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## MEMORANDUM

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|---------------------|---|
| <b>Aan   To</b>     | <b>Universities South Africa<br/>and<br/>Parliamentary Portfolio Committee on Higher Education and Training</b> |
| <b>Van   From</b>   | <b>Rector and Vice-Chancellor, Stellenbosch University</b>  |
| <b>Insake   RE</b>  | <b>Response to the Higher Education Amendment Bill, 2015</b>  |
| <b>Datum   Date</b> | <b>February 8, 2016</b>   |

### **Response to the Higher Education Amendment Bill, 2015**

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Stellenbosch University took note of the Higher Education Amendment Bill, 2015 (the Bill), to the Higher Education Act, 1997 (Act No. 101 of 1997) (the Act). Our response is as follows:

1. Stellenbosch University advises strongly against incorporation of clauses in the Bill that appear to:
  - a. limit or infringe upon the institutional autonomy of universities,
  - b. limit or infringe upon academic freedom,
  - c. unduly extend the powers of the Minister (such as determination of transformation goals for the public higher education system, appropriate oversight mechanisms in the Bill, and the broad powers for issuing of Ministerial directives), and
  - d. against clauses that appear to be in conflict with, limit or infringe upon rights and provisions as defined by the South African Constitution. These include proposed amendments that may be challenged under constitutional law.
2. Stellenbosch University endorses the comments of Prof. Andreas van Wyk, a subject matter expert, who was one of the primary contributors to the Act, and who commented on the Bill at the University's request. His comments are included as Appendix A.

3. The University requests that our comments be taken into account in the revision of the Amendment Bill, and that all stakeholders be given a subsequent opportunity to comment again.
4. Comments on particular clauses are presented below.

### **2.1 Clause 1: Amendment of section 1 of Act 101 of 1997**

- Consider renaming Chapter 1 as “DEFINITIONS, ACRONYMS, APPLICATION AND DETERMINATION OF POLICY” and Section 1 as “Definitions and Acronyms”;
- Consider including the definitions for “transformation” and “transformation goals” in the list of definitions;
- Although two new types of colleges, a *(i)* “higher education college” and a *(u)* “university college”, are defined in the Bill, it is unclear what the differences are between the two in terms of their “limited scope and range of operations”. Better institutional differentiation is welcomed, however, the term *(c)* “college” is well-established in the higher education nomenclature; perhaps consider retaining “college” and only introducing one additional institutional type.
- If “college” is deleted, then *(d)* “Constitution” is inserted after “CHE”;
- Consider reformulating the definition of *(h)* “higher education” – currently it could be confusing in terms of “... learning programmes which must be registered ... regardless of whether such programmes are in fact registered or not”
- The definition of *(o)* “Provide higher education” in its current state allows that e.g. “registering of students” by itself could be considered as providing higher education. Is this the intention?
- Consider keeping the verb “provide” in its *(p)* infinitive form, to distinguish it from the rest of the listed lemmas that are all nouns or acronyms.

### **2.3 Clause 3: Amendment of section 3 of the Act 101 of 1997**

- This clause unduly extends ministerial powers.
- The lack of definition and common understanding of the term “transformation” makes this provision vague and difficult to implement, and may lead to subjective interpretations;
- A definition for “transformation” will go a long way in addressing this deficiency, but it will remain a difficult concept. The “goals” will also have to be clarified;
- Please also refer to Appendix A;
- We agree with the proposed articulation- and RPL frameworks to be developed.

### **2.5 Clause 5: Amendment of section 20 of Act 101 of 1997**

- While SU in principle supports the inclusion of a new s.20(5A) to determine the power of the council of a public HEI to invest its funds, it does not make sense to

add this new provision below s.20(5) which deals with the “Disposal or alienation of immovable property”, a matter entirely removed from the investment of funds.

### **2.7 Clause 7: Amendment of section 23 of Act 101 of 1997**

- This clause unduly extends ministerial powers. Please refer to Appendix A.
- We agree with the proposed amendments that provide good, clear instructions, however we would propose that s.23(1) be changed from “[**after consulting**] the CHE” to “in consultation with the CHE”, i.e.:  
“Subject to subsection (2), the Minister may [**after consulting**] in consultation with the CHE and by notice in the Gazette, merge two or more public higher education institutions into a single public higher education institution.
- The Minister’s powers could be interpreted as being too strong.

### **2.8 Clause 8: Amendment of section 27 of Act 101 of 1997**

- In terms of (a) the comment prepared by Prof Andreas van Wyk (Appendix A) refers. Even though we welcome the acknowledgement of indigenous languages, the “due observance of the relevant provisions of the Use of Official Languages Act, 2012 (Act No. 12 of 2012)” is not directly applicable to educational contexts;
- It is not clear what “due observance” would imply.

### **2.9 Clause 9: Amendment of section 31 of Act 101 of 1997**

- In terms of the functioning of the Council, and the manner of its decision-making (e.g. in terms of voting), the requirement to give “written reasons if the advice [from the Institutional Forum] is not accepted”, places an additional burden on the secretariat and functioning of the Council, and puts a question on the value-add of this additional requirement in all instances (e.g. small editorial suggestions to specific policy documents).

### **2.12 Clause 12: Amendment of section 39 of Act 101 of 1997**

- This clause unduly extends ministerial powers. It should at least provide for building in checks and balances, e.g. prior consultation with and acting in concert with a body of neutral experts.

### **2.16 Clause 16: Substitution of section 42 of Act 101 of 1997**

- This clause unduly extends ministerial powers. It should at least provide for building in checks and balances, e.g. prior consultation with and acting in concert with a body of neutral experts.

#### **2.25 Clause 25: Amendment of section 49B of Act 101 of 1997**

- We would recommend that the “consultation with the council” be retained in s.25(a)(1)
- This clause unduly extends ministerial powers. It should at least provide for building in checks and balances, e.g. prior consultation with and acting in concert with a body of neutral experts.

#### **2.28 Clause 28: Insertion of sections 49F to 49J in Act 101 of 1997**

- Please refer to the comments from Prof Andreas van Wyk.
- Parts of this clause unduly extends ministerial powers. It should at least provide for building in checks and balances, e.g. prior consultation with and acting in concert with a body of neutral experts.
- Who has oversight over the administrator?

#### **2.37 Clause 37: Amendment of section 65D of Act 101 of 1997**

- This clause unduly extends ministerial powers, and infringes upon institutional autonomy and academic freedom of a university. It should at least provide for building in checks and balances, e.g. prior consultation with and acting in concert with a body of neutral experts.

#### **2.41 Clause 41: Repeal of section 70 of Act 101 of 1997**

- The Constitution should still have the highest authority.

## APPENDIX A

### COMMENTS ON THE HIGHER EDUCATION AMENDMENT BILL (B36-2015)

Submitted by Andreas van Wyk to the University of Stellenbosch at their request

1. **LIMITATIONS:** Due to the short time available to me to draft some comments on the Higher Education Amendment Bill of 2015, I am not able to discuss the proposed amendments to the Higher Education Act of 1997 in any detail. I will confine my comments to certain key provisions in the Bill and to their impact on fundamental principles underlying higher education policy and structures.
2. **GENERAL:** The Bill is like the proverbial curate's egg, partly good and partly bad. Examples of improvements are mostly in the area of operational matters, such as certainty on permissible investments by universities (cl 5), conflicts of interest in university councils (cl 8(e)-(i)) and the granting of an express power (and procedure) to universities to withdraw degrees and other qualifications (cl 36).
3. **OVERVIEW:** The most important proposals in the Bill deal with the higher education system as such, e g with articulation in the system. Though no sensible person would argue against a well articulated HE system giving all students the chance to develop to the best of their abilities, the proposal in cl 37 is a first example where the minister of HE is given a power which goes against fundamental principles of academic freedom and institutional autonomy. It allows the minister to COMPEL a HE institution to offer an education programme identified by the minister and in compliance with ministerial conditions. This would empower the minister to prescribe the content of courses and even the manner of presentation in clear violation of the guarantee of academic freedom in s 16(1) of the Constitution.
4. **ACADEMIC FREEDOM AND INSTITUTIONAL AUTONOMY GENERALLY:**

Unfortunately the example of cl 37 serves to illustrate the general approach of the Bill in such matters: ministerial intervention as a cure-all.

Any discussion of the key subjects of academic freedom and institutional autonomy and their interrelationship should take notice of two academic research projects: one South African<sup>1</sup> and one Dutch<sup>2</sup>.

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<sup>1</sup> W Bray *The legal status of the South African university* LL D thesis University of South Africa 1993

<sup>2</sup> PJJ Zoontjes *Vrijheid van wetenschap. Juridische beschouwingen over wetenschapsbeleid en hoger onderwijs*

Academic freedom is expressly protected as a fundamental right in the Italian Constitution of 1947<sup>3</sup>, sec 5.3 of the German *Grundgesetz* of 1949, and also in 16(1) of our Constitution of 1996 which provides as follows under the heading “freedom of expression”: “*Everyone has the right to freedom of expression, which includes academic freedom and freedom of scientific research*”. In other countries like France, the Netherlands and the United States of America the recognition of this freedom is more indirect through decisions of the courts relying on e.g. sec 145 of the UN International Covenant on Economic, Social and Cultural Rights of 1976 (Netherlands), the preamble to the French Constitution of 1946 or other fundamental freedoms such as freedom of expression in the USA<sup>4</sup>.

Though there is some inconsistency in the use of concepts like “academic freedom” and “autonomy”, the term “academic freedom” in the strict sense is usually employed as “*the composite term for independent basic freedoms vesting in the individual, such as freedom of expression, freedom of association and vocational freedom*”. This entails the absence of prior censorship and of direct interference by the state, the particular institution and its organs in the content of teaching and research activities. The principles underlying this fundamental freedom are well put in the American judgment in *Sweezy v New Hampshire* in 1957<sup>5</sup>: “*To impose any straitjacket upon the intellectual leaders in our colleges and universities would imperil the future of our nation. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die*”.

Institutional autonomy and the individual academic freedom of a lecturer, researcher and student are distinguishable and, in spite of occasional inaccurate terminology, also separable. The HE systems in different countries indeed show varying degrees of institutional autonomy. These differences were until recently often the result of historical circumstances, as is shown by e.g. the different histories of the establishment of the English and the Dutch universities. Nevertheless, since the Second World War there is a clear trend to recognise and enlarge university autonomy, even on the European continent with its Napoleonic tradition of treating universities as branches of government and their teaching staff as civil servants. As Prof Huizinga pointed out many years ago: there has been a clear shift in favour of the Anglo-Saxon corporate model<sup>6</sup>.

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Zwolle 1993

<sup>3</sup> Zoontjes *op cit* 249

<sup>4</sup> Zoontjes *op cit* 14-22,300-306, 340-349

<sup>5</sup> 354 US 234

<sup>6</sup> J Huizinga *Verzamelde Werken VIII* Haarlem 1951 32-33

In the USA institutional autonomy is indeed regarded as the self-evident premise for individual academic freedom. As it was formulated in 1985 in the Supreme Court's judgement in *Regents of the University of Michigan v Ewing*<sup>7</sup>: "*Academic freedom thrives not only on the independent and uninhibited exchange of ideas among teachers and students, but also and somewhat inconsistently, on autonomous decision-making by the academy itself*".

This same symbiotic relationship is recognised in UNESCO's *Policy Paper for Change and Development in Higher Education*<sup>8</sup> of 1995<sup>i</sup>, a fundamental document from which I want to quote extensively on this point: "*A clear grasp of the principles on which relations between higher education and the State are based is a precondition for quality and accountability in governance and management of higher education institutions. Academic freedom, understood as a set of individual and collective rights and responsibilities, is central in this respect. Together with the recognition of institutional autonomy it is essential for the preservation of the university or any other higher education institution as a community of free enquiry ...Recent history has provided strong evidence of the need to defend the principle of academic freedom as a sine qua non for the existence and normal functioning of higher education institutions. The proper degree of statutory institutional autonomy should therefore be granted to both public and accredited private higher education institutions to allow them to be relevant and perform their creative, reflective and critical functions in society. While the State may ensure general co-ordination in various system-wide policy matters such as accreditation and quality assessment, institutional self governance should be given adequate, pragmatic form*"<sup>9</sup>.

The *locus classicus* on the content of university autonomy is to be found in the judgement of judge Felix Frankfurter of the American Supreme Court in the *Sweezy* case: "*The four essential freedoms of a university (are) to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study*". To this one should add the freedom to organise and do research and to publish the results of such research.<sup>10</sup>

It is clear that neither individual academic freedom nor institutional autonomy is absolute. Apart from the general limitation in sec 36 of the Constitution, the freedom of the single academic is limited by the rights of others and also by the

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<sup>7</sup> 474 US 214

<sup>8</sup> Paris 1995

<sup>9</sup> P 26

<sup>10</sup> *Bray op cit* 180 & 183; G J Hauptfleisch 'n *Perspektief op universitêre outonomie* (1987) 15/4 *Aambeeld* 8, Johannesburg; E F J Malherbe *Die regsbeskerming van akademiese vryheid en universiteitsoutonomie in 'n nuwe Suid-Afrika* 8, Johannesburg 1993

reasonable interests of the institution which employs him or her. In the case of institutional autonomy nobody questions the state's responsibility to formulate a legal basis and a broad financial framework for a higher education system. Thus the increasing diversity of HE institutions can be co-ordinated through provision for mechanisms like accreditation and articulation. Nowadays there is also agreement that universities should be involved with their communities through links and partnerships and the recognition of a responsibility to those communities<sup>11</sup>.

The key question is nevertheless: when do the demands and challenges from the state, society and community groups exceed the bounds of reasonable expectations and become unacceptable threats to the *libertas*, the life blood of the true university and the essence of the academic endeavour? One has to recognise that there is a deep ambivalence in this relationship<sup>12</sup>, but we are fortunate that our constitution draws a line which must also be respected by the drafters and sponsors of the present HE Amendment Bill.

This is indeed recognised in the preamble to the very Higher Education Act of 1997: "*And whereas it is desirable for higher education institutions to enjoy freedom and autonomy in their relationship with the State within the context of public accountability and the national need for advanced skills and scientific knowledge*".

## 5. THE ISSUE OF MINISTERIAL POWERS:

Of special concern is the Bill's extension of ministerial discretion on various matters. Such a discretion in the hands of a political office bearer is always problematic in a constitutional democracy: it creates room for party political interference in areas which should be beyond politics, it leaves room for special interests and leads to uncertainty, lack of transparency and unpredictability.

Detailed rules for all possibilities are, however, not always possible and sometimes this makes the granting of a discretion inevitable. To avoid the dangers mentioned in the previous paragraph the exercise of such a discretion should then be subject to not only the normal principles and mechanisms of administrative law, but also to the concurrence or at least the advice of a specialised body of neutral experts. In the field of higher education such a body is provided for in the Higher Education Act, viz the Council on Higher Education

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<sup>11</sup> UNESCO Policy Paper 26; Bray *op cit* 71-72

<sup>12</sup> Harry Brinkman *Overheid en universiteiten: Waar staan we, na het regeerakkoord van augustus 1994? Bestuurlijke beschouwing (tweede versie) bij de opening van het academisch jaar 1994-1995 aan de Vrije Universiteit, Amsterdam 1994*



(CHE) created in terms of chapter 2 of the said Act. Although the composition and functioning of the CHE do not in my view ensure its total independence and neutrality, it is not an overtly political body and it has considerable expertise.

Virtually all the discretionary ministerial powers envisaged by the Bill (e.g. cls 3, 12, **in particular 16**, 18, 19, **in particular 25**, parts of cl 28 and 37) should therefore in my view be subject to at least prior consultation with the CHE (“after consultation” as is already the case in sec 20(1) of the Act) and preferably “in consultation” with the CHE. Only in this way will it be possible to lessen (but not necessarily avoid) the chance of challenges to the constitutionality of such powers as being contrary to the protection of academic freedom in sec 16(1) of the Constitution (read with *Ewing* and *Sweezy*).

#### 6. VAGUENESS:

Certain proposals in the Bill are also so vague as to cause serious concern and even to give rise to the possibility of legal challenges. One prime example should suffice: in terms of cl 3 of the Bill the minister would have the power to “*determine transformation goals for the higher education system and institute appropriate oversight mechanisms*”. What is “*transformation*” and what are “*transformation goals*”? These terms may be very current in the present social and political debates in South Africa, but they do not have any ascertainable legal content. Would the minister for example be able to determine the “*transformation*” of the present system to a more research oriented one? Or determine that the present system is too “Eurocentric” and institute goals to make it more Afrocentric (whatever these terms may mean)?

#### 7. LACK OF CLARITY:

Due to the multi-cultural nature of our society the Constitution protects cultural, linguistic and religious rights in various ways. Thus the right to education at all levels in the language of your choice is granted in sec 29(2). Sec 27 of the HE Act of 1997 therefore provides: “*Subject to the policy determined by the Minister, the council, with the concurrence of the senate, must determine the language policy of a public higher education institution and must publish and make it available on request*”.

