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GENERAL NOTICES

NOTICE 91 OF 2004

SKILLS DEVELOPMENT ACT, 1998: DRAFT SERVICE LEVEL AGREEMENT REGULATIONS

Draft: for public comment

SKILLS DEVELOPMENT ACT, 1998: DRAFT SERVICE LEVEL AGREEMENT REGULATIONS

The Minister of Labour, after consultation with the National Skills Authority, hereby publishes for
5 public comment the draft regulations in the Schedule.

Written comments on the proposed amendments must reach the Department of Labour by no later
than 11 February 2004 and must be delivered to The Acting Executive Officer, National Skills
Authority, Laboria Building Room 315, 215 Schoeman Street, PRETORIA, 0001.

SCHEDULE

1. Definitions

In these Regulations, unless the context otherwise indicates, any word or expression to
which a meaning has been assigned in the Skills Development Act, 1998 (Act 97 of 1998)
bears that meaning.

2. Procedure for negotiating service level agreements

(1) The Director-General and each SETA must conclude their negotiations by no later
than 31 March of each year.

(2) If the Director-General and any SETA have not agreed on the contents of their
service level agreement for the next financial year by 31 March of any year, either party
may refer the matter to the Minister for determination under section 10A(2) of the Act.

(3) If the contents of a service level agreement are referred to the Minister as
contemplated in sub-regulation (2), the Minister must -

(a) endeavour to determine the matter by the end of May of that year; and

(b) in writing, notify the Director-General and the SETA of the determination as
soon as possible after making it.

SKILLS DEVELOPMENT ACT, 1998: DRAFT SERVICE LEVEL AGREEMENT REGULATIONS

-§4Draft: for public comment

3. Service level agreement

(1) The contents of a service level agreement may deal with any matter concerning -

(a) a SETA's performance of its functions in terms of the Act and the national skills development strategy;

5 (b) a SETA's annual business plan;

(c) reports to be submitted to the Director-General; and

(d) any assistance that the Director-General is to provide to a SETA in order to enable it to perform its functions.

10 (2) The service level agreement to be concluded between the Director-General and the SETA referred to in section 10A of the Act shall be in the form of Annexure A and the Schedules thereto.

4. Short title

These Regulations are called the Service Level Agreement Regulations, 2004.

Service Level Agreement

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ANNEXURE A
SERVICE LEVEL AGREEMENT
between
the Director-General of Labour
and
the _____ SETA¹

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¹ Enter the name of the SETA concerned

Service Level Agreement

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1 Definitions

In this Agreement:

- 1.1 **"Agreement"** means this service level agreement and includes the Schedules to this Agreement;
- 1.2 **"Director-General"** means the Director-General of Labour;
- 1.3 **"NSDS"** means the national skills development strategy contemplated in section 5(1)(a)(ii) of the SDA;
- 1.4 **"parties"** mean the signatories to this Agreement;
- 1.5 **"SETA"** means the SETA party to this Agreement; and
- 1.6 **"SDA"** means the Skills Development Act, 1998 (Act No. 97 of 1998).

2 Purpose of Agreement

The parties have entered into this Agreement in order to determine:

- 2.1 the levels of service delivery required of the SETA in:
 - 2.1.1 performing its statutory functions;
 - 2.1.2 meeting the NSDS targets;
 - 2.1.3 submitting the required reports to the Director-General; and
 - 2.1.4 implementing its annual business plan;
- 2.2 the standards, criteria and targets for measuring and evaluating the SETA's conduct and practices;
- 2.3 the plans and reports to be submitted by the SETA to the Director-General for purposes of measuring and evaluating the performance of the SETA's obligations in terms of this Agreement; and
- 2.4 the assistance that the Director-General will provide to the SETA in order to enable it to perform its functions.

3 Duration of Agreement

This Agreement commences on 01 April 2004 and terminates on 31 March 2005.

Service Level Agreement

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4 Obligations of SETA

4.1 The SETA undertakes to comply with the standards, criteria and targets contained in **Schedule 1** in respect of:

4.1.1 performing its functions under the SDA;

4.1.2 meeting the NSDS targets;

4.1.3 implementing its annual business plan.

4.2 The SETA undertakes:

4.2.1 to implement its annual business plan for 2004/5 which is contained in **Schedule 2**; and

4.2.2 to submit plans and reports to the Director-General containing the information, in the format and by the dates set out in **Schedule 3**.

