for the position of Chairperson of an Accounting Authority from interested parties in the relevant sector.

Section 11A of the SDA states that a person does not qualify for appointment to an Accounting Authority;

- i. unless he or she is a citizen of and is permanently residing in the Republic;
- ii. if he or she is subject to an order of a competent court declaring such person to be mentally ill or disordered;
- iii. if he or she is an employee of the SETA in question;
- iv. if he or she is convicted, after the commencement of the Skills Development Amendment Act, 2011, whether in the Republic or elsewhere, of any offence for which such person is sentenced to imprisonment without the option of a fine;
- v. if he or she, at any time prior to the commencement of the Skills Development Amendment Act, 2011, was convicted, or at any time after such commencement, is convicted;
 - o in the Republic, of theft, fraud, forgery and uttering a forged document, perjury, or an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), or Part 1 to 4, or section 17, 20 or 21 (Insofar as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) ;
 - o Elsewhere, of any offence corresponding materially with any offence contemplated in subparagraph (i); and
 - o whether in the Republic or elsewhere, of any other offence involving dishonesty; or
- vi. if he or she has been convicted of an offence under this Act.

Section 11C (1) of the SDA states that a person may not be appointed on an Accounting Authority, unless the necessary disclosure has been made that such person;

- i. directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the SETA in question; or
- ii. his or her spouse, partner or associate holds an office in or is employed by any SETA, organization or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (a).

Nature of finding

During the audit of the appointment process of the chairpersons of the Accounting Authorities for various Sector Education and Training Authorities (SETAs) as directed by the Minister of Higher Education, Science and Technology through the two notices calling for nominations of chairpersons dated 12 August 2019 (Gazette 42631) and 21 January 2020 (Gazette 42963), the following instances of non-compliances with the provisions of the SDA quoted above were noted;

No validation checks performed on chairpersons appointed to the Accounting Authorities of the SETA's.

There was no criminal, nationality, qualification and background checks performed prior to the appointment of the Chairpersons listed below.

SETA	First name	Last name	Management Comments	Auditors conclusion
AGRISETA	Gaitsiwe Sharon	Sepeng	Not available at the time of appointment	From the management comments there is acknowledgement that there were no criminal, nationality, qualification and background checks prior to the appointment of the chairpersons. There has been no subsequent submission of additional information. The finding remains unresolved.
BANK SETA	Nosipho Zamanguni	Makhanya	Not available at the time of appointment	
CATHSETA	Themba	Ndlovu	Not available at the time of appointment	
CHIETA	Wezi Oris	Khoza	Not available at the time of appointment	
ETDP SETA	Duncan	Hindle	Not available at the time of appointment	
EW SETA	Limakatso	Moorosi	Not available at the time of appointment	
FASSET	Sibusisiwe Lynette	Ntuli	Not available at the time of appointment	
FOODBEV	Alan Griffin	Campbell	Not available at the time of appointment	
FP&M	Michelle	Odayan	Not available at the time of appointment	
HWSETA	Nomsa Veronica	Mnisi	Not available at the time of appointment	
INSETA	Sihle Joel	Ngubane	Not available at the time of appointment	
LGSETA	Phumlani Ennocent Eugene	Mntambo	Not available at the time of appointment	
MERSETA	Kate	Moloto	Not available at the time of appointment	
MICTSETA	Simphiwe	Thobela	Not available at the time of appointment	
PSETA	Thulani	Tshefuta	Not available at the time of appointment	
SASETA	Maphari Christopher	Mudau	Not available at the time of appointment	
TETA	Samuel Zamokuhle	Zungu	Not available at the time of appointment	
ServicesSETA	Steven	de Vries	Not available at the time of appointment	
W&RSETA	Linda Reginald	Sibiya	Not available at the time of appointment	

The department has indicated that these validation checks (criminal checks together with the nationality checks) were not conducted before appointment because of delays caused by the COVID-19 pandemic.

The government gazette notices calling for nominations of chairperson of the various SETA's stated the following criteria to be used in the evaluation of the nominees;

- v. representation of disadvantaged persons or communities which have been prejudiced by past racial and gender discrimination in relation to access to skills development programmes; and
- vi. a blend of knowledge, skills and experience required for the effective functioning of the SETA in question;

There were however no background and qualification checks performed in the evaluation of the chairperson appointed to confirm if the above criteria were met.