The Bill seeks to amend sec 27 to amend this section through the insertion of the phrase “*as contemplated in section 3, and with the observance of the relevant provisions of the Use of Official Languages Act 2012.*”

This innovation must be welcomed if the intention with it is to encourage and eventually ensure multilingualism in South African higher education, a field where the trend (encouraged by various official and political pronouncements) has been in the opposite direction. The resulting erosion of the use of Afrikaans, the only indigenous language used as a teaching medium in public HE institutions, has been a source of great concern for the more than 7 million native Afrikaans speakers. And since the advent of democracy no noticeable progress has been made in promoting such use of any other indigenous tongue.

The reference to the Official Languages Act of 2012 nevertheless seems an inappropriate way to promote multilingualism in public higher education. In terms of sec 2 of that Act its objects are all concerned with the use of languages for government purposes. The principles and mechanisms in the Act are clearly not meant for an educational environment. And the reference will probably cause a lack of clarity in a sensitive area.

If HE institutions are to be encouraged to become more language-friendly in their operations, an express re-affirmation in the Bill of the principles in sec 6 of the Constitution, coupled with the allocation of financial resources to make implementation possible, will be much more effective.

ANDREAS VAN WYK

Stellenbosch, 5 February 2016

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<sup>i</sup> Unlike the 1995 paper, subsequent UNESCO papers on higher education concentrate more on issues like massification and globalisation and do not really address governance

REPUBLIC OF SOUTH AFRICA

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# HIGHER EDUCATION AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
the Bill published in Government Gazette No. 39384 of 9 November 2015)  
(The English text is the official text of the Bill)*

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(MINISTER OF HIGHER EDUCATION AND TRAINING)

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**GENERAL EXPLANATORY NOTE:**

[                    ]     Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_                Words underlined with a solid line indicate insertions in existing enactments.

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## **BILL**

**To amend the Higher Education Act, 1997, so as to provide for the insertion of new definitions; to provide for the determination of transformation goals and oversight mechanisms for the public higher education system; to provide for the development of articulation and recognition of prior learning frameworks; to provide for the conversion of public higher education institutions; to provide for the powers of the council of a public higher education institution to invest funds; to provide further for the issuing of Ministerial directives; to provide for indemnification of an independent assessor; to provide for the indemnification and termination of the term of office of an administrator; to provide for different categories of registration of private higher education institutions and the associated rights; to provide for the withdrawal and revocation of qualifications by public higher education institutions; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 101 of 1997, as amended by section 1 of Act 44 of 1999, section 1 of Act 54 of 2000, section 1 of Act 63 of 2002, section 1 of Act 39 of 2008 and section 1 of Act 26 of 2010**

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1. Section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997) (herein referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of “auditor” of the following definition:

“ **‘auditor’** means a person registered in terms of section 37 of the Auditing Professions Act, 2005 (Act No. 26 of 2005);”

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(b) by the insertion after the definition of “Department of Education” of the following definition:

“ **‘directive’** means the written communication from the Minister to the council of a higher education institution or the council of a national institute for higher education, as applicable, contemplated in section 42;”

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(c) by the deletion of the definition of “college”;

(d) by the insertion after the definition of “college” of the following definitions:

“ **‘Constitution’** means the Constitution of the Republic of South Africa, 1996;

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- ‘convert’** means the process of conversion as contemplated in section 20(1) in terms of which an identified higher education institution or subdivision, faculty, school, department, section or component of a public higher education institution or education institution becomes a juristic or new juristic person, as the case may be, on a date specified by the Minister in the notice contemplated in section 20(1);”;
- (e) by the substitution for the definition of “foreign juristic person” of the following definition:
- “**‘foreign juristic person’** means a person that—
- (a) has the legal authority to provide higher education in its country of origin;
- (b) is registered or established as a juristic person in terms of a law of a foreign country; and
- (c) is entitled to be registered as an external company in terms of section 23 of the Companies Act, 2008 (Act No. 71 of 2008);”;
- (f) by the deletion of the definition of “HEQF”;
- (g) by the insertion after the definition of “HEQF” of the following definition:
- “**‘HEQSF’** means the sub-framework for higher education as contemplated in section 7(d) of the National Qualifications Framework Act;”;
- (h) by the substitution for the definition of “higher education” of the following definition:
- “**‘higher education’** means all learning programmes which must be registered in accordance with the provisions of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), as a qualification or part-qualification on the HEQSF, regardless of whether such programmes are in fact registered or not on the sub-framework;”;
- (i) by the insertion after the definition of “higher education” of the following definition:
- “**‘higher education college’** means an institution providing higher education, but with a limited scope and range of operations, and which meets the criteria for recognition as a higher education college as prescribed by the Minister in accordance with sections 3(3)(a) and 20(5)(b), and established, deemed to be established, converted, or declared as a higher education college under this Act;”;
- (j) by the substitution for paragraph (a) of the definition of “higher education institution” of the following paragraph:
- “(a) converted, merged, established or deemed to be established as a public higher education institution under this Act;”;
- (k) by the insertion after the definition of “incorporation of a subdivision” of the following definition:
- “**‘independent assessor’** means the person appointed under section 44;”;
- (l) by the insertion after the definition of “Minister” of the following definition:
- “**‘national institute for higher education’** means any institute for higher education established as a national institute for higher education in terms of Chapter 6A;”;
- (m) by the insertion after the definition of “organ of the state” of the following definitions:
- “**‘PAJA’** means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- ‘PFMA’** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;
- (n) by the substitution for the definition of “public higher education institution” of the following definition:
- “**‘public higher education institution’** means any higher education institution that is established, deemed to be established, converted or declared as a public higher education institution under this Act;”;
- (o) by the insertion after the definition of “private higher education” of the following definition:
- “**‘provide higher education’** means the performing of any or all of the following functions—
- (a) registering of students for higher education;

- (b) taking responsibility for the provision and delivery of a higher education curriculum;
- (c) assessing a student's performance in a higher education programme; and
- (d) conferring a higher education qualification.”;
- (p) by the deletion of the definition of “to provide higher education”
- (q) by the insertion after the definition of “registrar” of the following definition:  
 “**‘relative’** in relation to any person, means—
- (a) the spouse of that person;
- (b) anybody related to that person or his or her spouse within the third degree of consanguinity or affinity; or
- (c) any adoptive child within the first degree of consanguinity;”;
- (r) by the insertion after the definition of “senate” of the following definition:  
 “**‘spouse’** means a person's partner in a marriage—
- (a) recognised as such in terms of the laws of the Republic or a foreign country; or
- (b) concluded in terms of Islamic or other religious rites;”;
- (s) by the deletion of the definition of “technikon”;
- (t) by the substitution for the definition of “university” of the following definition:  
 “**‘university’** means [**any university**] an institution providing higher education and with a scope and range of operations including undergraduate and postgraduate higher education programmes, research and community engagement, which meets the criteria for recognition as a university prescribed by the Minister in accordance with sections 3(3)(a) and 20(5)(b) and established, deemed to be established, converted or declared as a university under this Act;”;
- (u) by the insertion after the definition of “university” of the following definition:  
 “**‘university college’** means an institution providing higher education, but with a limited scope and range of operations and which meets the criteria for recognition as a university college as prescribed by the Minister in accordance with sections 3(3)(a) and 20(5)(b) and established, deemed to be established, converted or declared as a university college under this Act.”.

### **Substitution of section 2 of Act 101 of 1997**

2. The following section is hereby substituted for section 2 of the principal Act:

#### **“Application and interpretation**

##### **2. This Act—**

- (a) applies to higher education and related matters in the Republic; and
- (b) prevails, subject to section 34 of the National Qualifications Framework Act, over any provision of other legislation that regulates matters referred to in paragraph (a) and that is materially inconsistent with the objects, or a specific provision, of this Act.”.

### **Amendment of section 3 of Act 101 of 1997, as amended by section 2 of Act 54 of 2000**

3. Section 3 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The Minister may, in terms of the policy contemplated in subsection (1) and in the interest of the higher education system as a whole[,]—

- (a) determine the scope and range of operations of—
- [(a)] (i) public higher education institutions;
- [(b)] (ii) private higher education institutions; and
- [(c)](iii) individual public or private higher education institutions;
- (b) determine transformation goals for the higher education system and institute appropriate oversight mechanisms; and

- (c) develop articulation and recognition of prior learning frameworks for the post school education and training system.”.

**Amendment of section 7 of Act 101 of 1997, as amended by section 1 of Act 23 of 2001 and substituted by section 3 of Act 39 of 2008**

4. Section 7 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The CHE is responsible for the implementation of the [HEQF] HEQSF.”.

**Amendment of section 20 of Act 101 of 1997, as amended by section 4 of Act 23 of 2001 and section 3 of Act 63 of 2002**

5. Section 20 of the principal Act is hereby amended— 10

- (a) by the substitution for subsection (1) of the following subsection:

“(1) The Minister may, after consulting the CHE, by notice in the *Gazette* and from money appropriated for this purpose by Parliament—

(a) establish a public university, public university college or a public higher education college [technikon or college]; or 15

(b) with the concurrence of the council of a public higher education institution, convert that institution, or a subdivision of that institution, into a public university or a public university college.”;

- (b) by the insertion after subsection (1) of the following subsection:

“(2) The Minister may, after consultation with the CHE and with the concurrence of the governance body of a private education institution, by notice in the *Gazette* and from money appropriated for this purpose by Parliament, declare an institution, or subdivision of an institution to be a public university, public university college or public higher education college.”; 20 25

- (c) by the substitution for subsection (4) of the following subsection:

“(4) Every public higher education institution established, merged, converted, deemed to have been established or declared as a public higher education institution under this Act, is a juristic person.”; and

- (d) by the insertion of the following subsections after subsection (5): 30

“(5A) Notwithstanding subsection (5), a higher education institution may invest its funds with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), or in securities listed on an exchange as defined in section 1 of the Financial Markets Act, 2012 (Act No. 19 of 2012), or in such other prudent investments in financial investments and assets as the Commissioner for the South African Revenue Service may determine for public benefit organisations. 35

(5B) The Minister may, in the notice contemplated in subsection (1) and with the concurrence of the council of another public higher education institution, determine— 40

(a) certain functions which the newly established or converted public higher education institution must perform under the supervision of the other public higher education institution; and

(b) the terms, conditions and period applicable to such supervision.”. 45

**Amendment of section 21 of Act 101 of 1997, as amended by section 5 of Act 23 of 2001 and section 4 of Act 63 of 2002**

6. Section 21 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively: 50

“(a) a university, [technikon] university college or higher education college; or

(b) an incorporated subdivision of a university, [technikon] university college or higher education college.”; and

- (b) by the substitution in subsection (2) for paragraphs (a), (b) and (c) of the following paragraphs, respectively:
- “(a) the date on which the education institution becomes a university, **[technikon] university college or higher education college** or a subdivision of a university, **[technikon] university college or higher education college**, as the case may be; 5
- (b) the name of the university, **[technikon] university college or higher education college**; and
- (c) the physical location and the official address of the university, **[technikon] university college or higher education college**.”. 10

**Amendment of section 23 of Act 101 of 1997, as amended by section 5 of Act 23 of 2001 and section 6 of Act 63 of 2002**

7. Section 23 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) Before making a decision under subsection (1), the Minister must— 15
- (a) give written notice to the councils of the public higher education institutions concerned of the intention to merge the institutions and the reasons for the intended merger;
- (b) publish a notice giving the reasons for the intended merger in one or more newspapers circulating in the area in which the public higher education institutions concerned are situated; 20
- (c) give the councils of the public higher education institutions concerned and any other interested persons an opportunity to make representations within at least 90 days of the date of the notice referred to in paragraph (b); and
- (d) consider the representations contemplated in paragraph (c).” 25

**Amendment of section 27 of Act 101 of 1997, as amended by section 8 of Act 23 of 2001, section 7 of Act 63 of 2002, section 1 of Act 21 of 2011 and sections 5A and 5B of Act 23 of 2012**

8. Section 27 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection: 30
- “(2) Subject to the policy determined by the Minister, as contemplated in section 3, and with due observance of the relevant provisions of the Use of Official Languages Act, 2012 (Act No. 12 of 2012), the council, with the concurrence of the senate, must—
- (a) determine the language policy of **[a] the public higher education institution [and must] concerned**; 35
- (b) publish the policy; and
- (c) make **[it]** the policy available on request.”.
- (b) by the substitution for subsection (3) of the following subsection: 40
- “(3) The council, after consultation with the students’ representative council, must provide for and establish a suitable structure to advise on the policy for student support services within the public higher education institution;”;
- (c) by the substitution for subsection (5B) of the following subsection: 45
- “(5B) Any person who has been a member of a council of a public higher education institution—
- (a) under circumstances contemplated in sections **[49A(4)(a)] 49B(1)(a) and 49E**; and
- (b) **[who is implicated] against whom an independent assessor has made an adverse finding in the report [of the independent assessor] contemplated in section 47(1)(b),** 50
- [is] shall not be eligible for appointment, election, re-appointment or re-election as a member of a council of [a] any public higher education institution unless the Minister, having regard to such representations as the person may make, determines that the finding is not of such a nature as to disqualify the person from becoming or continuing to be a member of the council of a public higher education institution;**” 55



- (d) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:  
“A member of a council or a member of a committee of a council or a person with delegated functions in terms of section 68(2)—”;
- (e) by the substitution in subsection (7) for paragraphs (b) and (c) of the following paragraphs, respectively: 5  
“(b) must participate in the deliberations of the council or the committee of the council, or exercise any delegated function in the best interests of the public higher education institution concerned;  
 (c) must before he or she assumes office, and annually for as long as he or she continues to hold such office, declare any business, commercial or financial activities undertaken for financial gain that may raise a conflict or a possible conflict of interest with the public higher education institution concerned;”;
- (f) by the substitution in subsection (7)(e) for subparagraphs (ii) and (iii) of the following subparagraphs, respectively: 15  
 (ii) may not have a direct or indirect financial, personal, or other interest in any matter to be discussed at a meeting, or in regard to which he or she is to make a decision in terms of a delegated function, and which entails or may entail a conflict or possible conflict of interest with the public higher education institution concerned; 20  
 (iii) must, before the meeting of the council or the committee concerned and in writing, inform the chairperson of that meeting of [that] the existence of a conflict or possible conflict of interest.”;
- (g) by the substitution for subsection (7A) of the following subsection: 25  
“(7A) Any person may, in writing, inform the chairperson of a meeting of the council or a committee of the council concerned, before [the] that meeting, of a conflict or possible conflict of interest of a member of the council or of a committee of the council with the public higher education institution concerned of which such person may be aware.”; 30
- (h) by the substitution for subsection (7C) of the following subsection:  
“(7C) [A] In the event that any member of a committee of the council or any employee, with delegated functions in terms of section 68(2), has a conflict or possible conflict of interest as contemplated in this section in respect of a matter to be considered, the committee or the employee concerned may not take part in any consideration or a decision on [a] the matter [considered by it if any member of the committee has a conflict of interest contemplated in this section] but must refer the matter for decision by council, having noted the member’s or the employee’s interest in the matter;”; 35 40
- (i) by the substitution in subsection (7E) for paragraph (a) of the following paragraph:  
“(a) having regard to the provisions of [sections 27(9) and (7A) to (7D)] subsections (7A) to (7D), (9) and section 34 and after consultation with the institutional forum, adopt a code of conduct to which all the members of the council, all the members of committees of the council and all other persons who exercise functions of the council in terms of delegated authority must subscribe in writing;”; and 45
- (j) by the substitution for subsection (9) of the following subsection: 50  
“(9) If a council resigns as contemplated in subsection (8) a new council must be constituted in terms of the institutional statute of the public higher education institution concerned by the administrator appointed in accordance with section 49G within a period of six months following the administrator’s appointment.” 55

**Amendment of section 31 of Act 101 of 1997, as amended by section 11 of Act 23 of 2001 and section 8 of Act 63 of 2002**

9. Section 31 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

- “(1A) The council must— 60  
 (a) consider the advice given by the institutional forum; and

(b) provide written reasons if the advice is not accepted.”.

**Amendment of section 34 of Act 101 of 1997, as amended by section 2 of Act 21 of 2011**

- 10.** Section 34 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection: 5  
 “(2) Notwithstanding subsection (1) the principal, any vice-principal and the academic employees of the public higher education institution must be appointed by the council after consultation with the senate;”;
- (b) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 10  
 “(a) (i) before he or she assumes office;  
 (ii) annually, while holding office; and  
 (iii) whenever a new interest, not disclosed as contemplated in subparagraph (i) or (ii), arises,  
declare any business, commercial or financial activities undertaken for financial or other gain that may raise a conflict or a possible conflict of interest with the public higher education institution concerned; and”; 15
- (c) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words: 20  
 “An employee may not conduct business directly or indirectly with the public higher education institution at which he or she is employed that entails or may entail a conflict of interest with the public higher education institution unless the council of such public higher education institution is of the opinion, and takes a decision, that—”; and 25
- (d) by the substitution for subsections (6) and (7) of the following subsections, respectively: 30  
 “(6) An employee may not on behalf of [that] the public higher education institution concerned contract with himself or herself or his or her relative or any entity in which [he or she] the employee or any relative has a direct or indirect financial [or], personal, fiduciary or other interest.  
 (7) Contracting referred to in subsection (6) relates to conduct that is aimed at receiving any direct or indirect financial, personal, fiduciary or other gain that does not form part of the employment relationship contemplated in subsection (1).” 35

**Repeal of sections 38A to 38O of Act 101 of 1997**

- 11.** Sections 38A to 38O of the principal Act are hereby repealed.