5 Measuring and evaluating the SETA's performance

The SETA's performance of its obligations under this Agreement will be measured and evaluated in the manner, by the dates and in accordance with the standards, criteria and targets set out in Schedule 1.

6 The obligations of the Director-General

The Director-General undertakes:

6.1 to consult the SETA on all relevant policy and operational matters that might affect the functioning of the SETA;

6.2 to promote the interests of the SETA to other organs of state as may be appropriate and necessary;

6.3 to provide the SETA with:

6.3.1 guidance on the Director-General's sector skills and business plan requirements at least 3 months before any plans are required to be submitted to the Director-General;

6.3.2 written comments on the SETA's draft annual business plan within 1 month of its submission to the Director-General; and

6.3.3 a quarterly report on the progress of SETAs in meeting the NSDS targets, incorporating the quarterly review data provided by SETAs;

Service Level Agreement

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- 6.4 to respond to any written inquiry from the SETA within 20 working days or, if this is not reasonably practicable, to provide the SETA with a reasonable time-table to deal with the inquiry;
- 6.5 to indicate to the SETA no later than 3 months after submission of each report contemplated in Schedule 3 if the Director-General is of the view that the SETA is under-performing; and
- 6.6 to provide the assistance described in **Schedule 4** in order to enable the SETA to perform its functions.

7 General

- 7.1 Subject to clause 7.2, any amendments to this Agreement must be in writing and signed by both parties.
- 7.2 If the parties cannot agree on the contents of an amendment to this Agreement, the Minister will determine its contents after consulting the National Skills Authority and this determination will be final and binding on the parties.
- 7.3 No relaxation, extension or indulgence which either party may grant to the other will constitute a waiver of any right of that party in terms of this Agreement or any applicable law and does not preclude a party from exercising any rights which may have arisen in the past or which may arise in the future.

8 Signatures of the parties

For the Director-General of Labour

For the SETA (duly authorised)

Date:

Date:

Address:

Address:

Schedule 1

Standards, criteria and targets for measuring and evaluating service delivery by the SETA

The SETA's performance of its obligations under this Agreement will be measured and evaluated in the manner, by the dates and in accordance with the standards, criteria and targets set out below.

1 Sector Skills Planning function

Standard and criteria for measurement: A SETA must present to the Director General or his delegated alternate on or before the end of April 2004, a Sector Skills Plan which substantially meets the criteria set out in the Sector Skills Plan Guideline as assessed by Seta Coordination.

The Department of Labour undertakes to respond by end of May 2004. SETAs must submit three final bound copies by 1 July 2004 to the Director General incorporating the agreed changes.

2 Workplace Skills Plan Grants and Implementation Grant payment function

Standard and criteria for measurement: A SETA must meet or exceed the targets set out in the National Skills Development Strategy success indicators 2.1, 2.2 and 3.1 in respect of the issuing of grants to levy-paying firms in their sector. An agreed baseline for each category of firms must be set out in the SETA business plan.

3 Education and Training Quality Assurance function

Standard and criteria for measurement and evaluation: A SETA must present to the Director-General a letter from SAQA which indicates that they have met all the requirements set for accredited ETQAs for 2004/5.

4 Learnership function

Standard and criteria for measurement

- 4.1 A minimum number of 18(2) learners or apprentices must be registered with the SETA, or have been registered with the SETA, from the date of the SETA's establishment to March 2005. The target for the SETA is not less than the greater of the following two numbers:

- 4.1.1 the number resulting from the following calculation:

$$\text{Number of 18(2) learners} = \frac{\text{Total SETA levy income (2003/4)} \times 80\,000}{\text{Total levy fund transferred to all SETAs (2003/4)}}$$

OR

- 4.1.2 the number of learners to which the SETA is committed under the Growth and Development Summit Agreement, 7 June 2003.

- 4.2 The SETA must in its business plan have specified the number of learners that it is able to support under its discretionary grant funds and the number of learners for which it will require additional funds from the National Skills Fund. It should be noted that the NSF will only entertain an application if the SETA is able to demonstrate that available funds have been exhausted or are committed to projects for which there is a formal, recorded SETA Board decision AND a formal contract has been entered into with a service provider.