Furthermore, in a meeting that took place on 26 March 2020 between the Minister and the National Skills Authority, the minister was advised to perform the necessary validation checks. This process has still not taken place in contravention with the objective of section 11(1)(a) of the SDA.

Declarations of interests not made by chairpersons prior to appointment

There were no declarations of interest made by the chairpersons listed below prior to their appointment as chairpersons in the respective SETA's as required by sections 11C (1).

SETA	First name	Last name	Management Comments	Auditions conclusion
AGRISETA	Gaitsiwe Sharon	Sepeng	Now available	Subsequent to the finding, management submitted additional information on 23/09/2020. There is no date on the declaration. This declaration was also not available at the time of appointment. Therefore, the finding remains unresolved.
BANK SETA	Nosipho Zamanguni	Makhanya	Now available 14/09/2020	Subsequent to the finding, management submitted additional information on 23/09/2020. The declaration was made on 14/09/2020 therefore the finding remains unresolved.
CATHSETA	Themba	Ndlovu	Now available 14/09/2020	Subsequent to the finding, management submitted additional information on 23/09/2020. The declaration was made on 14/09/2020 therefore the finding remains unresolved.
CHIETA	Wezi Oris	Khoza	Now available 13/09/2020	Subsequent to the finding, management submitted additional information on 23/09/2020. The declaration was made on 13/09/2020 therefore the finding remains unresolved.

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ETDP SETA	Duncan	Hindle	Now available 17/09/2020	Subsequent to the finding, management submitted additional information on 23/09/2020. The declaration was made on 17/09/2020 therefore the finding remains unresolved.
EW SETA	Limakatso	Moorosi	Now available 15/09/2020	Subsequent to the finding, management submitted additional information on 23/09/2020. The declaration was made on 15/09/2020 therefore the finding remains unresolved.
FASSET	Sibusisiwe Lynette	Ntuli	Now available 14/09/2020	Subsequent to the finding, management submitted additional information on 23/09/2020. The declaration was made on 14/09/2020 therefore the finding remains unresolved.
FOODBEV	Alan Griffin	Campbell	Now available 16/09/2020	Subsequent to the finding, management submitted additional information on 23/09/2020. The declaration was made on 16/09/2020 therefore the finding remains unresolved.
FP&M	Michelle	Odayan	Now available 15/09/2020	Subsequent to the finding, management submitted additional information on 23/09/2020. The declaration was made on 15/09/2020 therefore the finding remains unresolved.
INSETA	Sihle Joel	Ngubane	Now available 15/09/2020	Subsequent to the finding, management submitted additional information on 23/09/2020. The declaration was made on 15/09/2020 therefore the finding remains unresolved.
LGSETA	Phumlani Ennocent Eugene	Mntambo	Now available 16/09/2020	Not included in the file.
MERSETA	Kate	Moloto	Now available 14/10/2020	Subsequent to the finding, management submitted additional information on 23/09/2020. The declaration was made on 14/09/2020 therefore the finding remains unresolved.
MICTSETA	Simphiwe	Thobela	Now available 16/09/2020	Subsequent to the finding, management submitted additional information on 23/09/2020. The declaration was made on 16/09/2020 therefore the finding remains unresolved.

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PSETA	Thulani	Tshefuta	Now available 14/09/2020	Subsequent to the finding, management submitted additional information on 23/09/2020. The declaration was made on 14/09/2020 therefore the finding remains unresolved.
SASETA	Maphari Christopher	Mudau	Now available 01/09/2020	Subsequent to the finding, management submitted additional information on 23/09/2020. The declaration was made on 01/09/2020 therefore the finding remains unresolved.
TETA	Samuel Zamokuhle	Zungu	Now available 14/09/2020	Subsequent to the finding, management submitted additional information on 23/09/2020. The declaration was made on 14/09/2020 therefore the finding remains unresolved.
Services SETA	Steven	de Vries	Now available 14/09/2020	Subsequent to the finding, management submitted additional information on 23/09/2020. The declaration was made on 15/09/2020 therefore the finding remains unresolved.
W&RSETA	Linda Reginald	Sibiya	Now available 15/09/2020	Subsequent to the finding, management submitted additional information on 23/09/2020. The declaration was made on 15/09/2020 therefore the finding remains unresolved.