**Amendment of section 39 of Act 101 of 1997, as amended by section 4 of Act 55 of 1999** 40

- 12.** Section 39 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsections: 45
- “(3A) If the council of a public higher education institution fails to comply with any—
- (a) provision of this Act under which an allocation from money appropriated by Parliament is paid to the institution; or 45
- (b) condition subject to which any such allocation is paid to such institution, the Minister may in writing request such council to comply with the provision or condition within a specified period.
- (3B) If such council thereafter fails to comply with the provision or condition within the specified period as contemplated in subsection (3A), the Minister— 50
- (a) may withhold payment of any commensurate portion of any allocation appropriated by Parliament in respect of the public higher education institution concerned; and
- (b) must in writing inform the council concerned of his decision. 55

- (3C) Before acting under subsection (3B), the Minister must—
- (a) give notice in writing to the council of the public higher education institution concerned of the intention so to act;
  - (b) give such council a reasonable opportunity to make representations; and
  - (c) consider such representations.
- (3D) The Minister must table a report in Parliament, regarding any action taken under subsection (3B), as soon as reasonably practicable after such action.”

**Amendment of section 41 of Act 101 of 1997, as amended by section 5 of Act 54 of 2000 and substituted by section 10 of Act 63 of 2002**

13. Section 41 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
 

**“Records to be kept, external audit and information to be furnished by council”;**
  - (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 

**“(b) in respect of the public higher education institution concerned as a whole—**

    - (i) ensure the implementation of an external audit in accordance with accepted audit principles and standards on an annual basis; and
    - (ii) keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions **[of the public higher education institution as a whole, of its substructures and of other bodies operating under its auspices];”;** and
  - (c) by the substitution for subsection (2) of the following subsection:
 

**“(2) The council of a public higher education institution must[, in respect of the preceding year and] by a date and in the manner prescribed by the Minister, provide the Minister with such information, in such format, as the Minister [prescribes] may prescribe.”.**

**Insertion of heading in Act 101 of 1997**

14. The following heading is inserted after section 41 of the principal Act:

**“CHAPTER 6**

**MINISTERIAL INTERVENTIONS IN HIGHER EDUCATION INSTITUTIONS”.**

**Repeal of section 41A of Act 101 of 1997**

15. Section 41A of the principal Act is hereby repealed.

**Substitution of section 42 of Act 101 of 1997**

16. The following section is hereby substituted for section 42 of the principal Act:

**“Ministerial directive**

- 42.** (1) The Minister may issue a directive to the council of a public higher education institution if the Minister, after having complied with the provisions of subsection (3), has reasonable grounds to believe that the Council or the management of that public higher education institution—
- (a) is involved in financial impropriety or the public higher education institution is being otherwise mismanaged;
  - (b) is unable to perform its functions effectively;
  - (c) has acted in an unfair, discriminatory or wrongful manner towards a person to whom it owes a duty under this Act or any other law;

- (d) has failed to comply with any law;
  - (e) has failed to comply with any directive given by the Minister in terms of section 39; or
  - (f) has obstructed the Minister or a person authorised by the Minister in performing a function in terms of this Act. 5
- (2) A directive contemplated in subsection (1) must state—
- (a) the nature and extent of the deficiency;
  - (b) the negative impact of the deficiency on the institution and or higher education in an open and democratic society;
  - (c) the steps which should be taken to remedy the situation; 10
  - (d) a reasonable period within which the steps contemplated in subparagraph (c) or any other steps contemplated by the higher education institution and approved by the Minister, must be taken; and
  - (e) the manner in which the council of the public higher education institution concerned must provide written information to the Minister in respect of compliance with the directive. 15
- (3) Before making a decision under subsection (1), the Minister must—
- (a) give notice to the council of the intention to issue a directive;
  - (b) provide the council with the reasons for the intended directive;
  - (c) give the council a reasonable opportunity to make representations; and 20
  - (d) consider the representations contemplated in paragraph (c).
- (4) In the event that the Minister has reasonable grounds to believe that the council of the public higher education institution concerned has failed to comply with the directive contemplated in this section within the stated period, or the steps taken, fail to remedy the deficiency within a reasonable period of time, the Minister may, depending on the circumstances— 25
- (a) appoint an independent assessor in accordance with section 44; or
  - (b) appoint an administrator in accordance with section 49B; or
  - (c) take any other appropriate action allowed by this Act or any other law.”. 30

#### **Deletion of the heading of Act 101 of 1997**

17. The heading “**CHAPTER 6 INDEPENDENT ASSESSOR**” after section 42 of the principal Act is hereby deleted.

#### **Amendment of section 44 of Act 101 of 1997**

18. Section 44 of the principal Act is hereby amended— 35
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
    - “[The] Notwithstanding any other provision of this Act, the Minister may, from the independent assessment panel contemplated in section 43, appoint an assessor who is independent in relation to the public higher education institution concerned, to conduct an investigation at the public higher education institution—”;
  - (b) by the insertion after subsection (1) of the following subsection:
    - “(1A) The Minister must publish a notice on the appointment of the independent assessor contemplated in subsection (1) in the *Gazette* as soon as possible;”;
  - (c) by the substitution for subsection (2) of the following subsection:
    - “(2) The council of the public higher education institution, employees and students of the public higher education institution concerned and any person affected by the investigation must, subject to relevant legal provisions and practice, assist and co-operate with the independent assessor in the performance of his or her functions in [terms of] accordance with section 47.”.

**Substitution of section 45 of Act 101 of 1997**

19. The following section is hereby substituted for section 45 of the principal Act:

**“Cases where independent assessor may be appointed**

- 45. [An]** The Minister may appoint an independent assessor **[may be appointed]** under section 44 if— 5
- (a) the council of a public higher education institution requests **[the]** such appointment in writing; **[or]**
- (b) (i) circumstances arise at a public higher education institution that—
- [(i)](aa)** involve financial or other maladministration of a 10  
serious nature; or
- [(ii)](bb)** seriously undermine the effective functioning of the  
public higher education institution; **[or]; and**
- [(c)](ii)** the council of the public higher education institution has failed  
to resolve such circumstances; **[and]** 15
- (c) the circumstances contemplated in section 42(4) arise; and
- (d) the appointment is in the best interest of the public higher education institution concerned and in the interests of higher education in an open and democratic society.”.

**Amendment of section 45A of Act 101 of 1997, as inserted by section 9 of Act 23 of 2012**

20. Section 45A of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) (a) The independent assessor has the power on receipt of a 25  
complaint or an allegation or on the ground of information that has come  
to his or her knowledge and which **[points]** amounts to conduct such as  
referred to in section 45, to conduct an investigation for the purpose of  
determining—

- (i) the merits of the complaint, allegation or information; and 30  
(ii) the manner in which the matter concerned should be dealt with.

(b) The format and the procedure to be followed in conducting any  
investigation **[shall]** must be determined by the independent assessor  
with due regard to the PAJA, substantive fairness and the circumstances  
of the case. 35

(c) The independent assessor may direct that any category of persons  
or all persons whose presence is not desirable **[shall]** may not be present  
at any proceedings pertaining to any investigation or part thereof:  
Provided that in the event that the rights, interests or potential interests of  
a person so excluded may be affected by such proceedings, all 40  
information related to such excluded person obtained during the  
proceedings concerned must be made available in writing to him or her  
within a period not exceeding 14 calendar days after such proceedings in  
order to enable him or her to make written representations to the assessor  
if he or she so wishes. 45

(2) Notwithstanding anything to the contrary contained in any law, no  
person may disclose to any other person the contents of any document in  
the possession of the independent assessor or the record of any evidence  
given to the independent assessor during an investigation, unless  
the independent assessor determines otherwise: Provided that such 50  
document or evidence must be made available—

- (a) for purposes of, or during, proceedings before a court, tribunal or  
forum; and
- (b) to a person, or his or her union representative or legal representa- 55  
tive, in the event that the rights, interests or potential interests of that  
person may be affected by such document or evidence.”;

- (b) by the substitution for subsections (4) and (5) of the following subsections, respectively:

“(4) (a) For the purposes of conducting an investigation the independent assessor may in writing direct any member of the council, employee, student or service provider of the higher education institution or any other person or representative of an entity with a business or other relationship with the institution to submit an affidavit or affirmed declaration or to appear before him or her to—

- (i) give evidence; or **[to]**  
 (ii) produce any document—  
     (aa) in his or her possession; or  
     (bb) under his or her control,

which has a bearing on the matter being investigated, and may **[examine]** interview such person.

(b) The independent assessor or any person contemplated in section 48 and duly authorised thereto by the independent assessor may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on a matter being, or to be, investigated.

(5) A **[direction]** directive referred to in subsection (4) must contain particulars of the matter in connection with which the person concerned is required to appear before the independent assessor and **[shall]** must be signed by the independent assessor and served on the person either by **[a]**—

- (a) registered **[letter sent through the post]** mail; or  
 (b) **[delivered]** delivery executed by a person contemplated in section 48,

to the concerned person’s last known address as registered with the public higher education institution.”; and

- (c) by the substitution for subsections (7) to (9) of the following subsections, respectively:

“(7) The independent assessor or any person contemplated in section 48—

- (a) must be appointed as a commissioner of oaths in accordance with the relevant Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963), prior to administering an oath to, or accepting an affirmation from; and  
 (b) may administer an oath to, or accept an affirmation from, any **[such]** person contemplated in subsection (6).

(8) (a) If it appears to the independent assessor during the course of an investigation that any person is **[being]** implicated in the matter being investigated and that—

- (i) such implication may be to the detriment of that person; or  
 (ii) **[that]** an adverse finding pertaining to that person may result, the independent assessor must give such a person notice of the detrimental implication or possible adverse finding, as the case may be, and provide such person with all the relevant documentation and evidence affecting the rights, interests or potential interests of such person obtained during the investigations conducted by the independent assessor and afford such person **[or the council an]** the opportunity to respond in connection therewith, in [any] a manner that [may be] is expedient under the circumstances.

(b) If such implication forms part of the evidence submitted to the independent assessor during the proceedings contemplated in section 45A(1)(c) or during an appearance in terms of the provisions of subsection (4), such person must be afforded [an] the opportunity to be heard in connection therewith by way of giving evidence.

(9) The independent assessor **[may]** must allow a legal representative or a representative from a trade union of which a person is a member to assist the person contemplated in subsection (1)(c), (2), (4) or (8) **[, in accordance with section 3 (5) of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)].”.**

**Substitution of section 45B of Act 101 of 1997**

21. The following section is hereby substituted for section 45B of the principal Act:

**“Entering upon premises by independent assessor**

**45B.** The independent assessor [~~shall be~~ is] competent to enter, or to authorise another person contemplated in section 48 to enter, any building or premises of the public higher education institution under investigation in terms of section 45 and to make such investigation or assessment as he or she may deem necessary, and to copy any documents on those premises which in his or her opinion have a bearing on the investigation and to hand a signed inventory of such copied documents to the person or persons to whom the custody of the documents is entrusted.”

**Amendment of section 47 of Act 101 of 1997, as amended by section 3 of Act 21 of 2011 and substituted by section 10 of Act 23 of 2012**

22. Section 47 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- “*(c)* suggest in the report appropriate measures and provide the reasons why the measures are needed.”; and
- (b) by the insertion of the following subsection after subsection (1):
- “(1A) The Minister may, on good cause shown, at the request of the independent assessor extend the period in subsection (1).”

**Substitution of section 49 of Act 101 of 1997**

23. The following section is hereby substituted for section 49 of the principal Act:

**“Remuneration and allowances of independent assessor**

**49.** The Minister, with the [~~concurrence~~ written approval] of the Minister of Finance, may determine the remuneration and allowances to be paid to an independent assessor and any other person appointed under section 48.”

**Substitution of section 49A of Act 101 of 1997**

24. The following section is hereby substituted for section 49A of the principal Act: 30

**“Indemnification of independent assessor**

**49A.** The Minister shall be liable for any loss or damage suffered by another person, which arose from an act or omission of an independent assessor as a claim against the State and may not recover such loss from the independent assessor, provided that the independent assessor shall forfeit this cover if he or she, with regard to the act or omission, is liable in law and guilty of the following acts:

(a) Intentionally exceeded his or her powers;

(b) made use of alcohol or drugs;

(c) did not act in the course and scope of his or her terms of reference;

(d) acted recklessly or intentionally;

(e) without prior consultation with the State Attorney, made an admission that was detrimental to the best interest of higher education; or

(f) failed to comply with or ignored standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim, excluding damage arising from the use of a vehicle for official purposes; and

(g) in the case of a loss, damage or claim arising from the use of a vehicle for official purposes, the independent assessor—

(i) used the vehicle without authorisation;

- (ii) did not possess a valid driver's licence or other appropriate licence;
- (iii) did not use the vehicle in the interest of higher education;
- (iv) allowed unauthorised persons to handle the vehicle; or
- (v) deviated materially from the official journey or route without prior authorisation." 5

**Amendment of section 49B of Act 101 of 1997, as inserted by section 11 of Act 23 of 2012**

25. Section 49B of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 10

“(1) Notwithstanding any other provision of this Act, the Minister may [**after consultation with the council of a public higher education institution, if practicable,**] appoint a person as administrator [**to take over the management, governance and administration of the public higher education institution and to perform the functions of the public higher education institution**], if any of the following circumstances occur: 15

(a) An audit of the financial records of a public higher education institution or the report by an independent assessor or any other report or information reveals financial or other maladministration of a serious nature or serious undermining of the effective functioning of the public higher education institution; 20

(b) [**any other circumstances arising that reveal financial or other maladministration of a serious nature or the serious undermining of the effective functioning of the public higher education institution; or**] the circumstances contemplated in section 42(4) arise; 25

(c) the council of the public higher education institution requests such appointment; or

(d) if the council of the public higher education institution is deemed to have resigned as contemplated in section 27(8).”; 30

(b) by the insertion after subsection (1) of the following subsection:

“(1A) The Minister must, before making an appointment under subsection (1) on the grounds listed in section (1)(a) or (b)—

(a) give written notice that complies with section 42(3) to the council of the higher education institution concerned of his or her intention to make such an appointment; 35

(b) provide the council of the higher education institution concerned with the reasons for the appointment;

(c) give the council of the higher education institution a reasonable opportunity to make written representations; and 40

(d) consider the representations contemplated in paragraph (c);”; and

(c) by the substitution for subsection (2) of the following subsection:

“(2) The Minister may only act in terms of subsection (1)(a) or (b) if he or she has reason to believe that the appointment of an administrator is in the best interest of the public higher education institution concerned and of higher education in an open and democratic society.”. 45

**Insertion of section 49BA in Act 101 of 1997**

26. The following section is hereby inserted in the principal Act after section 49B:

“**Publication of appointment of administrator** 50

**49BA.** The Minister must, when appointing an administrator as contemplated in section 49B or 49G, by notice in the *Gazette* publish—

(a) the name of the public higher education institution concerned;

(b) the name, address and other contact details of the administrator so appointed; 55

(c) the period of appointment as contemplated in section 49B(3)(a) or 49G;



- (d) the period of extension as contemplated in section 49B(3)(b) or 49G, as the case may be and if applicable; and
- (e) any other information that the Minister may deem necessary.

#### **Substitution of section 49D of Act 101 of 1997**

27. The following section is hereby substituted for section 49D of the principal Act: 5

##### **“Remuneration and allowances of administrator**

**49D.** (1) The Minister, in consultation with the Minister of Finance, must determine the remuneration and allowances to be paid to—

- (a) the administrator appointed in accordance with section 49B or 49G; and
- (b) any other person appointed in accordance with section 49C.

(2) All costs associated with the appointment of—

- (a) an administrator appointed in accordance with section 49B or 49G; and
  - (b) any other person contemplated in subsection (1)(b),
- are for the account of the public higher education institution concerned.

#### **Insertion of sections 49F to 49J in Act 101 of 1997**

28. The following sections are hereby inserted in the principal Act after section 49E:

##### **“Role, powers, functions and duties of administrator**

**49F.** (1) The administrator appointed in accordance with section 49B must, subject to the provisions of section 49G—

- (a) take over the role, powers, functions and duties of the council concerned;
- (b) carry out the role, exercise the powers, perform the functions and execute the duties of the council concerned to the extent that such role, powers, functions and duties relate to governance;
- (c) take over and execute the management of the public higher education institution concerned;
- (d) identify and initiate processes and initiatives that restore proper governance and management; and
- (e) ensure that a new council for the higher education institution concerned is appointed and constituted in accordance with the institutional statute as soon as is practicable.