5 Adult Basic Education and Training and Skills Programme

Standard and criteria for measurement:

- 5.1 The SETA must present to the Director-General-
- 5.1.1 an informed estimate of the number of workers in their sector that already have achieved an NQF level 1; and
 - 5.1.2 the number of workers equal to 70% of the workforce of the economic sector for which the SETA is responsible.
- 5.2 Where 5.1.1 is less than 5.1.2, the SETA must demonstrate to the Director-General that it has undertaken significant steps to lift 5.1.1 to 5.1.2.
- 5.3 Where 5.1.1 is equal to or greater than 5.1.2, the standard for this function will be deemed to have been met, although credit will be given to any SETA that raises the level of its achievement in relation to adult basic education and training and skills programmes.

6 NSDS Equity Targets

Standard and criteria for measurement:

- 6.1 The SETA must show the Director-General¹ that it has taken active steps to achieve the NSDS EQUITY targets, namely that 85% of the beneficiaries of training undertaken have been black, 54% have been women and 4% people with disabilities.
- 6.2 The SETA must provide the Director-General with a race / gender / disability breakdown of the beneficiaries of training under NSDS success indicators: 1.1; 1.2; and 5.1 for the year 2004/5. This breakdown will be used to determine the assessment of 6.1.
- 6.3 Where the beneficiaries of training under any one of the three success indicators in a SETA deviate more than 50% from the target for 2004/5, it will indicate that insufficient steps have been taken by the SETA, provided that the SETA has motivated to the satisfaction of the Director-General why this should not constitute under-performance. Only 2004/5 figures will be measured to determine this standard.

7 National standard of good practice in skills development

Standard and criteria for measurement:

- 7.1 At least 20 enterprises within the jurisdiction of the SETA must commit to or achieve the national standard of good practice in skills development by March 2005.
- 7.2 The SETA must commit to or achieve the national standard of good practice in skills development by March 2005.

8 Financial performance

Standard and criteria for measurement:

- 8.1 Full compliance with the reporting requirements of the Public Finance Management Act.
- 8.2 No audit query from the Auditor General for 2004/5.
- 8.3 Full compliance with directives from SCOPA, where applicable.
- 8.4 Total cash or cash equivalents in the SETA account (i.e. including unspent funds committed towards projects as well as surplus funds) do not exceed the equivalent of 4 months levy income as at the end of the financial year (as reflected in the SETA's annual audited financial statements).
- 8.5 Administration expenditure of the SETA does not exceed the prescribed limit of 12,5% unless approved by the Director-General.

9 Governance

Standard and criteria for measurement:

- 9.1 The SETA Board and Sub-Committee members have maintained a good attendance record.
- 9.2 The SETA Board has attended to every complaint forwarded by the Department of Labour to it within two months and has submitted a written report to the Director-General within two weeks of the Board decision regarding the complaint.

10 Equity of SETA Board and Staff

Standard and criteria for measurement:

- 10.1 The SETA must present an Employment Equity Plan and implementation report.

Schedule 2

Annual business plan for 2004/5

1. The SETA Business Plan must be easy to read, user-friendly and structured as follows:

1.1 Foreword

1.2 Introduction

The introduction should include a SETA analysis of progress made in the previous year against targets.

1.3 SETA Vision, Mission, Policy and Strategy for skills development in the sector

1.4 Proposed Targets for 2004-2005

1.5 Mapping the targets to functions and programmes / projects giving clear outputs, timeframes and budgets for each.

1.6 A consolidated budget projection for 3 years in the format as set out by National Treasury.

2. Governance and Administration

2.1 Demonstrate steps that the SETA will take to comply with the equity provisions of the Skills Development Amendment Act with regard to SETA Board members and staff.

2.2 The organisational structure of the SETA.

2.3 Levy / Grant Administration - including a schedule of grant payments to employers, including dates for submission of grant claims and target dates for payments (this section should also set out the basis on which discretionary grants will be paid and the criteria to be applied, but it is not sufficient to state that sector priorities will be addressed).

3. SETA Business Plan financials

3.1 Internal audit arrangements (which must include the names and designations of Audit Committee members and a three-year audit plan).