The department has indicated that this process was not performed because the chairpersons are required to declare their interest during the accounting authority meetings. This however does not address the requirements of section 11C (1) as these declarations should happen before the appointment process is completed

It was further noted that the section 11C (1) interest declarations were not stated as a requirement in the notices calling for nominations dated 12 August 2019 (Gazette 42631) and 21 January 2020 (Gazette 42963), and were also not considered in the evaluation of nominations received.

Nomination received after closing date

- It was noted that the Minister initially invited nominations for persons to serve as chairpersons in the accounting authorities for the period 1 April 2020 – 31 March 2025 through Government Gazette number 42631 on 12 August 2019.

The notice in the above Gazette indicated the minimum information to be contained for each nomination and for submissions to be made within 30 working days from the date of notice, which would expire on the 23rd September 2019.

It was further noted that the process of inviting nominations was re-opened by the Minister through a Government Gazette number 42963 dated 21 January 2020, with a closing date of 31 January 2020 for submissions. This notice indicated that submissions previously submitted in response to notice 42631 need not resubmit, as their submissions would still be considered in the evaluation.

During the audit of the nominations received it was noted that the nomination for Ms Nosipho Zamanguni Makhanya who has been appointed as the chairperson of the Bank SETA accounting authority was submitted on the 30th October 2019 which was after the closing date of the first notice calling for nominations (Gazette 42631) and before the second gazette that re-opened the process of submissions.

There was therefore no active notice on the 30 October 2019, as notice 42631 had closed on the 23rd September 2019 and notice 42963 only opened on 21 January 2020.

Impact

A number of internal control deficiencies have also been noted as certain processes (listed above) were not followed to ensure compliance with the specific sections of the SDA. This then creates a risk that the chairpersons appointed to the accounting authorities may not qualify due to not meeting the criteria set on the sections of the SDA. This can only be prevented by ensuring that the necessary checks and due diligence is followed before chairpersons are appointed.

The appointment process followed was not compliant with the requirements of the SDA. To the extent that the SDA was contravened there is irregular expenditure. The non-compliance with the SDA will result in the SETAs incurring irregular expenditure. Therefore, the department must make an assessment of all instances of irregular expenditure and ensure that there are accounted as such by the affected SETAs.

Internal control deficiency

Leadership

Leadership did not adequately exercise oversight on the implementation of provisions of the SDA relating to the appointments of officials listed above

The executive authority did not review and monitor compliance with applicable legislation, in relation to the Skills Development Act.

Recommendation

The department should ensure that the requirements of the SDA are adhered to in the appointment of chairpersons of the accounting authorities of the different SETAs and this should be supported by sufficient and appropriate supporting documentation.

The SETAs should further ensure that any remunerations made towards these officials, in terms of the appointments stipulated above, are disclosed as irregular expenditure in the financial statement of the SETAs in the years that the expenditures occur.

Management response

Management comment on audit finding;

1. No validation checks prepared on Chairpersons Appointed to the Accounting Authority.

• Management Comment:

- The appointment letters of all appointed Accounting Authority ("AA") members stipulated a condition that their appointment are subject to attainment of criminal records checks and the outcome thereon.
- The lockdown which commenced on the 27 March 2020 made it impractical for the validation checks to be prepared because movement of people was restricted with the exception of those who were performing essential services in terms of the Disaster Management Regulations.
- There is no specific requirement for qualification in terms of the Skills Development Act (Act No. 97 of 1998) to serve on the SETA Accounting Authorities as these are constituency based appointments.

2. Declaration of interest not made by Chairpersons prior to the appointment.

Management Comment:

- The Minister consulted the National Skills Authority ("the NSA") for the appointment of the SETA Chairpersons on the 26 March 2020, the day before the commencement of the nation-wide lockdown.
- It was therefore impractical to get declaration before the appointments, however, the SETA Standard Constitution requires the declaration in the meetings of the Accounting Authorities as one of the internal control measures. The Chairpersons have since been requested to sign the declaration forms, as referred above.

3. Nomination received after closing dates.

• Management Comment:

- The letter was signed on the 03 October 2019.

Management comment on the Root Cause;

Management Comment:

- The Department acknowledges the gaps raised by the AGSA relating to the appointments of both the SETA AAs and the Chairpersons, however, it is important to point that after reviewing the responses received, there was a need to re-open the process in order to bring in suitable skills and competence and also to improve representivity in terms of gender and people with disabilities. Despite the time constraints, the unprecedented declaration of the national state of disaster and the nation-wide lockdown on the 27 March 2020 had a bearing on the process. These identified gaps has since been attended to.