(2) The Minister may, depending on the circumstances—

- (a) confine the mandate of the administrator to the role, powers, functions and duties related to the governance of the higher education institution concerned only; and
- (b) determine the mandate of the administrator to include specific tasks related to the circumstances justifying the appointment.

(3) Subject to this Act, the institutional statute and the rules of the higher education institution concerned, employees and students of the higher education institution concerned must comply with instructions given by the administrator.

##### **Appointment of administrator on resignation of council**

**49G.** (1) In the event that a council is deemed to have resigned as contemplated in section 27(8), the Minister must appoint a person for a period not exceeding six months as an administrator on behalf of the public higher education institution concerned to—

- (a) take over the role, powers, functions and duties of the council;
- (b) carry out the role, exercise the powers, perform the functions and execute the duties of the council to the extent that such role, powers, functions and duties relate to governance; and

(c) ensure that a new council is constituted in accordance with the institutional statutes of the institution concerned within a period not exceeding six months subsequent to his or her appointment.

(2) For the purposes of subsection (1), section 49C applies with the changes required by the context.

#### **Termination of term of office of administrator**

**49H.** (1) The term of office of an administrator is terminated in the event of—

- (a) the constitution of the council of the higher education institution in accordance with the institutional statute of the higher education institution concerned;
- (b) the expiry of term of appointment;
- (c) death or incapacity;
- (d) resignation; or
- (e) removal from office by the Minister.

(2) The decision contemplated in subsection (1)(e) must be taken with due observance of the provisions of PAJA.

(3) The Minister may in instances where the term of office of an administrator is terminated in accordance with subsection (1)(b) to (e) appoint a new administrator after consultation with the principal of the higher education institution concerned for the remainder of the term of office of the previous incumbent.

(4) Sections 49BA, 49D, 49F and 49G apply with the changes required by the context to an appointment made as contemplated in subsection (3).

#### **Directive to council appointed by administrator**

**49I.** (1) The Minister may—

- (a) after the term of office of an administrator is terminated as contemplated in section 49H(1)(a);
  - (b) within the term of office of the first council of the higher education institution concerned appointed by the administrator; and
  - (c) after consultation with that council,
- issue a directive to the council to take such action as specified by the Minister in the event that the Minister has reasonable grounds to believe that certain matters related to the effective and efficient functioning of the institution and the execution of its mandate require specific or continued attention of the council and the management.

(2) The provisions of section 42(4) apply with the changes required by the context in instances of non-compliance by the council with the directive contemplated in subsection (1).

#### **Indemnification of administrator**

**49J.** Section 49A, with the changes required by the context, applies to an Administrator appointed in terms of section 49B or 49G.”.

### **Insertion of Chapter 6A in Act 101 of 1997**

29. The following heading and sections are hereby inserted in the principal Act.

#### **“CHAPTER 6A**

#### **NATIONAL INSTITUTES FOR HIGHER EDUCATION**

##### **Establishment of national institute for higher education**

**49K.** (1) The Minister may, after consultation with the CHE and the public higher education institutions affected by the establishment, establish a national institute for higher education as a juristic person with a specific scope of application.

(2) The Minister must prescribe particulars of the establishment of the national institute for higher education, its board and its specific scope of application by notice in the *Gazette*.

### Functions of national institute for higher education

**49L.** (1) The functions of a national institute for higher education relate to its specific scope of application and may include one or more of the following—

- (a) to provide services to higher education within its specific scope of application;
- (b) to advance learning within its specific scope or application by ensuring collaboration and co-ordination of the work of higher education institutions and other national institutes for higher education; and
- (c) to advise the Minister on matters relating to its specific scope of application, or to higher education generally.

(2) Subject to subsection (1) and the provisions of section 49K, the Minister must prescribe the functions of each national institute for higher education by notice in the *Gazette*.

### Governance, composition of board and committees

**49M.** (1) A national institute of higher education is governed by a board.

(2) The board of a national institute for higher education consists of—

- (a) a chairperson; and
- (b) not more than 10 ordinary members.

(3) The majority of members contemplated in subsection (1) must have specific knowledge and experience in—

- (a) higher education generally; and
- (b) the scope of application of the specific institute established in terms of section 49K(1), specifically.

(4) The board may co-opt persons to the board, for a period not exceeding the term of office of the board and these co-opted persons have no voting rights.

(5) The chairperson and members contemplated in subsection (2) are appointed by the Minister from nominations received in the manner prescribed for that national institute for higher education and must, as far as is practically possible, be representative of the higher education institutions affected by the establishment of the specific national institute.

(6) The board—

- (a) must establish—
  - (i) an executive committee;
  - (ii) an audit and risk committee;
  - (iii) a human resources and remuneration committee; and
  - (iv) any other committee prescribed by the Minister; and
- (b) may establish any other committee.

(7) The composition, manner of election, functions, procedure at meetings and the dissolution of committees of the board are determined by the institutional rules and policies of the board and the principles of good governance.

### Term of office of chairperson and members

**49N.** The chairperson and a member of the board hold office for a period of four years and may only serve a maximum of two consecutive terms.

### Vacation of office

**49O.** (1) A person ceases to be a member of the board if he or she—

- (a) resigns by giving written notice to the chairperson or, in the case of the chairperson, to the Minister;
- (b) is absent from three consecutive meetings of the board without the leave of the chairperson;

- (c) is declared insolvent;
- (d) is removed from an office of trust by a court of law;
- (e) is convicted of an offence involving dishonesty or an offence for which the sentence is imprisonment without the option of a fine;
- (f) is declared unfit to attend to his or her personal affairs by a court of law; or
- (g) is removed from office by means of a resolution passed by at least two-thirds of the total number of serving members of the board present at the meeting on account of misconduct, incapacity to carry out his or her official functions, or on account of any other reason recognised by law.

(2) Removal of a member of the board from office is subject to the processes and procedures prescribed by notice in the *Gazette*, the institutional rules and or legal prescripts in general.

(3) Without limiting the generality of subsection (2), the resolution of the board contemplated in subsection (1)(g) may not be passed without prior notice to the member of the board concerned of the pending motion for his or her removal and the reasons therefore, and providing him or her with a reasonable opportunity to obtain assistance, to appear in person, and to present his or her case.

#### **Filling of vacancies**

49P. (1) In the event of a vacancy occurring in the board, such vacancy is filled by the Minister in terms of section 49M(5).

(2) Any person appointed to fill a vacancy holds office for the unexpired portion of the vacating member's term.

#### **Delegations**

49Q. (1) The board may delegate any of its functions under this Act to any committee of the board or person employed by the board and may at any time revoke such delegation.

(2) A delegation by the board must be in writing and is subject to such conditions as the board may impose.

(3) The board is not divested of responsibility for the performance of any function delegated or assigned to a committee or an employee under subsection (1) and is, despite any delegation, not prevented from performing the function itself.

#### **Staff and conditions of service**

49R. (1) The board may appoint a chief executive officer and other staff required to manage and administer the national institute for higher education in accordance with the institutional rules and procedures developed and approved by the board of the national institute on such conditions as it may determine.

(2) The national institute for higher education must out of its own funds pay to its employees such remuneration, allowances and other benefits as the board may determine.

#### **Funds of national institute for higher education**

49S. (1) The Minister must, after consultation with the CHE and with the approval of the Minister of Finance, determine the policy on the funding of national institutes for higher education and publish such policy by notice in the *Gazette*.

(2) The Minister must, subject to the policy determined in terms of subsection (1), allocate public funds to national institutes of higher education on a fair and transparent basis.

(3) The Minister may, subject to the policy determined in terms of subsection (1), impose—

- (a) any reasonable condition in respect of an allocation contemplated in subsection (2); and
- (b) different conditions in respect of different national institutes of higher education, if there is a reasonable basis for such differentiation.
- (4) The funds of a national institute for higher education consist of—
- (a) money appropriated by Parliament;
- (b) donations or contributions;
- (c) money raised by the institute; and
- (d) any other income.
- (5) The board—
- (a) must keep a record of all—
- (i) funds received and spent;
- (ii) assets and liabilities; and
- (iii) financial transactions;
- (b) must, once in each financial year, submit to the Minister, at the time and in the manner which the Minister may determine, a statement of estimated income and expenditure for the ensuing financial year for approval by the Minister and the Minister of Finance;
- (c) may in any financial year submit an adjusted statement of its estimated income and expenditure to the Minister for approval by the Minister and the Minister of Finance; and
- (d) may not incur any expenses which exceed the total amount approved in terms of paragraph (b) or (c), as the case may be.
- (6) If the Minister does not approve of the board's statement of estimated income and expenditure or adjusted statement of estimated income and expenditure contemplated in subsection (5)(b) or (c), as the case may be—
- (a) the Minister must—
- (i) inform the board in writing of the fact that the statement concerned was not approved; and
- (ii) indicate in writing a time period in which the board must submit a revised statement of estimated income and expenditure, which period may not be less than 30 calendar days;
- (b) the board must submit a revised statement of estimated income and expenditure to the Minister within the specified period; and
- (c) the Minister must consider the revised statement of estimated income and expenditure for approval as contemplated in subsection (5)(c).
- (7) (a) The funds contemplated in subsection (4) must be used in accordance with the approved statement referred to in subsection (5) or (6), as the case may be.
- (b) Any funds not utilised within a specific financial year must be carried over as a credit to the following financial year.
- (8) Subject to subsection (7), the board may invest any portion of its funds in such manner as the Minister and the Minister of Finance may approve.

#### **Annual audit**

##### **49T.** The Auditor-General must—

- (a) audit the books of account and financial statements of every national institute for higher education; and
- (b) submit a separate audit report to the Minister for each national institute for higher education within three months of receipt of the financial statements from the national institute for higher education concerned.

#### **Annual report**

**49U.** (1) The board must, within three months after the end of each financial year, submit a report to the Minister which includes a financial statement on the performance of its functions during the preceding financial year.

- (2) The annual report contemplated in subsection (1) must—
- (a) fairly present the financial state of affairs of the national institute for higher education;

- (b) fairly present its activities and other business;
- (c) fairly present its financial results and financial position at year end;
- (d) fairly present its performance against predetermined objectives;
- (e) contain the report drafted by the audit committee contemplated in section 49L(6)(a)(ii) and approved by the board; and
- (f) contain any other information that may be prescribed by the Minister from time to time.

### Ministerial interventions

**49V.** The provisions of sections 42 to 49J apply to national institutes of higher education with the changes required by the context.

### Disestablishment of national institute for higher education

**49W.** (1) In the event that the functions of a national institute for higher education, as contemplated in section 49L, have become obsolete or, in the view of the Minister, could be performed effectively and efficiently otherwise, the Minister may, after consultation with the CHE and by notice in the *Gazette*, disestablish any national institute for higher education.

- (2) Before making a decision under subsection (1), the Minister must—
- (a) give notice to the board of the national institute for higher education concerned of the intention to disestablish such national institute for higher education;
  - (b) provide the board with the reasons for the disestablishment;
  - (c) give the board a reasonable opportunity to make representations; and
  - (d) consider the representations contemplated in paragraph (c).

(3) In the event that a national institute for higher education is disestablished in accordance with subsection (1), all assets and liabilities of such national institute for higher education must be dealt with by the Minister according to law and any assets remaining after payment of all liabilities vest in the Minister.

(4) The Minister may appoint a person on the terms of reference specified by the Minister to administer the closure of the national institute concerned.”.

### Amendment of section 50 of Act 101 of 1997, as amended by section 7 of Act 55 of 1999

**30.** Section 50 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The Director-General is—
- (a) the registrar for; and
  - (b) responsible for registering,
- private higher education institutions in terms of section 53 as contemplated in section 29 of the Constitution.”.

### Amendment of section 51 of Act 101 of 1997, as amended by section 6 of Act 54 of 2000 and section 2 of Act 26 of 2010

**31.** Section 51 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
 

“**Authority to provide private higher education**”;

- (b) by the substitution for subsection (1) of the following subsection:
 

“(1) No person [other than a public higher education institution or an organ of state] may perform one or more of the functions to provide higher education unless that person is—

- (a) [in the prescribed manner, registered or conditionally registered as a private higher education institution in terms of this Act; and] an organ of state with the statutory responsibility to provide higher education;
- (b) [registered or recognised as a juristic person in terms of the Companies Act, 1973 (Act 61 of 1973), before such person is

**registered or conditionally registered in accordance with paragraph (a)]** a public higher education institution merged, established or deemed to be established as a higher education institution under this Act;

- (c) declared as a public higher education institution under this Act; or  
 (d) registered or provisionally registered as a private higher education institution under this Act.”; and

(c) by the deletion of subsection (2).

**Amendment of section 53 of Act 101 of 1997, as amended by section 7 of Act 54 of 2000, substituted by section 16 of Act 23 of 2001 and section 5 of Act 39 of 2008**

32. Section 53 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

**“Requirements for registration of private higher education institutions”**; and

(b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) is able to provide higher education that will—

- (i) maintain acceptable standards that are not inferior to standards at a comparable public higher education institution; and  
 (ii) comply with the requirements of the CHE.”.

**Amendment of section 54 of Act 101 of 1997, as substituted by section 8 of Act 54 of 2000**

33. Section 54 of the principal Act is hereby amended—

(a) by the substitution for subsection (7) of the following subsection:

“(7) No independent school as defined in the South African Schools Act, 1996 (Act No. 84 of 1996), and no other private education institution may call itself a university, university college or higher education college, or use such wording in its name, unless it is registered—

- (a) in terms of Chapter 7; and  
 (b) in the particular category of institutions which, in accordance with the Regulations, may call themselves universities, university colleges or higher education institutions, as the case may be.”; and

(b) by the addition of the following subsection:

“(8) Only a private higher education institution registered as a university or university college in accordance with subsection (7)(b) may confer a professorship or an honorary degree, or use the title of chancellor and vice-chancellor for its titular head and its principal, respectively.”.

**Amendment of section 57 of Act 101 of 1997**

34. Section 57 of the principal Act is hereby amended by the substitution in paragraph (b) of subsection (1) for the words preceding subparagraph (i) of the following words:

“(b) prepare financial statements within **[three]** six months of the end of the financial year, including at least—”.

**Insertion of section 65AB in Act 101 of 1997**

35. The following section is hereby inserted in the principal Act after section 65A:

**“Change of type and scope of higher education institution**

**65AB.** (1) The Minister may after consultation with the CHE and at the request of the council of the institution concerned, by notice in the *Gazette*, change the type of a higher education institution concerned or amend or remove any restrictions on the scope and operations of a public higher education institution contemplated in sections 3(3) and 20(5)(b).

(2) The Minister must, before acting under subsection (1), comply with the provisions of section 23(2), with the changes required by the context.”.

**Insertion of section 65BA in Act 101 of 1997**

36. The following section is hereby inserted in the principal Act after section 65B:

**“Withdrawal and revocation of degree, diploma, certificate or other qualification 5**

**65BA.** (1) Subject to the provisions of subsection (2), the council of a public higher education institution may, in consultation with the senate, withdraw and revoke any degree, diploma, certificate or other qualification that was awarded— 10

(a) on the basis of a material error on the part of the public higher education institution concerned: Provided that such withdrawal and revocation may only take place within a period not exceeding two years after the conferment concerned; or

(b) as a result of a fraudulent or dishonest act in connection with the obtaining of such degree, diploma, certificate or other qualification. 15

(2) (a) Prior to the council of a public higher education institution withdrawing and revoking the conferment of a degree, diploma, certificate or other qualification, the council must—

(i) notify the recipient of the qualification concerned that a revocation and withdrawal is being considered; 20

(ii) provide the recipient with relevant information justifying the intended action;

(iii) provide the recipient with an opportunity to obtain assistance and to present his or her case; and 25

(iv) consider the submissions and representations of the recipient.

(b) In the event that the withdrawal and revocation relates to circumstances contemplated in subsection (1)(b), the higher education institution must report the matter for criminal investigation as contemplated in section 66(2).” 30

**Amendment of section 65D of Act 101 of 1997, as inserted by section 24 of Act 23 of 2001**

37. Section 65D of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any public higher education institution identified by the Minister in accordance with policy determined under section 3, must offer an education programme or trade and occupational learning programme that leads to a qualification or part-qualification on the sub-framework for trades and occupations contemplated in section 7(c) of the National Qualifications Framework Act and in compliance with any condition set by the Minister.” 35 40

**Amendment of section 66 of Act 101 of 1997, as substituted by section 10 of Act 54 of 2000**

38. Section 66 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection—

“(1A) Any person contravening the provisions of section 51 or 65D is guilty of an offence and is liable on conviction to a sentence which may be imposed for fraud.” 45

**Amendment of section 68 of Act 101 of 1997, as amended by section 9 of Act 55 of 1999 and substituted by section 11 of Act 54 of 2000**

39. Section 68 of the principal Act is hereby amended— 50

(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) the board of a national institute for higher education;” and



(b) by the addition of the following subsection:

“(5) The provisions of subsections (2) and (3) apply to national institutes for higher education with the changes required by the context.”.