Schedule 3

Reports to the Director-General

The SETA undertakes to submit the following plans and reports containing the information, in the format and by the dates set out below:

1 The SETA Quarterly Monitoring Report (SQMR)

- 1.1 The SETA must submit to the Department of Labour a SETA Quarterly Monitoring Report quarterly during the financial year. The financial year starts on 1 April of every year and ends on 31 March of the following year. The quarter covers three months of the financial year.
- 1.2 The CEO and the Chairperson of the SETA are responsible for ensuring that the report is accurate and reflects the performance of the SETA for the reporting period. It is expected that the SETA Board will review the quarterly report as part of their normal oversight functions of SETA performance. The Department of Labour will assess the performance of the SETA on the basis of information submitted on the due date.
- 1.3 The SETA must report to the Director-General according to the SQMR reporting format as provided for in the "SETA Quarterly Monitoring Report, New Scope and Format for Reports, July 2002" issued by the Department of Labour.
- 1.4 The SETA must provide the Department of Labour with a SQMR within 1 month of the end of each quarter. Late reporting by the SETA will constitute under-performance in terms of the Act.

2 The SETA Quarterly Financial Cash Flow Statements (QFCFS)

- 2.1 In accordance with the current Government Finance Statistics system (GFS system), the SETA is required to report quarterly on the Revenue, Surplus/(Deficit), and Financing under the headings outlined in the GFS system as issued by the National Treasury, on November 2001, and in accordance with the "SETA Quarterly Monitoring Report, New Scope and Format for Reports, July 2002" issued by the Department of Labour.
- 2.2 The CEO and the CFO of the SETA are responsible for ensuring that the report is accurate and reflects the financial position of the SETA for the reporting period. It is expected that the SETA Board will also review the quarterly financial report as part of their normal oversight functions.
- 2.3 The CFO of the Department of Labour, the Director-General and the Minister of Labour must in terms of the Public Finance Management Act, 1999 be kept informed of the financial position of the SETA.
- 2.4 Quarterly financial reports must be provided to the Department of Labour within 1 month of the end of each quarter. Late reporting by a SETA will constitute under-performance in terms of the Act.

3 Annual Report

- 3.1 The SETA must prepare and submit its Annual Report to the Minister of Labour for tabling in Parliament in compliance with the Public Finance Management Act, 1999, five months after the end of the financial year.
- 3.2 The CEO of the SETA is responsible for ensuring that the report is accurate and reflects the performance of the SETA in line with the Service Level Agreement for the reporting period. It is expected that the SETA Board and the SETA's constituencies will review the Annual Report at the Annual General meeting of the SETA.
- 3.3 Failure to submit the Annual Report timeously will constitute under-performance in terms of the Act.
- 3.4 The report must include an assessment of the SETA against the standards, criteria and targets as set out in Schedule 1 of Annexure A.

Schedule 4**Assistance by the Director-General**

The Director General undertakes to provide SETAs with assistance in respect of the following:

1. To convene regular meetings with the Chief Executive Officers, Chairpersons and other SETA officials as and when is necessary, to consider operational matters and to provide a forum for discussing emerging policy issues and exchanging ideas on good practice;
2. To convene quarterly meetings between the National Skills Authority, SETA representatives and relevant officials of the Department of Labour to review progress in meeting the NSDS targets and to discuss strategic matters that have significance for the labour market as a whole; and
3. To provide additional funding from the National Skills Fund (NSF) for the implementation of Learnerships in pursuance of the achievement of the Growth and Development Summit commitments, provided that the SETA meets the minimum criteria for additional funding in terms of the NSF Learnership Support Fund procedures and funds are available.

NOTICE 92 OF 2004

SKILLS DEVELOPMENT ACT, 1998: DRAFT AMENDMENT TO SKILLS DEVELOPMENT REGULATIONS

Draft: for public comment

**SKILLS DEVELOPMENT ACT, 1998: DRAFT
AMENDMENT TO SKILLS DEVELOPMENT FUNDING
REGULATIONS**

- 5 The Minister of Labour, after consultation with the National Skills Authority, hereby publishes for public comment proposed amendments to the regulations published in Notice 571 in Government Gazette 22398 of 22 June 2001 as amended by Notice 344 in Government Gazette 24967 of 7 March 2003 as set out in the Schedule.

- 10 Written comments on the proposed amendments must reach the Department of Labour by no later than 11 February 2004 and must be delivered to The Acting Executive Officer, National Skills Authority, Laboria Building Room 315, 215 Schoeman Street, PRETORIA, 0001.

SCHEDULE**1. Amendment of Regulation 3**

- 15 Regulation 3 is hereby amended by the substitution in sub-regulation (1) of the following words:

“A SETA may in terms of section 14(3)(b) of the Act not, without the prior written approval of the Director-General, use more than 12,5% of the money it receives in terms of the Skills Development Levies act to pay for its administration costs.”