Management comment on internal control deficiencies:

Management Comment:

- Due to time constraints, some of the processes necessary for internal control could not be performed on time, for example, consultation with the NSA was done on 26 March 2020, the day before the declaration of the nation-wide lockdown which was unforeseen.
- Secondly, the SETA Standard Constitution requires that the Chairpersons declare their interest in every meeting, this is a control measure of checking that a member does not participate in an item where he/she is conflicted.

Management comment on recommendation:		
Management Comments: <ul style="list-style-type: none"> The documents have since been received from the Chairpersons as reflected in the table above. There is a serious challenge for the Department in accessing the records of companies owned by prospective nominees to check where they do business. 		
Remedial action Management comment: <ul style="list-style-type: none"> Some of the declaration of interest have since been received and are attached. The criminal records information is being received since some have submitted as required in the appointment letters. 	Yes	No
If yes: Not Applicable	By whom	When (Date)

Auditor's conclusion

1. No validation checks prepared on Chairpersons Appointed to the Accounting Authority

Management response is noted, as management acknowledge that validation checks (criminal records) were not conducted prior to appointments due to the lockdown restriction that came into effect on 27 March 2020. Therefore, the finding remains and will be reported a non-compliance with Section 11A (e)(f) of the Skills Development Act. It should further be noted that when the lockdown came in to effect there were only three (3) working days left before the effective date of appointments.

2. Declaration of interest not made by Chairpersons prior to the appointment

Management response is noted. However, as management acknowledges that the declaration of interests was not done due to the lockdown, this finding remains and will be reported a non-compliance with Section 11C of the Skills Development Act. It should further be noted that when the lockdown came in to effect there were only three (3) working days left before the effective date of appointments.

3. Nomination received after closing dates

Management response is noted. However, the nomination for Ms Nosipho Zamanguni Makhanya who has been appointed as the chairperson of the Bank SETA accounting authority was submitted on the 30th October 2019 which was after the closing date of the first notice calling for nominations (Gazette 42631) and before the second gazette that re-opened the process of submissions.

There was therefore no active notice on the 30 October 2019, as notice 42631 had closed on the 23rd September 2019 and notice 42963 only opened on 21 January 2020.

Further, through inspection of the signed letter of nomination for Ms Nosipho Zamanguni Makhanya confirmed that the nomination was dated 13 October 2019, which is still after the closing date. Therefore, there was no active notice on the 13 October 2019, as notice 42631 had closed on the 23rd September 2019 and notice 42963 only opened on 21 January 2020.

Therefore, the finding remains and will be reported as non-compliance with Section of the Skills Development Act

The appointment process followed was not compliant with the requirements of the SDA. To the extent that the SDA was contravened there is irregular expenditure. The non-compliance with the SDA will result in the SETAs incurring irregular expenditure. Therefore, the department must make an assessment of all instances of irregular expenditure and ensure that there are accounted as such by the affected SETAs.

6. Non-compliance identified on the appointment of members of the Accounting Authority for various SETAs.

Audit Finding

Section 11 (2) (a-b) of the SDA states that, subject to paragraph (b) and section 13(2), the Minister must appoint 14 persons as members of the Accounting Authority of a SETA. The members referred to in paragraph (a) may not include more than:

- six persons who must be nominated by organized labour;
- six persons who must be nominated by organized employers; and
- two persons who must be nominated by;
 - o any government department that has an interest in the relevant sector and that is not an organized employer;
 - o any interested professional body;
 - o any bargaining council with jurisdiction in the sector in question; or
 - o any organization in a community that has an identifiable interest in skills development in the sector in question.

Section 11 (4) of the SDA further states that in appointing the members of contemplated in subsection (2), the Minister must ensure, in so far as is practicably possible, that the membership of the Accounting Authority in question;

- o represents the interest identified in the national skills development strategy contemplated in section 5 (1) (a) (ii);
- o taken as a whole, achieves;
 - vii. gender representation;
 - viii. demographic representation;
 - ix. representation of disadvantaged persons or communities which have been prejudiced by past racial and gender discrimination in relation to access to skills development programmes; and
 - x. a blend of knowledge, skills and experience required for the effective functioning of the SETA in question; and
- is drawn from the ranks of senior officials in the organizations in question.