**Amendment of section 69 of Act 101 of 1997, as substituted by section 13 of Act 63 of 2002 and amended by section 6 of Act 39 of 2008** 5

40. Section 69 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) the planning and reporting framework for public higher education institutions.”. 10

**Repeal of section 70 of Act 101 of 1997**

41. Section 70 of the principal Act is hereby repealed.

**Substitution of Long Title of Act 101 of 1997**

42. The following Long Title is hereby substituted for the Long Title of the principal Act: 15

“To regulate higher education; to provide for the establishment, composition and functions of a Council on Higher Education; to provide for the determination of transformation goals and oversight mechanisms for the public higher education system; to provide for the development of articulation and recognition of prior learning frameworks; to provide for the establishment, disestablishment, conversion, merging, incorporation, governance and funding of public higher education institutions; to provide for the powers of the council of a public higher education institution to invest funds; to provide for the conflict of interest and code of conduct of members of the council, committees of the council, and employees, of a public higher education institution; to provide for the issuing of Ministerial directives; to provide for the appointment [and], functions and indemnification of an independent assessor; to provide for the appointment, functions, indemnification and termination of the term of office of an administrator; to provide for the issuing of post-administration directives by the Minister; to provide for the establishment, disestablishment, governance and funding of national institutes for higher education; to provide for the registration of private higher education institutions, the different categories of registration and the associated rights; to provide for quality assurance and quality promotion in higher education; to provide for the withdrawal and revocation of qualifications by public higher education institutions; to provide for transitional arrangements and the repeal of certain laws; and to provide for matters connected therewith.”. 20  
25  
30  
35

**Amendment of the Arrangement of Sections of Act 101 of 1997**

43. The Arrangement of Sections of the principal Act is hereby amended— 40

(a) by the substitution for item 2 of the following item:

“2. Application and interpretation”;

(b) by the deletion of items 38A to 38O;

(c) by the substitution for item 41 of the following item:

“41. Records to be kept, external audit and information to be furnished by council”; 45

(d) by the insertion after item 41 of the following heading:

“CHAPTER 6  
MINISTERIAL INTERVENTIONS IN HIGHER EDUCATION  
INSTITUTIONS”

(e) by the deletion of item 41A; 50

(f) by the substitution for item 42 of the following item:

“42. Ministerial directive”;

- (g) by the deletion after item 42 of the following heading:  
**“CHAPTER 6  
 INDEPENDENT ASSESSOR”**
- (h) by the substitution for item 49 of the following item: 5  
**“49. Remuneration and allowances of independent assessor”;**
- (i) by the substitution for item 49A of the following item:  
**“49A. Indemnification of independent assessor”;**
- (j) by the insertion after item 49B of the following item:  
**“49BA. Publication of appointment of administrator”;**
- (k) by the substitution for item 49D of the following item: 10  
**“49D. Remuneration and allowances of administrator”;**
- (l) by the insertion after item 49E of the following items:  
**“49F. Role, powers, functions and duties of administrator**  
**49G. Appointment of administrator on resignation of council**  
**49H. Termination of term of office of administrator**  
**49I. Directive to council appointed by administrator**  
**49J. Indemnification of administrator”;** 15
- (m) by the insertion after item 49J of the following heading and items: 20  
**“CHAPTER 6A  
 NATIONAL INSTITUTES FOR HIGHER EDUCATION**
- 49K. Establishment of national institute for higher education**  
**49L. Functions of national institute for higher education**  
**49M. Governance, composition of board and committees**  
**49N. Term of office of chairperson and members**  
**49O. Vacation of Office**  
**49P. Filling of vacancies**  
**49Q. Delegations**  
**49R. Staff and conditions of service**  
**49S. Funds of national institute for higher education**  
**49T. Annual audit**  
**49U. Annual report**  
**49V. Ministerial interventions**  
**49W. Disestablishment of national institute for higher education”;** 25
- (n) by the substitution for item 51 of the following item: 30  
**“51. Authority to provide private higher education”;**
- (o) by the substitution for item 53 of the following item: 35  
**“53. Requirements for registration of private higher education institutions”;**
- (p) by the insertion after item 65A of the following item: 40  
**“65AB. Change of type and scope of higher education institution”;**
- (q) by the insertion after item 65B of the following item:  
**“65BA. Withdrawal and revocation of degree, diploma, certificate or other qualification”;** and
- (r) by the deletion of item 70.

**Transitional arrangements** 45

44. Any action taken under the repealed sections 38A to 38O of the principal Act, immediately prior to the commencement date of section 11 of the Higher Education Amendment Act, 2015, is deemed to have been taken under the authority of the corresponding provision of Chapter 6 of the principal Act.

**Short title and commencement** 50

45. This Act is called the Higher Education Amendment Act, 2015, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

## MEMORANDUM ON THE OBJECTS OF THE HIGHER EDUCATION AMENDMENT BILL, 2015

### 1. MAIN OBJECT OF BILL

- 1.1 The main object of the Higher Education Amendment Bill, 2015 (the Bill), is to amend the Higher Education Act, 1997 (Act No. 101 of 1997) (the Act), to ensure alignment and consistency with the administrative law provisions of the Constitution of the Republic of South Africa, 1996; the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) (PAIA); the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (PAJA); and other administrative law norms and judicial decisions relating to administrative actions. This was necessitated because the Act came into force prior to the enactment of the PAIA and the PAJA and since 2000 a number of significant judicial decisions on the implementation and application of these Acts (also in respect of public higher education institutions) have provided clarity on the minimum content of administrative actions (both procedurally and substantively).
- 1.2 The Bill is not aimed at broadening the scope of the Act to cover areas beyond higher education, such as the central applications service and the admissions agency, but seeks to account for the changes and envisaged changes (with specific reference to the *White Paper for Post-School Education and Training*) in the higher education landscape and the lessons learnt from recent tendencies and experiences in the public and private higher education sector.
- 1.3 On 20 November 2013 the Cabinet approved the *White Paper for Post-School Education and Training (Building an Expanded, Effective and Integrated Post-School System)*. This White Paper, described as a “definitive statement of the government’s vision for the post-school system, outlining government’s main priorities and strategies for achieving them, is a vision for an integrated system of post-school education and training, with all institutions playing their role as parts of a coherent but different whole”.
- 1.4 In general, the Bill seeks to rectify any inconsistencies, contradictions or gaps in the Act, address issues pertaining to institutional autonomy, public accountability and co-operative governance arising from the Higher Education Laws Amendment Act, 2011 (Act No. 21 of 2011) (HELA Act, 2011) and the Higher Education and Training Laws Amendment Act, 2012 (Act No. 23 of 2012) (HETLA Act, 2012) and propose certain amendments and additions related to the independent assessment and administration, dispensations and post administration needs of public higher education institutions.
- 1.5 In essence, the Bill seeks to amend the Long Title and the way the Act is arranged; seeks to provide for the insertion of new definitions; to provide for the determination of transformation goals for the public higher education system and oversight mechanisms; to provide for the development of articulation and recognition of prior learning frameworks; to provide for the conversion of public higher education institutions; to provide for the issuing of Ministerial directives; to provide for indemnification of an independent assessor; to provide for the indemnification and termination of the term of office of an administrator; to provide for different categories of registration of private higher education institutions and the associated rights; to provide for the withdrawal and revocation of qualifications by public higher education institutions; to provide for transitional arrangements and for matters connected therewith.
- 1.6 The following matters are specifically addressed in the Bill:
  - 1.6.1 Determination of transformation goals for the public higher education system and appropriate oversight mechanisms.

- 1.6.2 Development of articulation and recognition of prior learning frameworks.
- 1.6.3 Powers of the council of a public higher education institution to invest funds.
- 1.6.4 Issuing of Ministerial directives.
- 1.6.5 Alignment of the institutional types to provide pro-actively for envisaged new developments.
- 1.6.6 Different categories of registration of private higher education institutions and the associated rights.
- 1.6.7 Withdrawal and revocation of qualifications by public higher education institutions, if obtained fraudulently.

## **2. SUMMARY OF PROVISIONS OF THE BILL**

### **2.1 Clause 1: Amendment of section 1 of Act 101 of 1997**

This clause inserts certain definitions in the Act required by the amendments made to the Act and the need to define certain important concepts used in the Act.

### **2.2 Clause 2: Substitution of section 2 of Act 101 of 1997**

This clause amends section 2, dealing with the application and interpretation of the Act. This Act applies to higher education and related matters in South Africa, subject to section 34 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008).

### **2.3 Clause 3: Amendment of section 3 of Act 101 of 1997**

This clause amends subsection 3—

- by renumbering subsection (3); and
- by inserting subparagraphs *(b)* and *(c)* after the newly numbered subparagraph *(3)(a)* to provide that the Minister may determine transformation goals for the higher education system (and appropriate oversight mechanisms) and develop articulation and recognition of prior learning frameworks for the post-school education and training system.

### **2.4 Clause 4: Amendment of section 7 of Act 101 of 1997**

This clause amends section 7 by replacing “HEQF” with “HEQSF”.

### **2.5 Clause 5: Amendment of section 20 of Act 101 of 1997**

This clause—

- amends subsection (1) and inserts subsection (2) to provide that the Minister may establish, or convert, as appropriate, the different types of higher education institutions introduced in the Bill and the procedures to be followed;
- amends subsection (4) to provide for a converted public higher education institution to acquire the status of a juristic person;
- inserts subsection (5A) to determine the power of the council of a public higher education institution to invest its funds with financial and other approved institutions; and

- inserts subsection (5B) to provide that the Minister may determine the functions of a newly established higher education institution must perform under the supervision of another identified higher education institution.

## **2.6 Clause 6: Amendment of section 21 of Act 101 of 1997**

This clause amends section 21 to provide that the Minister may, after following the prescribed procedure, declare any education institution as one of the recognised types of public higher education institutions.

## **2.7 Clause 7: Amendment of section 23 of Act 101 of 1997**

This clause amends subsection (2) to provide that the prescripts of administrative law norms and judicial decisions relating to administrative actions must be complied with before a decision to merge higher education institutions is taken.

## **2.8 Clause 8: Amendment of section 27 of Act 101 of 1997**

This clause amends—

- subsection (2) to provide that the council and the senate of a public higher education institution must comply with the provisions of the Use of Official Languages Act, 2012 (Act No. 12 of 2012) as part of the process to determine the language policy of the public higher education institution;
- subsection (3) to provide that councils of higher education institutions must establish a suitable structure to advise on the policy for student support services;
- subsection (5B) to provide that any person against whom an adverse finding is made in the report of the independent assessor should be given the opportunity to submit submissions in respect of such finding with a view to soliciting a final decision on the matter from the Minister;
- subsection (7) to provide that—
  - o persons with delegated functions in terms of section 68(2) must be persons with knowledge and experience relevant to the objects and governance of the public higher education institution;
  - o members of the council, a committee of the council and persons with delegated functions in terms of section 68(2) must—
    - ‡ participate in the deliberations of the council or a committee of the council, or exercise any delegated function in the best interests of the public higher education institution concerned;
    - ‡ declare business, commercial or financial activities undertaken for financial or other gain that may raise a conflict or a possible conflict of interest with the public higher education institution concerned, also after a member has assumed office;
    - ‡ may not have a direct or indirect financial, personal, or other interest in any matter to be discussed at a meeting, or in regard to which he or she is to make a decision in terms of a delegated function, and which entails or may entail a conflict or possible conflict of interest with the public higher education institution; and
    - ‡ must, before the meeting of the council or the committee of the council concerned and in writing, inform the chairperson of that meeting of a conflict or possible conflict of interest;

- subsection (7A) to provide that any person may in writing inform the chairperson of a meeting of the council, or a committee of the council, of a public higher education institution before the meeting, of a conflict or possible conflict of interest of a member of the council, or of a committee of the council;
- subsection (7C) to provide that in instances where members of a committee of the council or any employee with delegated functions of a public higher education institution have a conflict or possible conflict of interest in respect of a matter to be considered by the committee, the committee may not discuss or take a decision on the matter and must refer the matter to the council for a decision;
- subsection (7E) to adjust the cross references appropriately and to provide that members of the council, members of the council committees and all other persons exercising functions of the council of a public higher education institution must subscribe in writing to the principles embedded in the code of conduct contemplated in this section; and
- subsection (9) to provide that, upon resignation of a council of a public higher education institution, a new council must be constituted within a period not exceeding six months after the appointment of the administrator.

#### **2.9 Clause 9: Amendment of section 31 of Act 101 of 1997**

This clause inserts subsection (1A) to provide that the council must consider advice given by the institutional forum and to provide written reasons if the advice is not accepted.

#### **2.10 Clause 10: Amendment of section 34 of Act 101 of 1997**

This clause amends—

- subsection (2) to provide that the principal, vice-principals and the academic employees of a public higher education institution must be appointed by the council after consultation with the senate;
- subsection (4)(a) to provide that employees must, after assuming office and continuously thereafter declare business, commercial or financial activities undertaken for financial or other gain that may raise a conflict or a possible conflict of interest with the public higher education institution concerned;
- subsection (5) to require a decision by the council that the business of an employee that entail or may entail a conflict of interest with the public higher education institution, is unique, the supplier is a sole provider and that it is in the best interest of the institution to conduct business with such employee;
- subsection (6) to include a member or members of his or her immediate family; and
- subsection (7) to include references to financial and fiduciary gain, not forming part of the employment relationship, as being included in the prohibitions of benefiting from contracts by an employee on behalf of a public higher education institution with him or herself.

#### **2.11 Clause 11: Repeal of sections 38A to 38O of Act 101 of 1997**

This clause repeals these sections as they are currently incorrectly located under Chapter 4 of the Act which provides for the governance of public higher education institutions. The content of these sections are included, with the necessary changes and additions, by means of clause 29 in the newly inserted

Chapter 6B, (sections 49K to 49W) providing for national institutes for higher education.

**2.12 Clause 12: Amendment of section 39 of Act 101 of 1997**

This clause amends section 39 by inserting subsection (3A) after subsection (3). Subsection (3A) contains the provisions of section 42 of the principal Act, which were edited and renumbered. The provisions of section 42 are moved to section 39 with a view to consolidating the prescripts regarding the allocation of funds by the Minister. Section 42 of the principal Act is substituted in clause 16.

**2.13 Clause 13: Amendment of section 41 of Act 101 of 1997**

This clause amends—

- the section heading by inserting the words “external audit” between the words “kept” and “and”;
- subparagraph (1)(b) to provide for a statutory annual external audit obligation in respect of public higher education institutions as a whole; and
- subsection (2) to provide that the Minister may prescribe the submission of information beyond the activities of the public higher education institution of the previous year.

**2.14 Clause 14: Insertion of heading of Chapter 6 of Act 101 of 1997**

This clause inserts “Chapter 6” and its heading “Ministerial Interventions: Public Higher Education Institutions”.

**2.15 Clause 15: Repeal of section 41A of Act 101 of 1997**

This clause repeals section 41A as it is currently incorrectly located under Chapter 5 of the Act which provides for the funding of public higher education institutions. The content of this section is included, with the necessary changes, by means of clause 28 (section 49G), with the necessary changes.

**2.16 Clause 16: Substitution of section 42 of Act 101 of 1997**

This clause substitutes section 42. See clause 12.

**2.17 Clause 17: Deletion of the heading “Chapter 6” and the heading of Chapter 6 “Independent Assessor” of Act 101 of 1997**

This clause deletes the existing headings.

**2.18 Clause 18: Amendment of section 44 of Act 101 of 1997**

This clause—

- amends subsection (1) to provide that the Minister may in certain circumstances appoint an independent assessor without issuing a Ministerial directive first;
- inserts subsection (1A) to provide that the Minister must publish a notice in the *Gazette* regarding the appointment of an independent assessor; and
- amends subsection (2) to provide that every student and employee of the public higher education institution concerned has an obligation to assist and co-operate with the independent assessor in the performance of his or her functions in accordance with section 47.

**2.19 Clause 19: Amendment of section 45 of Act 101 of 1997**

This clause—

- edits and renumbers subparagraph (a) to (c);
- in subparagraph (a) provides that the council of a public higher education institution, when requesting the Minister to appoint an independent assessor, must do so in writing;
- in subparagraph (c) provides that the Minister may appoint an independent assessor in the circumstances contemplated in section 42(4) (substantive non-compliance by the council of a public higher education institution with a directive of the Minister); and
- adds to subparagraph (d) the additional proviso that the appointment of an independent assessor must be in the best interest of the public higher education institution concerned as well.