20 **2. Amendment of Regulation 4**

Regulation 4 is hereby amended by the addition of the following sub-regulation:

“(4) A SETA must implement its annual business plan and take all reasonable steps to meet the income, expenditure and other targets contained in the plan.”

SKILLS DEVELOPMENT ACT 1998: DRAFT AMENDMENT TO SKILLS DEVELOPMENT REGULATIONS

Draft: for public comment

3. Amendment of Regulation 6

Regulation 6 is hereby amended by -

- (a) the substitution for the expression "2002/3 and 2003/4 financial years" in sub-regulation (2)(b) of the expression "2002/3, 2003/4 and 2004/5 financial years";

- (b) the insertion of the following sub-regulation after sub-regulation (2)A-

"(2)B Subject to any limits and conditions that the Director-General may determine, a SETA may allocate a mandatory grant to an employer with less than 50 employees who has not submitted a workplace skills plan on a simplified basis to be determined by the SETA.";

- (c) the substitution for sub-regulation (3) of the following sub-regulation:

"[A] Subject to any limits or conditions that the Director General may determine, a SETA may of any surplus moneys determine and allocate discretionary grants to -

- (a) an employer if the employer has submitted an application for a discretionary grant in the form prescribed in Annexure C to these Regulations; **[and]**

- (b) an employer if the employer has submitted an application for a discretionary grant in the form determined by the SETA for the following national skills priority areas-

- (i) adult basic education and training;

- (ii) HIV/Aids awareness training;

- (iii) learnerships involving learners contemplated in section 18(2) of the Act; and

SKILLS DEVELOPMENT ACT, 1998: DRAFT AMENDMENT TO SKILLS DEVELOPMENT REGULATIONS

Draft: for public comment

- (iv) achieving equity targets, including special programs aimed at people with disabilities;
- 5 (c) a lead employer contemplated in Regulation 3(4) of the Learnership Regulations, 2001 if the lead employer has submitted an application for a discretionary grant to fund its administration costs in the form determined by the SETA;
- 10 (d) an employer if the employer has submitted an application for a discretionary grant in the form determined by the SETA for learnerships registered in terms of Regulation 2 of the Learnership Regulations, 2001 by another SETA; and
- (e) education and training providers and workers if the education and training providers and workers concerned have submitted an application for a discretionary grant in the form prescribed in Annexure D to these Regulations.”
- 15 (d) the substitution in sub-regulation (5) of the following words:
- 20 “[Each] Subject to sub-regulation (5A), each SETA must prepare and distribute to employers and education and training providers and workers a schedule setting out the dates by which employers and education and training providers and workers must submit their applications for the grants as contemplated in sub-regulations (1), (1A) and (3), including any circumstances under which employers and education and training providers and workers may be granted extensions to the dates stipulated by the relevant SETA for the submission of applications.”
- 25 (e) the addition of the following sub-regulation after sub-regulation (5):
- ‘(5A) Each SETA must, in the schedule contemplated in sub-regulation (5), require every application for a grant to be submitted -

SKILLS DEVELOPMENT ACT 1998: DRAFT AMENDMENT TO SKILLS DEVELOPMENT REGULATIONS

Draft: for public comment

- (i) no later than three months after the end of the financial year in respect of which the application is made; or
- (ii) within such shorter period as may be determined by the SETA.”

NOTICE 93 OF 2004

SKILLS DEVELOPMENT ACT, 1998: DRAFT AMENDMENT TO SKILLS DEVELOPMENT REGULATIONS

Draft: for public comment

**Skills Development Act, 1998: Draft amendment to the
Learnership Regulations, 2001**

5 The Minister of Labour, after consultation with the National Skills Authority, hereby publishes for
public comment proposed draft amendments to the regulations published in Notice 330 in
Government Gazette 22197 of 03 April 2001 (the Learnership Regulations, 2001) set out in the
Schedule.

10 Written comments on the proposed amendments must reach the Department of Labour by no later
than 11 February 2004 and must be delivered to The Acting Executive Officer, National Skills
Authority, Laboria Building Room 315, 215 Schoeman Street, PRETORIA, 0001.