Section 11A of the SDA states that a person does not qualify for appointment to an Accounting Authority;

- vii. unless he or she is a citizen of and is permanently residing in the Republic;
- viii. if he or she is subject to an order of a competent court declaring such person to be mentally ill or disordered;
- ix. if he or she is an employee of the SETA in question;
- x. if he or she is convicted, after the commencement of the Skills Development Amendment Act, 2011, whether in the Republic or elsewhere, of any offence for which such person is sentenced to imprisonment without the option of a fine;
- xi. if he or she, at any time prior to the commencement of the Skills Development Amendment Act, 2011, was convicted, or at any time after such commencement, is convicted;
 - o in the Republic, of theft, fraud, forgery and uttering a forged document, perjury, or an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), or Part 1 to 4, or section 17, 20 or 21 (Insofar as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) ;

- Elsewhere, of any offence corresponding materially with any offence contemplated in subparagraph (i); and
- whether in the Republic or elsewhere, of any other offence involving dishonesty; or
- xii. if he or she has been convicted of an offence under this Act.

Section 11C (1) of the SDA states that a person may not be appointed on an Accounting Authority, unless the necessary disclosure has been made that such person;

- iii. directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the SETA in question; or
- iv. his or her spouse, partner or associate holds an office in or is employed by any SETA, organization or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (a).

Nature of finding

During the audit of the appointment process of the members of the Accounting Authorities for various SETAs as directed by the Minister of Higher Education, Science and Technology through directives issued on 30 July 2019, 21 August 2019 and 20 January 2020, the following instances of non-compliances with the provisions of the SDA quoted above were noted;

No qualification and background checks performed

The accounting authority members listed on the attached annexure B were appointed without the necessary background and qualification checks being performed to ensure that there is compliance with section 11(4) of the SDA.

There were therefore no processes put in place to ensure that the requirements of section 11(4) have been complied with before the appointments were made.

No criminal record and Nationality checks performed

The accounting authority members listed on the attached annexure B were appointed without the necessary background and qualification checks being performed to ensure that there is compliance with section 11A of the SDA.

There were therefore no processes put in place to ensure that the requirements of section 11A have been complied with before the appointments were made

Members appointed not from recommendations made by the SETAs.

It was noted that appointments to the SETA Accounting Authority of various SETAs did not form part of the recommendations from the respective SETAs as required by Section 11(5).

The table below provides detail of the SETAs in question and the members appointed;

SETA	Surname	Name	Management Comments	Auditor's conclusion
CATHSSETA	Maumela	Khumbudzo	Appointed in view of the importance of the stakeholder represented (Provincial Heritage Resource Authority).	From the management comments there is acknowledgement that the member was not included from the SETA recommendation however management have included specific consideration for candidate.
CATHSSETA	Ingonyama Diko	Madzikane II	Disagree with the finding, the member was nominated for both AGRISSETA & CATHSSETA and was appointed for CATHSSETA	Additional information was submitted on 21/09/2020, which is a nomination of the candidate as chairperson of the CATHSETA directly to the department. Therefore the information provided supports the finding that the nomination was not from the list of recommendation by the SETA
CATHSSETA	Gaoshubelwe	Thulaganyo	Disagree with the finding, see the attached letter dated 05/02/2020	Additional information was submitted on 23/09/2020, which is a letter dated 05/02/2020. However, the finding remains unresolved.
CATHSSETA	Ms Khan	Sumayya	Disagree with the finding, see the attached letter dated 05/02/2020	Additional information was submitted on 23/09/2020, which is a letter dated 05/02/2020. However, the finding remains unresolved.
SSETA	Madela	Andrew	Person with disability (PWD) appointed to achieve representation of people with disabilities.	From the management comments there is acknowledgement that the member was not included from the SETA recommendation however management have included specific consideration for candidate
SSETA	Karanja	Alice	Female appointed to achieve gender equity.	From the management comments there is acknowledgement that the member was not included from the SETA recommendation however management have included specific consideration for candidate
INSETA	Kruger	Sharon Joanne	Coloured female appointed to achieve race and gender equity.	From the management comments there is acknowledgement that the member was not included from the SETA recommendation however management have included specific consideration