**2.20 Clause 20: Amendment of section 45A of Act 101 of 1997**

This clause—

- edits subparagraph (1)(a);
- amends subparagraph (1)(b) to provide that the independent assessor must comply with administrative law norms and judicial decisions relating to administrative actions when conducting his or her investigation;
- adds a proviso to subparagraph (1)(c) obliging the independent assessor to avail in writing all information obtained during proceedings affecting the rights, interests or potential interests of a person directed by the independent assessor not to attend the proceedings, in order to protect the rights, interests or potential interests of such a person and to allow such a person to make written submissions to the assessor;
- adds a proviso to subsection (2) creating a statutory obligation on the independent assessor to make documents or evidence available—
  - o for purposes of, or during, proceedings before a court, tribunal or forum; and
  - o in the event that the rights, interests or potential interests of a person may be affected by such document or evidence to him or her, or his or her trade union or legal representative;
- amends subsection (4)(a) by specifying the persons and entities the independent assessor is entitled to direct to submit affidavits or affirmed declarations or to appear before him or her;
- amends subsection (5) by improving the drafting style and to provide that the letter contemplated in subparagraph (5)(b) must be delivered at the address as registered with the public higher education institution concerned;
- amends subsection (7) to provide that an oath or affirmation can only be administered or accepted by a person appointed as a Commissioner of Oaths under the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963);
- amends subsection (8) to provide that the independent assessor must, when it appears during an investigation that a person is implicated, give such person notice of the implication and provide such person with all the relevant documentation and evidence affecting his or her rights, interests or



potential interests, and afford such person the opportunity to respond in connection therewith; and

- amends subsection (9) by obliging the independent assessor to allow legal representation or representation by a representative from a trade union of which the person appearing before him or her is a member.

#### **2.21 Clause 21: Amendment of section 45B of Act 101 of 1997**

This clause amends section 45B to provide that the access of the independent assessor to premises and buildings shall be in accordance with relevant legal provisions and practice and to oblige an independent assessor to hand a signed inventory of copied documents to the custodian of the documents upon leaving the premises.

#### **2.22 Clause 22: Amendment of section 47 of Act 101 of 1997**

This clause—

- amends subparagraph (1)(c) to provide that the independent assessor must suggest appropriate measures in his or her report to the Minister; and
- inserts subsection (1A) to provide that the Minister may extend the term of office of an independent assessor at his or her request.

#### **2.23 Clause 23: Amendment of section 49 of Act 101 of 1997**

This clause amends section 49 by substituting the word “concurrence” with the words “written approval”.

#### **2.24 Clause 24: Substitution of section 49A of Act 101 of 1997**

This clause inserts a provision in the Act providing indemnification to an independent assessor in certain circumstances.

#### **2.25 Clause 25: Amendment of section 49B of Act 101 of 1997**

This clause—

- amends subsection (1) to provide that the Minister may, notwithstanding any other provision of the Act, appoint an administrator under circumstances where serious undermining of the functioning of a public higher education institution is revealed as contemplated in this section;
- inserts in subsection (1A) that the Minister must, before appointing an administrator, give written notice in the format prescribed by the Act of his or her intention to make such an appointment to the council of the public higher education concerned, provide the reasons for the appointment and give the council a reasonable opportunity to make written representations and consider the representations; and
- amends subsection (2) to provide that the Minister may make such appointment only when he or she has reason to believe that the appointment is in the best interest of the public higher education institution concerned and of higher education in an open and democratic society.

#### **2.26 Clause 26: Insertion of section 49BA in Act 101 of 1997**

This clause inserts in the Act section 49BA to provide that the Minister must publish the appointment of an administrator in the *Gazette* and provide certain information regarding the incumbent and his or her term of office.

**2.27 Clause 27: Substitution of section 49D of Act 101 of 1997**

This clause provides that the Minister must determine the remuneration and allowances of an administrator in consultation with the Minister of Finance and that all the costs associated with the appointment of an administrator will be carried by the institution concerned. Section 49D thus consolidates financial aspects pertaining to the appointment of an administrator.

**2.28 Clause 28: Insertion of sections 49F to 49J in Act 101 of 1997**

This clause—

- in subsections 49F(1) and (2), introduces a consolidated section providing a full menu of the role, powers, functions and duties of an administrator. It empowers the Minister to select those relevant to a particular situation;
- in section 49F(3), provides that employees and students of the public higher education concerned must comply with instructions given by the administrator, but that these instructions would be subject to the institutional statute and rules of the public higher education concerned;
- in section 49G, reintroduces the repealed section 41A of the Act, with the changes required by the context (see clause 14);
- in section 49H, introduces a new section on the termination of the appointment of an administrator and the procedures to be followed in this regard;
- in section 49I, introduces a new section on the issuing of post-administration directives by the Minister and the procedures to be followed in this regard; and
- in section 49J, introduces a new section on the indemnification of an administrator in certain circumstances.

**2.29 Clause 29: Insertion of Chapter 6A and sections 49K to 49W in Act 101 of 1997**

This clause inserts Chapter 6A and sections 49K to 49W to provide, in a separate chapter in the Act, for the establishment of National Institutes for Higher Education in accordance with good governance norms and standards, public finance management principles, constitutional and administrative law principles and for matters related thereto (See also clause 11). The original chapter of the Act has been recomposed, reworded, extended and inserted under this chapter.

In particular, this clause provides for the following sections—

**Section 49K: Establishment of national institute for higher education**

- o Except for the removal of subsection (2), this section is similar to the former section 38A(1) and (3). Subsection (2) of the former section 38A now forms part of the new section 49M and has been redrafted to focus on the governance responsibilities of the Board only.

**Section 49L: Functions of national institute for higher education**

- o Subsection (1) contains the same wording as the former section 38B(1). However, subsection (2) has been redrafted to provide that the Minister must publish the functions of national institutes for higher education by notice in the Government *Gazette*.

**Section 49M: Governance, composition of board and committees**

- o Subsection (1) provides that a national institute is governed by its board (see section 49K) and replaces subsection 38A(2) which conflated management, governance and administration at board level;
- o Subsections (2) and (3) follows the same wording as that of the former subsection 38C(1) and (1A), with the necessary changes;
- o Subsection (4) provides that co-opted members of the board will have no voting rights;
- o Subsection (5) provides that the members of the board appointed by the Minister must, as far as is practically possible, be representative of the higher education institutions affected by the establishment of the specific national institute; and
- o Subsections (6) and (7) provide that the board must establish at least a number of board committees and determine the composition, manner of election, procedure at meetings and the dissolution of committees in accordance with institutional policies and the principles of good governance.

**Section 49N: Term of office of chairperson and members**

- o Section 49N provides that the chairperson and appointed members of the board hold office for four years and may only serve a maximum of two consecutive terms.

**Section 49O: Vacation of Office**

- o Subsection (1)(a) to (f) is an edited version of the former section 38E;
- o Subsection (1)(g) provides for the removal of a member of the board by means of a resolution passed by the board; and
- o Subsection (2) and (3) prescribe the procedure to be followed by the board.

**Section 49P: Filling of vacancies**

- o The same wording as the former section 38F.

**Section 49Q: Delegations**

- o Subsections (1) and (2) provide that the board may delegate, in writing and subject to conditions set by the board, any of its functions to committees of the board and to persons employed by the board and may at any time revoke such delegation; and
- o Subsection (3) confirms that the board is not divested of its responsibilities for the performance of any function so delegated or assigned.

**Section 49R: Staff and conditions of service**

- o Subsection (1) provides that the board may appoint a chief executive officer and other staff required to manage and administer the national institute; and
- o Subsection (2) provides that the national institute must out of its own funds pay to its employees such remuneration, allowances and other benefits as the board may determine.

**Section 49S: Funds of national institute for higher education**

- o Subsections (1) to (3) have been inserted and contains provisions similar to the provisions applicable to the funding of public higher education institutions;
- o Subsections (4) and (5) follows the same wording as the former section 38G(1) to (2);
- o Subsection (6) prescribes, in the interest of compliance with administrative law principles, the procedure to be followed by the Minister should he or she not approve the board's statement or adjusted statement of estimated income and expenditure; and
- o Subsections (7) and (8) follow the same wording as subsections (4) and (5) of the former section 38G.

**Section 49T: Annual audit**

- o The drafting style of the section is updated.

**Section 49U: Annual report**

- o The same wording as the former section 38I.

**Section 49V: Ministerial interventions**

- o This section provides that the same provisions applicable to public higher education institutions shall apply to national institutes, with the necessary changes.

**Section 49W: Disestablishment of national institute for higher education**

- o Subsections (1) and (2) of the former section 38O have been redrafted to describe the circumstances that could lead to a decision by the Minister to disestablish a national institute and the procedure to be followed in this regard;
- o Subsection (3) is added to provide that in the event that a national institute for higher education is disestablished all assets and liabilities of such national institute for higher education must, after disestablishment, be dealt with according to law by the Minister and any assets remaining after payment of all liabilities vest in the Minister; and
- o Subsection (4) is added to provide that the Minister may appoint a person to administer the closure of a national institute for higher education.

**2.30 Clause 30: Amendment of section 50 of Act 101 of 1997**

This clause now indicates clearly that the Director-General of the Department of Higher Education and Training acts as the registrar for registering private higher education institutions.

**2.31 Clause 31: Amendment of section 51 of Act 101 of 1997**

This clause amends section 51 to provide that no person, or a person with delegated authority of another person, or as an agent of another person may perform one or more of the functions to provide higher education unless that person is authorised to do so in accordance with subparagraphs (1)(a) to (d); and deletes subsection (2) which became redundant due to the amendments referred to above.

**2.32 Clause 32: Amendment of section 53 of Act 101 of 1997**

This clause is an edited version of the existing section 53 of the Act.

**2.33 Clause 33: Amendment of section 54 of Act 101 of 1997**

This clause provides that registered private higher education institutions may in certain circumstances call themselves universities, university colleges or higher education colleges and allow private universities and university colleges to use certain titles, confer professorships and award honorary degrees.

**2.34 Clause 34: Amendment of section 57 of Act 101 of 1997**

This clause amends section 57 to allow more time for private higher education institutions to prepare their financial statements.

**2.35 Clause 35: Insertion of section 65AB in Act 101 of 1997**

This clause inserts section 65AB to provide for the change in type and scope of higher education institutions or amend or remove any restrictions on the scope and operations of higher education institutions and to prescribe the procedure to be followed in this regard.

**2.36 Clause 36: Insertion of section 65BA in Act 101 of 1997**

This clause inserts subsection (1) to provide for the withdrawal and revocation of degrees, diplomas, certificates or other qualifications—

- that were conferred on the basis of a material error on the part of the public higher education institution concerned, within 2 years after the conferment concerned; or
- in the event that the recipient of a degree, diploma, certificate or other qualification had committed a fraudulent or dishonest act in connection with the obtaining of such degree, diploma, certificate or other qualification.

Subsection (2) provides for the process to be followed for such withdrawal, compliance with administrative law norms and the reporting of criminal activities.

**2.37 Clause 37: Amendment of section 65D of Act 101 of 1997**

This clause amends subsection (2) to provide that the Minister may identify higher education institutions who shall be obliged to offer an education programme or trade and occupational learning programme that leads to a qualification or part-qualification on the sub-framework for trades and occupations contemplated in section 7(c) of the National Qualifications Framework Act.

**2.38 Clause 38: Amendment of section 66 of Act 101 of 1997**

This clause inserts subsection (1A) to provide that persons contravening sections 51 (registration) and 65D (qualifications) of the Act are guilty of an offence.

**2.39 Clause 39: Amendment of section 68 of Act 101 of 1997**

This clause—

- amends subsection (1) to provide that the Minister may also delegate any of his or her powers to the board of a national institute for higher education; and

- inserts subsection (5) to provide that the board and the chief executive officer of an institute for higher education may delegate their authorities and assign their duties.

#### **2.40 Clause 40: Amendment of section 69 of Act 101 of 1997**

This clause amends section 69 to provide for the Minister to make regulations consistent with the Act on the matters listed in the clause.

#### **2.41 Clause 41: Repeal of section 70 of Act 101 of 1997**

This clause repeals section 70 as it is incorporated into the Act in clause 3 (section 2A(1)).

#### **2.42 Clause 42: Substitution of the Long Title of Act 101 of 1997**

This clause amends the Long Title of the Act to reflect the amendments made to the Act.

#### **2.43 Clause 43: Amendment of the Arrangement of sections of Act 101 of 1997**

This clause amends the Arrangement of the Act to reflect the amendments made to the Act.

#### **2.44 Clause 44: Transitional Arrangements**

This clause provides for appropriate transitional arrangements.

#### **2.45 Clause 45: Short title and commencement**

This clause provides for the short title of the Act and provides for the Act to come into operation on a date fixed by proclamation in the *Gazette*.

### **3. BODIES/PERSONS/STAKEHOLDERS CONSULTED**

3.1 The consultative process started during 2013, when the Department embarked on a process of the review of the Act. A Task Team comprising key stakeholders in the higher education sector was established to assist with this work. The review of the Act is necessitated by two crucial factors. Firstly, the changing higher education policy environment and DHET's vision of an integrated post school system whereby all institutions play their role as parts of a coherent but differentiated whole. It is believed that a comprehensive review of the Act is needed to begin to reflect these new developments. The second contributing factor is the feedback constantly received from the higher education sector (both public higher education institutions and private providers) that certain aspects of the Act need to be revisited in order to develop and further strengthen the sector. The Task Team held a total of three meetings as follows:

- (i) the first meeting held on 20 November 2013;
- (ii) the second meeting held on 16 April 2014; and
- (iii) the third meeting on 09 October 2014.

3.2 During the review, a targeted call for submission was made to key stakeholders, namely, Higher Education South Africa (HESA, now called Universities South Africa); Association of Private Providers of Education Training and Development (APPEDT); and Private Higher Education Interest Group (PHEIG). Letters for the call were issued on 13 December 2013, and the stakeholders were given the deadline of 28 February 2014 to submit their proposals. The request was for the stakeholders to submit to the DHET aspects that they would like to be revised in the Act. The submissions from APPEDT

were received on 27 February 2014; from PHEIG submissions were received on 28 February 2014 and for HESA, submissions were received on 31 March 2014, although an extension was granted. Contact meetings were held with the above stakeholders to discuss the revised Amendment Bill as follows: On 26 August 2014 a meeting took place with HESA; and on 27 August 2014 a meeting was arranged with both APPEDT and PHEIG. Following these meetings, HESA made a second submission on 27 October 2014. No additional inputs were received from the private providers (APPEDT and PHEIG). All the inputs were considered in drafting the Bill.

- 3.3 The University Branch, a Branch directly affected by the proposed amendments to existing legislation, has extensively dealt with the review of the Act in an internal process in the Department of Higher Education and Training (DHET). During these consultations, the Bill was perused and deliberated upon, further drafts were compiled for consideration by the Branch and the Bill was also introduced at Senior Management. Up to date, Higher Education South Africa (HESA, now called Universities of South Africa); internal members of the Department (DHET); Council for Higher Education (CHE); Quality Council for Trade and Occupations (QCTO), South African Qualifications Authority (SAQA) and Umalusi were consulted. Students and the public were not as yet consulted, but meetings were scheduled with student organisations. This Bill was also deliberated with SAQA, CHE, QCTO, Umalusi and representatives of DBE during the extended CEO SAQA Committee meeting of 27 February 2015. This Bill was tabled in the Social Protection, Community and Human Development (SPCHD) Cluster meeting of 8 July 2015 and the submission of the Bill to Cabinet was recommended. The Social Economic Impact Assessment System (SEIAS) evaluation was submitted to the Department of Planning, Monitoring and Evaluation in the Presidency, whom signed off on the report.
- 3.4 Public hearings will also take place during the Parliamentary legislative process.

#### 4. FINANCIAL IMPLICATIONS FOR STATE

The revenue and expenditure flowing from the recommendations will not have a significant effect on the State during this financial year. Costs will be carried forward to the next financial year. Proposed funding for the implementation of the Bill has been budgeted for.

#### 5. PARLIAMENTARY PROCEDURE

- 5.1 The Department of Higher Education and Training and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution of the Republic of South Africa, 1996, since it is an ordinary Bill not affecting provinces.
- 5.2 The Constitutional Court, in **Tongoane and Others v Minister for Agriculture and Land Affairs and Others**<sup>1</sup>, stated that the procedure envisaged in section 75 of the Constitution remains relevant to all Bills that do not, in substantial measure, affect the provinces. It stated that whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3)(a) to (f) of the Constitution, and second by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence.
- 5.3 In view of the foregoing, the Bill must be dealt with in accordance with the procedure set out in section 75 of the Constitution as it deals with higher education. Schedule 4 to the Constitution excludes tertiary education from the

<sup>1</sup> CCT 100/09 [2010] ZACC 10 (11May 2010), see para 72 of the decision.

ambit of the functional areas of concurrent national and provincial legislative competence.

- 5.4 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain any provisions pertaining to customary law or to the customs of traditional communities.