SCHEDULE**1. Amendment of Regulation 3 of the Learnership Regulations, 2002**

15 Regulation 3 is hereby amended by substituting the following sub-regulation for sub-
regulation (4)-

“(4) [A] Subject to any limits or conditions that the Director-General may
determine, a SETA may only register a learnership agreement to which a
group of employers is party if-

- 20 (a) one of the employers is identified in the agreement as the lead
employer; and
- (b) the lead employer undertakes to ensure compliance with the
employer's duties in terms of the agreement.”

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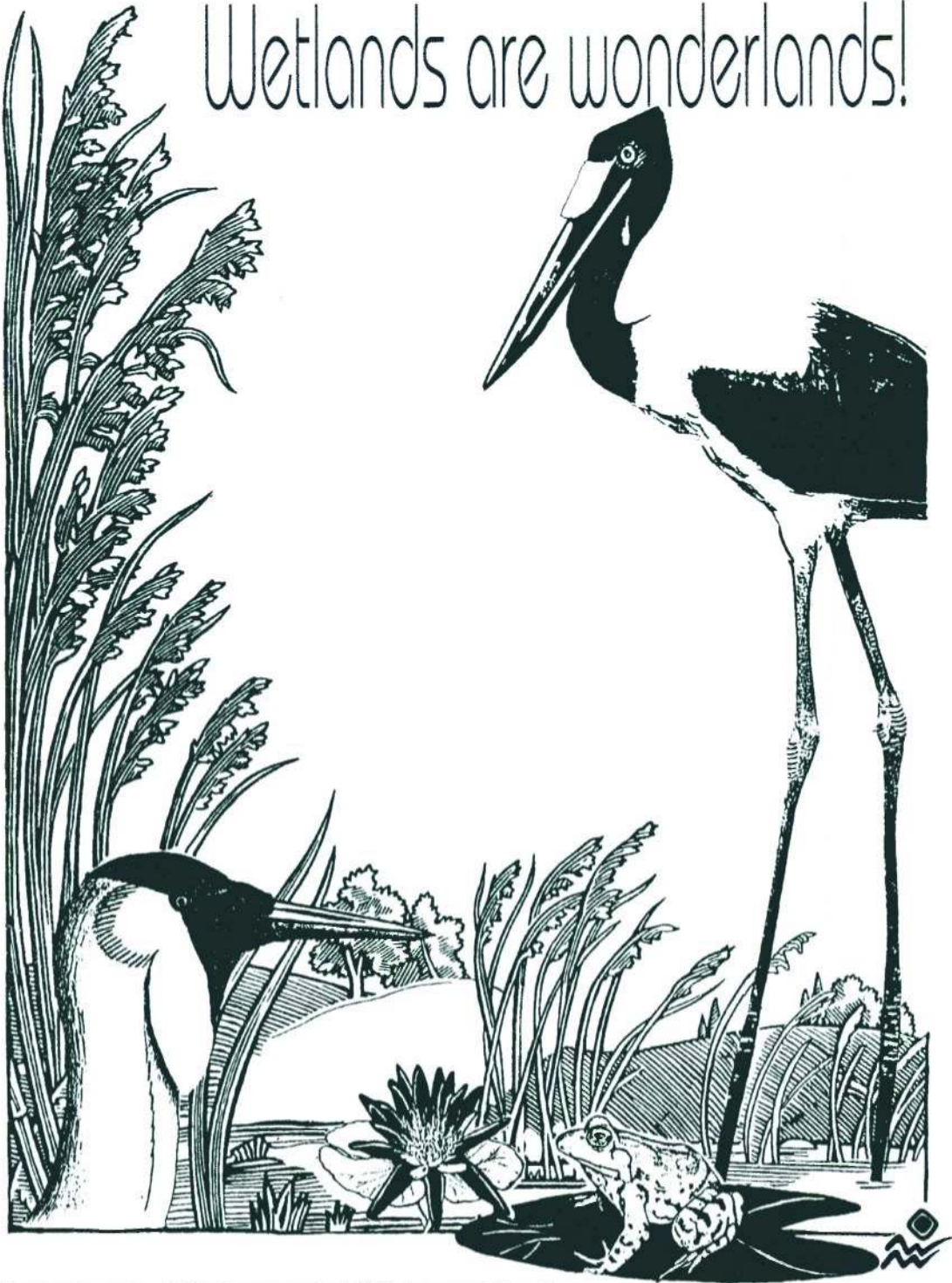
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