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SETA	Surname	Name	Management Comments	Auditor's conclusion
				for candidate
INSETA	Motsa	Zanele	Female appointed to achieve gender equity.	From the management comments there is acknowledgement that the member was not included from the SETA recommendation however management have included specific consideration for candidate
BANKSETA	Protas	Langalakhe Mhlongo	Disagree with the finding, see attached letter dated 12/09/2019	Additional information was submitted on 21/09/2020, which is a nomination of the candidate as chairperson of the BANKSETA directly to the department. Therefore, the information provided supports the finding that the nomination was not from the list of recommendation by the SETA.
BANKSETA	Ntombana	Segapane	Female appointed to achieve gender equity.	From the management comments there is acknowledgement that the member was not included from the SETA recommendation however management have included specific consideration for candidate
P SETA	Brink	Christelene	Disagree with the finding see the attached letter dated 07/09/2020	Subsequent to the communication of finding, additional information was submitted on 23/09/2020, which is a nomination list with the name of the candidate. The name of the candidate was not in the initial submission.
P SETA	Nzimande	Lewis	Person with disability (PWD) appointed to achieve representation of people with disabilities.	From the management comments there is acknowledgement that the member was not included from the SETA recommendation however management have included specific consideration for candidate
P SETA	Kruger	Jacobus	Disagree with the finding see the attached dated 19/09/2019	Subsequent to the communication of finding, additional information was submitted on 23/09/2020, which is a nomination list with the name of the candidate. The name of the candidate was not in the initial

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SETA	Surname	Name	Management Comments	Auditor's conclusion
				submission.
P SETA	Seokolo	Gaolape	Disagree with the finding see the attached dated 19/09/2019	Subsequent to the communication of finding, additional information was submitted on 23/09/2020, which is a nomination list with the name of the candidate. The name of the candidate was not in the initial submission.
P SETA	Maesela	Nkojane	Disagree with the finding see the attached dated 19/09/2019	Subsequent to the communication of finding, additional information was submitted on 23/09/2020, which is a nomination list with the name of the candidate. The name of the candidate was not in the initial submission.
P SETA	Mkhafane	Patrick	Disagree with the finding see the attached dated 19/09/2019	Subsequent to the communication of finding, additional information was submitted on 23/09/2020, which is a nomination list with the name of the candidate. The name of the candidate was not in the initial submission.
P SETA	Matshidza	Namadzavho	Disagree with the finding see the attached dated 19/09/2019	Disagree that the member not included in the SETA recommendations
P SETA	Molefe - Sefanyetso	Tampane	Disagree with the finding see the attached dated 19/09/2019	Subsequent to the communication of finding, additional information was submitted on 23/09/2020, which is a nomination list with the name of the candidate. The name of the candidate was not in the initial submission.
P SETA	Mzizi	Mbuyiswa	Disagree with the finding see the attached dated 19/09/2019	Subsequent to the communication of finding, additional information was submitted on 23/09/2020, which is a nomination list with the name of the candidate. The name of the candidate was not in the initial submission.
P SETA	Moopelwa	Patrick	Disagree with the finding see the attached dated 19/09/2019	Subsequent to the communication of finding, additional information was

SETA	Surname	Name	Management Comments	Auditor's conclusion
				submitted on 23/09/2020, which is a nomination list with the name of the candidate. The name of the candidate was not in the initial submission.
P SETA	Dludla	Linda	Disagree with the finding see the attached letter	Subsequent to the communication of finding, additional information was submitted on 23/09/2020, which is a nomination list with the name of the candidate. The name of the candidate was not in the initial submission.
FASSET	Mkhumuleni Nyathela	Mahanjana	Female appointed to achieve gender equity.	From the management comments there is acknowledgement that the member was not included from the SETA recommendation however management have included specific consideration for candidate
FASSET	Rofhiwa	Singo	Female appointed to achieve gender equity.	From the management comments there is acknowledgement that the member was not included from the SETA recommendation however management have included specific consideration for candidate

Declarations of interests not made by chairpersons prior to appointment

There were no declarations of interest made by the members listed in annexure A prior to their appointment as members of the accounting authorities in the respective SETA's as required by sections 11C (1).

It was further noted that the section 11C (1) interest declarations were not stated as a requirement in the adverts calling for nominations and were also not considered in the evaluation of nominations received.

Incorrect composition of the accounting authorities

The appointment of the accounting authorities on the SETAs listed in Annexure C did not comply with section 11(2)(a) of the SDA as the required composition of the accounting authority has not been met (does not comprise of the required 15 members ,14 members plus a chairperson, as there are only 11-14 members appointed).