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HIGHER EDUCATION ACT 101 OF 1997

|                                |  |
|--------------------------------|--|
| [ASSENTED TO 26 NOVEMBER 1997] | [DATE OF COMMENCEMENT: 19 DECEMBER 1997] |
|--------------------------------|--|

(English text signed by the President)

as amended by

Higher Education Amendment Act 55 of 1999

Higher Education Amendment Act 54 of 2000

Higher Education Amendment Act 23 of 2001

Higher Education Amendment Act 63 of 2002

Higher Education Amendment Act 38 of 2003

Higher Education Amendment Act 39 of 2008

Higher Education Laws Amendment Act 26 of 2010

Higher Education Laws Amendment Act 21 of 2011

Higher Education and Training Laws Amendment Act 23 of 2012

ACT

To regulate higher education; to provide for the establishment, composition and functions of a Council on Higher Education; to provide for the establishment, governance and funding of public higher education institutions; to provide for the appointment and functions of an independent assessor; to provide for the registration of private higher education institutions; to provide for quality assurance and quality promotion in higher education; to provide for transitional arrangements and the repeal of certain laws; and to provide for matters connected therewith.

Preamble

WHEREAS IT IS DESIRABLE TO-

ESTABLISH a single co-ordinated higher education system which promotes co-operative governance and provides for programme-based higher education;

RESTRUCTURE AND TRANSFORM programmes and institutions to respond better to the human resource, economic and development needs of the Republic;

REDRESS past discrimination and ensure representivity and equal access;

PROVIDE optimal opportunities for learning and the creation of knowledge;

PROMOTE the values which underlie an open and democratic society based on human dignity, equality and freedom;

RESPECT freedom of religion, belief and opinion;

RESPECT and encourage democracy, academic freedom, freedom of speech and expression, creativity, scholarship and research;

PURSUE excellence, promote the full realisation of the potential of every student and employee, tolerance of ideas and appreciation of diversity;

RESPOND to the needs of the Republic and of the communities served by the institutions;

CONTRIBUTE to the advancement of all forms of knowledge and scholarship, in keeping with international standards of academic quality;

AND WHEREAS IT IS DESIRABLE for higher education institutions to enjoy freedom and autonomy in their relationship with the State within the context of public accountability and the national need for advanced skills and scientific knowledge;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

## ARRANGEMENT OF ACT

### CHAPTER 1

#### DEFINITIONS, APPLICATION AND DETERMINATION OF POLICY

##### *Section*

- 1 Definitions
- 2 Application
- 3 Determination of higher education policy

### CHAPTER 2

#### COUNCIL ON HIGHER EDUCATION

- 4 Establishment of Council on Higher Education (CHE)
- 5 Functions of CHE
- 6 Information to be provided to CHE
- 7 Qualifications, quality promotion and quality assurance  
[S. 7 substituted by s. 3 (1) of Act 39 of 2008.]
- 8 Composition of CHE
- 9 Term of office of members
- 10 Vacation of office by members
- 11 Filling of vacancies
- 12 Executive officer and employees of CHE
- 13 Executive committee of CHE
- 14 Committees of CHE
- 15 Meetings of CHE and committees
- 16 Funds of CHE
- 17 Remuneration and allowances of members of CHE and committees
- 18 Annual audit
- 19 Annual report

### CHAPTER 3

#### PUBLIC HIGHER EDUCATION INSTITUTIONS

- 20 Establishment of public higher education institutions
- 21 Declaration of education institutions as public higher education institutions
- 22 Consequences of declaration as public higher education institutions
- 23 Merger of public higher education institutions
- 24 Incorporation of subdivisions of public higher education institutions  
[S. 24 substituted by s. 6 of Act 63 of 2002.]
- 25 Closure of public higher education institutions

### CHAPTER 4

#### GOVERNANCE OF PUBLIC HIGHER EDUCATION INSTITUTIONS

- 26 Institutional governance structures
- 27 Council of public higher education institution
- 28 Senate of public higher education institution
- 29 Committees of council and senate
- 30 Principal of public higher education institution
- 31 Institutional forum
- 32 Institutional statutes and institutional rules
- 33 Institutional statutes to be approved or made by Minister
- 34 Appointment and conditions of service of employees of public higher education institutions
- 35 Students' representative council
- 36 Disciplinary measures
- 37 Admission to public higher education institutions
- 38 Co-operation between public higher education institutions
- 38A Establishment of national institute for higher education  
[S. 38A added by s. 3 of Act 38 of 2003.]
- 38B Functions of national institute for higher education

[S. 38B added by s. 3 of Act 38 of 2003.]  
38C Composition of board  
[S. 38C added by s. 3 of Act 38 of 2003.]  
38D Term of office of chairperson and members  
[S. 38D added by s. 3 of Act 38 of 2003.]  
38E Vacation of office  
[S. 38E added by s. 3 of Act 38 of 2003.]  
38F Filling of vacancies  
[S. 38F added by s. 3 of Act 38 of 2003.]  
38G Funds of national institute for higher education  
[S. 38G added by s. 3 of Act 38 of 2003.]  
38H Annual audit  
[S. 38H added by s. 3 of Act 38 of 2003.]  
38I Annual report  
[S. 38I added by s. 3 of Act 38 of 2003.]  
38J Intervention by Minister  
[S. 38J added by s. 7 of Act 23 of 2012.]  
38K Appointment of administrator  
[S. 38K added by s. 7 of Act 23 of 2012.]  
38L Assistance to administrator  
[S. 38L added by s. 7 of Act 23 of 2012.]  
38M Remuneration and allowances  
[S. 38M added by s. 7 of Act 23 of 2012.]  
38N Dissolution of board  
[S. 38N added by s. 7 of Act 23 of 2012.]  
38O Disestablishment of national institute for higher education  
[S. 38O added by s. 7 of Act 23 of 2012.]

## CHAPTER 5 FUNDING OF PUBLIC HIGHER EDUCATION

39 Allocation of funds by Minister  
40 Funds of public higher education institutions  
41 Records to be kept and information to be furnished by council  
41A Appointment of administrator  
[S. 41A inserted by s. 6 of Act 55 of 1999.]  
42 Action on failure of council to comply with this Act or certain conditions

## CHAPTER 6 INDEPENDENT ASSESSOR

43 Appointment of independent assessment panel  
44 Appointment of independent assessor  
45 Cases where independent assessor may be appointed  
45A Investigation by independent assessor  
[S. 45A inserted by s. 9 of Act 23 of 2012.]  
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**CHAPTER 1**  
**DEFINITIONS, APPLICATION AND DETERMINATION OF POLICY (ss 1-3)**

**1 Definitions**

In this Act, unless the context otherwise indicates-

**'academic employee'** means any person appointed to teach or to do research at a public higher education institution and any other employee designated as such by the council of that institution;

**'applicant'** means any person who makes any application referred to in Chapter 7;

**'auditor'** means any person registered as such in terms of the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991);

**'CHE'** means the Council on Higher Education established by section 4;

**'college'** means any college established or declared as a college under this Act;

**'council'** means the governing body of a public higher education institution;

**'Department of Education'** means the Department of Higher Education and Training;  
[Definition of 'Department of Education' substituted by s. 1 (a) of Act 26 of 2010.]

**'Director-General'** means the Director-General of the Department of Higher Education and Training;  
[Definition of 'Department of Education' substituted by s. 1 (b) of Act 26 of 2010.]

**'employee'** means any person employed at a public higher education institution;

**'employer'** means the council of a public higher education institution;

**'financial year'** means a year commencing on the first day of April and ending on the thirty-first day of March of the following year;

**'foreign juristic person'** means a person-

- (i) registered or established as a juristic person in terms of a law of a foreign country; and
- (ii) recognised or registered as an external company in terms of the Companies Act, 1973 (Act 61 of 1973);

[Definition of 'foreign juristic person' inserted by s. 1 (a) of Act 54 of 2000.]

**'grade 12'** means the highest grade in which education is provided by a school as defined in the South African Schools Act, 1996 (Act 84 of 1996);

**'HEQF'** means the Higher Education Qualifications Framework;  
[Definition of 'HEQF' inserted by s. 1 (a) of Act 39 of 2008.]

**'higher education'** means all learning programmes leading to a qualification that meets the requirements of the HEQF;  
[Definition of 'higher education' substituted by s. 1 (b) of Act 39 of 2008.]

**'higher education institution'** means any institution that provides higher education on a full-time, part-time or distance basis and which is-

- (a) merged, established or deemed to be established as a public higher education institution under this Act;
- (b) declared as a public higher education institution under this Act; or
- (c) registered or provisionally registered as a private higher education institution under this Act;

[Definition of 'higher education institution' substituted by s. 1 (a) of Act 63 of 2002.]

**'Higher Education Qualifications Framework'** means the policy on higher education-

- (a) determined and published by the Minister in terms of section 3; and
- (b) referred to in section 7 (b) of the National Qualifications Framework Act as the sub-framework for higher education;

[Definition of 'Higher Education Qualifications Framework' inserted by s. 1 (c) of Act 39 of 2008.]

**'Higher Education Quality Committee'** means the committee of the CHE established in terms of section 7 (1);

**'incorporation of a subdivision'** means the process of incorporation as contemplated in section 21 (1) (b) or 24 in terms of which an identified subdivision, faculty, school, department, section or component of a public higher education institution or education institution becomes part of another public higher education institution while the latter institution's legal personality as contemplated in section 20 (4) is not affected by the incorporation, and **'an incorporated subdivision'** has a similar meaning;

[Definition of 'incorporation of a subdivision' inserted by s. 1 (b) of Act 63 of 2002.]

**'institutional forum'** means the body contemplated in section 31;

**'institutional rules'** means any rules made by the council of a public higher education institution under section 32;

**'institutional statute'** means any statute made by the council of a public higher education institution under section 32;

**'local juristic person'** means a person established as a juristic person in South Africa in terms of the Companies Act, 1973 (Act 61 of 1973);

[Definition of 'local juristic person' inserted by s. 1 (b) of Act 54 of 2000.]

**'merger'** means the process contemplated in section 23 in terms of which two or more public higher education institutions lose their status as juristic persons on the date that they are merged into a new juristic person as contemplated in section 20 (4).

[Definition of 'merger' inserted by s. 1 (c) of Act 63 of 2002.]

**'Minister'** means the Minister of Higher Education and Training;

[Definition of 'Minister' substituted by s. 1 (c) of Act 26 of 2010.]

**'National Qualifications Framework'** means the National Qualifications Framework contemplated in the National Qualifications Framework Act;

[Definition of 'National Qualifications Framework' inserted by s. 1 (d) of Act 39 of 2008.]

**'National Qualifications Framework Act'** means the National Qualifications Framework Act, 2008;

[Definition of 'National Qualifications Framework Act' inserted by s. 1 (d) of Act 39 of 2008.]

**'organ of state'** means an organ of state as defined in section 239 of the Constitution;

**'prescribed'** means prescribed by regulation;

**'principal'** means the chief executive and accounting officer of a public higher education institution, and includes a vice-chancellor and a rector;

**'private higher education institution'** means any institution registered or conditionally registered as a private higher education institution in terms of Chapter 7;

**'public higher education institution'** means any higher education institution that is established, deemed to be established or declared as a public higher education institution under this Act;

**'quality council'** has the meaning assigned to it in section 1 of the National Qualifications Framework Act, 2008;

[Definition of 'quality council' inserted by s. 1 (e) of Act 39 of 2008.]

**'registrar'** means the registrar referred to in section 50 (1);

[Definition of 'registrar' substituted by s. 1 of Act 55 of 1999.]

**'SAQA'** means the South African Qualifications Authority established by section 3 of the South African Qualifications Authority Act, 1995 (Act 58 of 1995);

**'senate'** means the body contemplated in section 28, and includes an academic board;

**'student'** means any person registered as a student at a higher education institution;

**'technikon'** means any technikon established, deemed to be established or declared as a technikon under this Act;



'this Act' includes the regulations made under this Act;

'to provide higher education' means-

- (a) the registering of students for higher education;  
[Para. (a) substituted by s. 1 (f) of Act 39 of 2008.]
  - (b) the taking of responsibility for the provision and delivery of the curricula;
  - (c) the assessment of students regarding their learning programmes; and
  - (d) the conferring of qualifications,
- in the name of the higher education institution concerned.  
[Definition of 'to provide higher education' inserted by s. 1 (c) of Act 54 of 2000.]

'university' means any university established, deemed to be established or declared as a university under this Act;

'vice-principal' includes a vice-rector and a deputy vice-chancellor.

[a101y1997s2]2 Application

This Act applies to higher education in the Republic of South Africa.

[a101y1997s3]3 Determination of higher education policy

- (1) The Minister must determine policy on higher education after consulting the CHE.
  - (2) The Minister must-
    - (a) publish such policy by notice in the *Gazette*; and
    - (b) table such policy in Parliament.
  - (3) The Minister may, in terms of the policy contemplated in subsection (1) and in the interest of the higher education system as a whole, determine the scope and range of operations of-
    - (a) public higher education institutions;
    - (b) private higher education institutions; and
    - (c) individual public or private higher education institutions.
- [Sub-s. (3) added by s. 2 of Act 54 of 2000.]

## CHAPTER 2 COUNCIL ON HIGHER EDUCATION (ss 4-19)

### 4 Establishment of Council on Higher Education (CHE)

The Council on Higher Education (CHE) is hereby established as a juristic person.

### 5 Functions of CHE

- (1) The CHE may advise the Minister on any aspect of higher education on its own initiative and must-
  - (a) advise the Minister on any aspect of higher education at the request of the Minister;
  - (b) arrange and co-ordinate conferences;
  - (c) subject to section 7 (2), through its permanent committee, the Higher Education Quality Committee-
    - (i) promote quality assurance in higher education;
    - (ii) audit the quality assurance mechanisms of higher education institutions; and
    - (iii) accredit programmes of higher education;
  - (d) publish information regarding developments in higher education, including reports on the state of higher education, on a regular basis;  
[Para. (d) substituted by s. 1 of Act 38 of 2003.]
  - (e) promote the access of students to higher education institutions; and
  - (f) perform any other function-
    - (i) conferred on or assigned to it in terms of this Act or the National Qualifications Framework Act;  
[Sub-para. (i) substituted by s. 2 (a) of Act 39 of 2008.]
    - (ii) delegated or assigned to it by the Minister by notice in the *Gazette*.
- (2) The advice contemplated in subsection (1) (a) includes advice on-
  - (a) qualifications, quality promotion and quality assurance;  
[Para. (a) substituted by s. 2 (b) of Act 39 of 2008.]
  - (b) research;
  - (c) the structure of the higher education system;
  - (d) the planning of the higher education system;
  - (e) a mechanism for the allocation of public funds;
  - (f) student financial aid;

- (g) student support services;
- (h) governance of higher education institutions and the higher education system; and
- (i) language policy.

(3) The Minister must-

- (a) consider the advice of the CHE; and
- (b) provide reasons in writing to the CHE if the Minister does not accept the advice.

(4) The Minister may act without the advice of the CHE-

- (a) if the matter is urgent; or
- (b) if the CHE has failed to provide the advice within a reasonable time.

(5) If the Minister acts without the advice of the CHE the Minister must-

- (a) notify the CHE of such action; and
- (b) provide reasons in writing to the CHE for such action.

## 6 Information to be provided to CHE

Every national and provincial department of state, every publicly funded science, research and professional council and every higher education institution must provide the CHE with such information as the CHE may reasonably require for the performance of its functions in terms of this Act.

## 7 Qualifications, quality promotion and quality assurance

(1) The CHE performs its functions in relation to qualifications, quality assurance and quality promotion-

- (a) in terms of this Act; and
- (b) in its capacity as the quality council for higher education, in terms of the National Qualifications Framework Act.

(2) The CHE is responsible for the implementation of the HEQF.

(3) The CHE must establish the Higher Education Quality Committee as a permanent committee to perform the quality assurance and quality promotion functions of the CHE in terms of this Act and the National Qualifications Framework Act.

(4) The Higher Education Quality Committee may, with the concurrence of the CHE, establish committees to assist it in the performance of its functions.

(5) The CHE may charge fees for any service rendered by the Higher Education Quality Committee to any person, institution or organ of state.

[S. 7 amended by s. 1 of Act 23 of 2001 and substituted by s. 3 (1) of Act 39 of 2008.]

## 8 Composition of CHE

(1) The CHE consists of-

- (a) a chairperson;
- (b) ordinary members;
- (c) co-opted members; and
- (d) non-voting members.

(2) The selection of the chairperson, ordinary members and co-opted members must be undertaken in such a manner as to ensure, insofar as is practically possible, that-

- (a) the functions of the CHE in terms of this Act are performed according to the highest professional standards;
- (b) the membership taken as a whole-
  - (i) is broadly representative of the higher education system and related interests;
  - (ii) has deep knowledge and understanding of higher education and research;
  - (iii) appreciates the role of the higher education system in reconstruction and development; and
  - (iv) has known and attested commitment to the interests of higher education;
- (c) due attention is given to representivity of the CHE on such relevant grounds as race and disability; and
- (d) the members contemplated in subsection (1) (b) and (c) consist of equal numbers of women and men.