Nomination not drawn from the ranks of senior officials in the organizations in question

It was further noted that the members (details listed on the table below) appointed to the stated SETA Accounting Authorities were not selected from the senior ranks of the nominating organizations as required by Section 11(4)(c).

SETA	Member Name	Member Surname	Position from nomination	Management Comments	Auditors conclusion
CHIETA	Adri	Bruwer (Swart)	Office Assistant	Title :Assistant to the Deputy Chief Executive Officer	Assistant to the Chief Executive Officer is not considered to be from senior rank Further, no information has been submitted in relation to the organisation
FOODBEV	Sithembile Hope	Mzizi	Supervisor	Title : 2 nd Deputy Chairperson of the union in Free State and Northern Cape.	No information submitted regarding the union the member is serving for, therefore unable to determine if the member is from senior ranks
AGRISETA	Kabelo	Tsimatsima	Farmer	Title : Farmer	The member has not been detailed as to which organisation is from and further no information regarding the position held in the organisation We are therefore unable to determine if the member is from senior ranks
AGRISETA	Linda	Gqokoma	Shop Steward	Title : 1 st Deputy president	No information submitted regarding the union the member is serving for, therefore unable to determine if the member is from senior ranks
AGRISETA	Bagcinile	Cele	Packer	Title : KZN 2 nd Deputy Chairperson	No information submitted regarding the union the member is serving for, therefore unable to determine if the member is from senior ranks
PSETA	Christelene	Brink	Executive Assistant	Executive Assistant	Executive Assistant is not considered to be from senior rank Further, no information has been submitted in relation to the organisation

Observation: Member appointed in two separate accounting authorities

Ms Ruth Ntlokotse has been appointed as a member of the accounting authority of both MERSETA and EW SETA.

Scope limitation in the audit of certain areas of the appointments

In addition there were instances where information requested was not submitted therefore we experienced limitation of scope.

Impact

The appointment process followed was not compliant with the requirements of the SDA. To the extent that the SDA was contravened there is irregular expenditure. The non-compliance with the SDA will result in the SETAs incurring irregular expenditure. Therefore, the department must make an assessment of all instances of irregular expenditure and ensure that there are accounted as such by the affected SETAs.

A number of internal control deficiencies have also been noted as certain processes (listed above) were not followed to ensure compliance with the specific sections of the SDA. This then creates a risk that the members appointed to the accounting authorities may not qualify due to not meeting the criteria set on the sections of the SDA. This can only be prevented by ensuring that the necessary checks and due diligence is followed before members are appointed

Internal control deficiency

Leadership

Leadership did not adequately exercise oversight on the implementation of provisions of the SDA relating to the appointments of officials listed above

The executive authority did not review and monitor compliance with applicable legislation, in relation to the Skills Development Act.

Recommendation

The department should ensure that the requirements of the SDA are adhered to in the appointment of members of the accounting authorities of the different SETAs and this should be supported by sufficient and appropriate supporting documentation.

The SETAs should further ensure that any remunerations made towards the members appointed without complying with section 11C (1) of the SDA are disclosed as irregular expenditure in the financial statement of the SETAs in the years that the expenditures occur.

Management response

Management comment on audit finding;

1. No qualification and background check performed.

- The Skills Development Act does not prescribe any qualification requirement to serve in the Accounting Authority except that members must be drawn from their constituencies. The representation in the AA is constituency based and it is the constituencies that submit the names of person they wish to serve in the AAs.

2. No criminal record and nationality checks performed.

- The appointment letter of all the AA had the condition that the criminal record would be done after appointment. These records are being received and are attached in the file, albeit, not all of them.

3. Members appointed not from recommendations made by the SETAs.

- All members who were not part of the list were appointed to redress past discriminatory practices and address historical imbalances in order to achieve equity and representivity in terms of race, gender and people with disabilities. It is not correct that Ingonyama Madzikane Diko, Protas Langalakhe Mhlongo, Thulaganyo Gaoshubelwe and Ms Summaya Khan were not part of the list from the SETAs. Refer to documentary evidence.

4. Declaration of interest not made by the chairpersons prior to appointment.

- Some of the declaration were made and the list is submitted except for some that still needs to be submitted.

5. Incorrect composition of the Accounting authority.

- This is not correct because the Act sets the maximum and does not set the minimum. In certain instances where a vacancy exists is because the recommended candidates did not address the gender, and in certain instances the SETA did not get the response.

6. Nomination not drawn from the ranks of senior officials in the organisations in question.

- The management response is reflected in the table in question.

7. Member appointed in two separate Accounting Authorities.

- There is no regulation or provision in the Act that prohibits a member to serve in more than one SETA.

8. Scope limitation in the audit of certain areas of the appointment.

- This is as results if the lockdown because at the time of processing the appointments not all members could submit the required documentation in time.

Management comment on the Root Cause;

Management comment:

- The Department acknowledges some of the gaps in processing of the appointments as the result of the national state of disaster and nation-wide lockdown as movements were restricted for those performing essential services.

Management comment on internal control deficiencies:

Management comment:

- The AA members are expected to declare their interest in every meeting in terms of the SETA Standard Constitution, this is one of the control measures in place.

Management comment on recommendation:

Management comment:

- Agreed with the finding on providing the required documentation except that the lockdown had an impact in ensuring that the required documentation are furnished. Not all members however were appointed without supporting documentation.

Remedial action

Management comment:

- There are some declaration of interest that have since been received and are attached, whilst others are expected.
- The criminal records have been requested and some have been submitted as attached and some are still being submitted.

Yes

No

If yes: Not Applicable	By whom	When (Date)
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Auditor's conclusion

1. No qualification and background check performed

Management response is noted. We agree that as per the legislation this is not the requirement, however, to ensure assessment of the board representation in relation to Section 11(4)(c).

Therefore, the finding is resolved on the basis that the qualification checks are not as per the legislation, this matter has been raised as a limitation as per finding 8.

2. No criminal record and nationality checks performed

Management response is noted, however, due to the fact that criminal checks were not conducted prior to appointment, the finding still remains and will be reported as non-compliance to Section 11A (e)(f) of the Skills Development Act.

3. Members appointed not from recommendations made by the SETAs

Management response is noted.

In relation to the members that management disagreed with the finding have inspected the subsequent information submitted and have confirmed that the information submitted relates to the nomination made by the constituency, not the recommendations made by the various SETAs after evaluation and selection of the nominations sent to the SETAs by constituencies. Therefore, the finding remains and will be reported as a non-compliance with Section 11(2)(a) of the Skills Development Act.

Also the members appointed do not form part of the list of the recommendations submitted on the 05 February 2020 after the applications were reopened. Therefore, the second list of recommendation should have included the members to be recommended for appointment. This is because the process was reopened, and the advert issued for the second application indicated that the previously nominated candidates are not requested to resubmit their applications as their applications will be considered.

For other members, management is in agreement with the finding as the appointment made was not as per recommendations from the SETAs, therefore evaluation and selection process was not performed. Therefore, the finding remains and will be reported as a non-compliance with Section 11(2)(a) of the Skills Development Act.

4. Declaration of interest not made by the chairpersons prior to appointment

Management response is noted, therefore as management agrees with the finding, this will be reported as a non-compliance with Section 11C of the Skills Development Act as the declaration of interests were not obtained before appointments were made. The finding remains unresolved.

5. Incorrect composition of the Accounting authority

Management comment is noted. However, Section 11 (2) (a) states that, Subject to paragraph (b) and section 13 (2), the Minister must appoint 14 persons as members of the Accounting Authority of a SETA, therefore not detailing the minimum board members to be appointed. The finding therefore remains and will be reported as non-compliance with the section above.

6. Nomination not drawn from the ranks of senior officials in the organisations in question.

Management response is noted. However, based on the response it is unclear as to what senior positions do the members hold from their constituencies and for which union or organisation. Therefore, the finding still remains and will be reported as non-compliance to section 11(4)(c) of the Skills Development Act.

7. Member appointed in two separate Accounting Authorities

Management response is noted.

We agree with the finding as there is no legislation in place to prevent the appointment in two SETAs, however, the ability to serve in two different boards in extremely different sectors should be assessed to ensure that both boards the member will be able to provide adequate oversight.

8. Scope limitation in the audit of certain areas of the appointment

Management response is noted.

However, the scope limitation finding still remains as no information was submitted we were unable to reach a conclusion on the composition of the board was in accordance with the provisions of Section 11(4) of the Skills Development Act.

The appointment process followed was not compliant with the requirements of the SDA. To the extent that the SDA was contravened there is irregular expenditure. The non-compliance with the SDA will result in the SETAs incurring irregular expenditure. Therefore, the department must make an assessment of all instances of irregular expenditure and ensure that there are accounted as such by the affected SETAs.