(3) The Minister must, by notice in the *Gazette* and in two national newspapers circulating in every province of the Republic, and by any other means regarded necessary by him or her, invite nominations for the chairperson and the ordinary members of the CHE from-

(a) the public;

(b) national organisations representing students, academic employees, employees other than academic employees, university principals, technikon principals, principals of higher education colleges, principals of private higher education institutions, the further education sector, the distance education sector, educators, organised business and organised labour;

[Para. (b) substituted by s. 2 of Act 63 of 2002.]

(c) research and science councils; and

(d) non-governmental organisations.

(4) The Minister must consider the nominations as contemplated in subsection (3), and from the persons so nominated, the Minister must appoint-

(a) the chairperson of the CHE; and

(b) no more than 13 ordinary members of the CHE.

(5) At least three of the members contemplated in subsection (4) (b) must be external to the higher education sector and must be appointed on account of their particular experience and expertise.

(6) The Minister must appoint eight non-voting members of the CHE nominated by the Director-General, the Provincial Heads of Education, the Director-General of the Department of Science and Technology, the Director-General of the Department of Labour, the National Research Foundation established in terms of the National Research Foundation Act, 1998 (Act 23 of 1998), and the chief executive officers of SAQA and the other quality councils, in their official capacities.

[Sub-s. (6) substituted by s. 2 of Act 23 of 2001 and by s. 4 of Act 39 of 2008.]

(7) The CHE may co-opt no more than three members.

## 9 Term of office of members

(1) The chairperson of the CHE holds office for a period of five years.

(2) Every ordinary member of the CHE holds office for a period of four years.

(3) Any co-opted member of the CHE holds office for a period determined by the CHE.

(4) A member of the CHE may not serve for more than two consecutive terms of office.

## 10 Vacation of office by members

A person ceases to be a member of the CHE if he or she-

(a) resigns by giving written notice to the chairperson or, in the case of the chairperson, to the Minister;

(b) is absent from three consecutive meetings of the CHE without the leave of the chairperson or, in the case of the chairperson, the leave of the executive committee of the CHE;

(c) is declared insolvent, is removed from an office of trust by a court of law or is convicted of an offence involving dishonesty or an offence for which the sentence is imprisonment without the option of a fine; or

(d) is declared unable to attend to his or her personal affairs by a court of law.

## 11 Filling of vacancies

(1) If a member vacates his or her office, the resultant vacancy must be filled by nomination, appointment or co-option in accordance with section 8.

(2) A member nominated in accordance with subsection (1) serves for the unexpired term of office of the predecessor.

[Sub-s. (2) added by s. 3 of Act 54 of 2000.]

(3) Notwithstanding section 8 (3), the Minister must in writing invite nominations to fill a vacancy contemplated in subsection

(1) from-

(a) national organisations representing-

(i) students;

- (ii) academic employees;
- (iii) employees other than academic employees;
- (iv) university principals;
- (v) technikon principals;
- (vi) principals of higher education colleges;
- (vii) principals of private higher education institutions;
- (viii) organised business; and
- (ix) organised labour; and
- (b) research and science councils.

[Sub-s. (3) added by s. 3 of Act 54 of 2000.]

## **12 Executive officer and employees of CHE**

- (1) The CHE must appoint an executive officer to-
  - (a) perform the functions determined by the CHE;
  - (b) supervise the employees of the CHE; and
  - (c) account for the assets and liabilities of the CHE.
- (2) The CHE may appoint such other employees as it deems necessary to assist the executive officer.
- (3) The CHE must, with the concurrence of the Minister and the Minister of Finance, determine the conditions of service of the executive officer and the other employees of the CHE.

## **13 Executive committee of CHE**

- (1) The CHE must establish an executive committee and determine its functions.
- (2) The executive committee consists of-
  - (a) the chairperson of the CHE; and
  - (b) four other members appointed by the CHE.
- (3) A decision of the executive committee must be regarded as a decision of the CHE, unless such decision is revoked at the next meeting of the CHE.
- (4) Anything done in consequence of a decision of the executive committee before its revocation is not invalid by reason only of the fact that the decision is revoked by the CHE under subsection (3).

## **14 Committees of CHE**

- (1) The CHE may establish other committees in addition to the Higher Education Quality Committee and the executive committee, to assist it in the performance of its functions.
- (2) Any committee other than the executive committee may include persons who are not members of the CHE.
- (3) The chairperson of a committee must be appointed by the CHE.
- (4) Members of the committees contemplated in subsection (2) may be appointed for such period or periods as the CHE may determine.

## **15 Meetings of CHE and committees**

- (1) Meetings of the CHE and its committees must be held at such times and places as may be determined by the chairperson concerned, but the chairperson must convene a meeting at least twice a year or if asked to do so in writing by at least one third of the members of the CHE or the committee, as the case may be.
- (2) Whenever the chairperson is absent from any meeting of the CHE or a committee, the members present must elect a person from among themselves to preside at that meeting.
- (3) The CHE may make rules relating to the procedure at meetings of the CHE and its committees, including the quorum for such meetings, and any other matter necessary or expedient for the performance of its functions.

(4) The proceedings at a meeting of the CHE or of a committee are not invalid by reason only of the fact that a vacancy exists on the CHE or such committee, as the case may be, at the time of such meeting.

## **16 Funds of CHE**

(1) The funds of the CHE consist of-

- (a) money appropriated by Parliament;
- (b) donations, contributions and other income received by the CHE from whatever source; and
- (c) money payable by any person, institution or organ of state for services rendered by the CHE or the Higher Education Quality Committee.

(2) The CHE-

- (a) must in each financial year, at such time and in such manner as the Minister may determine, submit a statement of its estimated income and expenditure for the ensuing financial year to the Minister for his or her approval granted with the concurrence of the Minister of Finance;
- (b) may in any financial year submit adjusted statements of its estimated income and expenditure to the Minister for his or her approval, granted with the concurrence of the Minister of Finance;
- (c) may not incur any expenditure which exceeds the total amount approved in terms of paragraphs (a) and (b).

(3) If the Minister does not approve the CHE's statement of its estimated income and expenditure, the Minister must require the CHE to provide a revised statement within a specified period to him or her.

(4) The money contemplated in subsection (1) must be used by the CHE in accordance with the approved statement referred to in subsection (2), and any unexpended balance must be carried forward as a credit to the following financial year.

(5) Subject to subsection (4), the CHE may invest any portion of its funds in such manner as the Minister, with the concurrence of the Minister of Finance, may approve.

## **17 Remuneration and allowances of members of CHE and committees**

The chairperson of the CHE, every other member and any person appointed as a member of a committee, who is not in the full-time service of the State may, in respect of services rendered by him or her in connection with the affairs of the CHE or a committee, be paid by the CHE-

- (a) such travelling, subsistence and other allowances; and
  - (b) in the case of the chairpersons of the CHE and the Higher Education Quality Committee, such additional remuneration,
- as the Minister with the concurrence of the Minister of Finance may determine.

## **18 Annual audit**

The books of account and financial statements of the CHE must be audited at the end of each financial year by the Auditor-General.

## **19 Annual report**

(1) The CHE must, within six months after the end of each financial year, submit a report to the Minister on the performance of its functions during the past financial year.

(2) The Minister must table copies of the report in Parliament as soon as reasonably practicable.

## **CHAPTER 3 PUBLIC HIGHER EDUCATION INSTITUTIONS (ss 20-25)**

### **20 Establishment of public higher education institutions**

(1) The Minister may, after consulting the CHE, by notice in the *Gazette* and from money appropriated for this purpose by Parliament, establish a university, technikon or college.

(2) .....

[Sub-s. (2) deleted by s. 4 (a) of Act 23 of 2001.]

(3) The notice contemplated in subsection (1) must determine-

- (a) the date of establishment of the institution;
- (b) the type and name of the institution; and
- (c) the physical location and official address of the institution.

(4) Every public higher education institution established, merged, deemed to have been established or declared as a public higher education institution under this Act, is a juristic person.  
[Sub-s. (4) substituted by s. 3 of Act 63 of 2002.]

(5) Notwithstanding subsection (4), a public higher education institution may not, without the concurrence of the Minister, dispose of or alienate in any manner, any immovable property acquired with the financial assistance of the State or grant to any person any real right therein or servitude thereon.

(6) The Minister must in the notice contemplated in subsection (1) establish an interim council for a period not exceeding six months, to perform the functions relating to the governance of the institution, except the making of an institutional statute.  
[Sub-s. (6) added by s. 4 (b) of Act 23 of 2001.]

(7) The Minister may extend the period referred to in subsection (6) once for a further period not exceeding six months.  
[Sub-s. (7) added by s. 4 (b) of Act 23 of 2001.]

(8) The members of the interim council contemplated in subsection (6) are appointed by the Minister and consist of-

- (a) the chairperson; and
- (b) four other members.

[Sub-s. (8) added by s. 4 (b) of Act 23 of 2001.]

(9) The interim council must co-opt three members of the interim management contemplated in subsection (10) (a) and these co-opted members have no voting powers.  
[Sub-s. (9) added by s. 4 (b) of Act 23 of 2001.]

(10) Apart from the functions contemplated in subsection (6), the interim council must in particular-

- (a) appoint an interim body to manage the day-to-day activities of the institution;
- (b) ensure that a council is constituted in terms of the standard institutional statute contemplated in section 33 (3); and
- (c) ensure that such other structures as may be determined in the standard institutional statute contemplated in section 33 (3) are constituted.

[Sub-s. (10) added by s. 4 (b) of Act 23 of 2001.]

(11) Any decision of the interim council which may affect the right of any structure of the public higher education institution, may only be taken after consultation with such structure.  
[Sub-s. (11) added by s. 4 (b) of Act 23 of 2001.]

## **21 Declaration of education institutions as public higher education institutions**

(1) The Minister may, after consulting the CHE and by notice in the *Gazette*, declare any education institution providing higher education as-

- (a) a university, technikon or college; or
- (b) an incorporated subdivision of a university, technikon or college.

[Para. (b) substituted by s. 4 (a) of Act 63 of 2002.]

(2) The notice contemplated in subsection (1) must determine-

- (a) the date on which the education institution becomes a university, technikon or college or a subdivision of a university, technikon or college, as the case may be;
- (b) the name of the university, technikon or college; and
- (c) the physical location and the official address of the university, technikon or college.

(3) The Minister may act under subsection (1) only-

- (a) after consulting-
- (i) the governing body of the education institution, if it is a public institution;
- (ii) the council of the existing public higher education institution, if the education institution is to be declared a subdivision of such existing public higher education institution; or

(iii) the responsible Minister, Member of the Executive Council or authority, if the education institution is administered, controlled or funded by an organ of state other than the Department of Education; and

(b) after having-

(i) published a notice in one or more newspapers circulating in the area in which the education institution provides higher education, containing the reasons for the declaration referred to in subsection (1), in all the official languages used as media of instruction by the education institution concerned;

[Sub-para. (i) substituted by s. 4 (b) of Act 63 of 2002.]

(ii) given any interested persons an opportunity to make representations; and

(iii) considered such representations;

(c) if it is a private institution, with the concurrence of the owner of the education institution and the Minister of Finance.

(3A) Section 20 (6) to (11), with the changes required by the context, applies to a declaration referred to in subsection (1)

(a).

[Sub-s. (3A) inserted by s. 5 of Act 23 of 2001.]

(4) Nothing contained in this Act or any other law may be regarded as obliging the Minister to declare an education institution to be a public higher education institution in terms of this section.

(5) (a) Notwithstanding sections 197 and 197A of the Labour Relations Act, 1995 (Act 66 of 1995), the contracts of employment between the education institution (herein referred to as 'the old employer') and its employees are transferred automatically to the declared higher education institution (herein referred to as 'the new employer') as from the date of the declaration contemplated in subsection (1), but any redeployment of an employee as a consequence of the declaration is subject to applicable labour legislation.

(b) If an education institution is declared a higher education institution as contemplated in subsection (1), all the rights and obligations between the old employer and each employee at the time of the declaration continue in force as if they were rights and obligations between the new employer and each employee and anything done before the declaration by or in relation to the old employer is deemed to have been done by or in relation to the new employer.

(c) A declaration referred to in subsection (1) does not interrupt the employee's continuity of employment.

(d) The provisions of this subsection do not affect the liability of any person to be disciplined for, prosecuted for, convicted of, and sentenced for any offence or misconduct.

(e) An employee or a student is subject to the disciplinary codes and rules applicable to the higher education institution as from the date of the declaration contemplated in subsection (1), but if any enquiry into incapacity or any proceedings in respect of a charge of misconduct had been instituted or commenced against any employee or student before the date of the declaration, such enquiry or proceedings continue in terms of the codes and rules applicable to the education institution immediately prior to the declaration.

[Sub-s. (5) substituted by s. 4 (c) of Act 63 of 2002.]

(6) Notwithstanding subsection (5) (a), the old employer may undertake rationalisation of its workforce according to operational requirements in accordance with section 189 of the Labour Relations Act, 1995 (Act 66 of 1995), prior to the date of the declaration contemplated in subsection (1).

[Sub-s. (6) added by s. 4 (c) of Act 63 of 2002.]

(7) If an education institution is declared a higher education institution as contemplated in subsection (1), the higher education institution-

(a) continues with all academic programmes offered by the education institution under the rules applicable to the education institution immediately before the date of the declaration, until such programmes and rules are amended or restructured by its council; and

(b) awards a degree, diploma or certificate to a student who qualifies before or after the date of the declaration in its own name, but if the student started the course before the date of the declaration, such degree, diploma or certificate must also reflect the name of the education institution as it was before the declaration.

[Sub-s. (7) added by s. 4 (c) of Act 63 of 2002.]

## 22 Consequences of declaration as public higher education institutions

(1) From the date determined in terms of section 21 (2) (a)-

(a) the education institution is deemed to be a public higher education institution established under this Act or a subdivision of such public higher education institution, as the case may be;

(b) the assets, liabilities, rights and obligations of the education institution devolve upon the public higher education institution; and

(c) any agreement lawfully entered into by or on behalf of the education institution is deemed to have been concluded by the public higher education institution.

(2) Immovable property devolving upon the public higher education institution in terms of subsection (1) (b) must, subject to the concurrence of the Minister of Finance, be transferred to such institution without payment of transfer duty, stamp duty or other money or costs, but subject to any existing right, encumbrance, duty or trust on or over that property.

(3) The officer in charge of a deeds office or other office where the immovable property contemplated in subsection (2) is registered must, on submission of the title deed and on application by the public higher education institution, make such endorsements on that title deed and such entries in the registers as may be required to register the transfer concerned.

(4) The declaration of an education institution as a public higher education institution under section 21 (1) does not affect anything lawfully done by the education institution prior to the declaration.

(5) All funds which, immediately prior to the date determined in terms of section 21 (2) (a), were vested in the education institution by virtue of a trust, donation or bequest must be applied by the public higher education institution in accordance with the trust, donation or bequest, as the case may be.

(6) Notwithstanding subsection (2), any fees charged by the Registrar of Deeds resulting from such transfer must be paid in full or in part from funds appropriated by Parliament for that purpose.

### 23 Merger of public higher education institutions

(1) Subject to subsection (2), the Minister may, after consulting the CHE and by notice in the *Gazette*, merge two or more public higher education institutions into a single public higher education institution.

(2) The Minister must-

(a) give written notice of the intention to merge to the public higher education institutions concerned;

(b) publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area in which the public higher education institutions concerned are situated;

[Para. (b) substituted by s. 5 (a) of Act 63 of 2002.]

(c) give the councils of the public higher education institutions concerned and any other interested persons an opportunity to make representations within at least 90 days of the date of the notice referred to in paragraph (b);

(d) consider such representations; and

(e) .....

[Para. (e) deleted by s. 5 (b) of Act 63 of 2002.]

(2A) Notwithstanding sections 197 and 197A of the Labour Relations Act, 1995 (Act 66 of 1995), the contracts of employment between the public higher education institution (herein referred to as 'the old employer') and its employees are transferred automatically to the merged single public higher education institution (herein referred to as 'the new employer') as from the date of the merger contemplated in subsection (1), but any redeployment of an employee as a consequence of the merger is subject to applicable labour legislation.

[Sub-s. (2A) inserted by s. 5 (c) of Act 63 of 2002.]

(2B) If two or more public higher education institutions are merged into a single public higher education institution as contemplated in subsection (1), all the rights and obligations between the old employers and each employee at the time of the merger continue in force as if they were rights and obligations between the new employer and each employee and anything done before the merger by or in relation to the old employers is considered to have been done by or in relation to the new employer.

[Sub-s. (2B) inserted by s. 5 (c) of Act 63 of 2002.]

(2C) A merger referred to in subsection (1) does not interrupt the employee's continuity of employment.

[Sub-s. (2C) inserted by s. 5 (c) of Act 63 of 2002.]

(2D) The provisions of subsections (2A) to (2F) do not affect the liability of any person to be disciplined for, prosecuted for, convicted of and sentenced for any offence or misconduct.

[Sub-s. (2D) inserted by s. 5 (c) of Act 63 of 2002.]

(2E) An employee or a student is subject to the disciplinary codes and rules applicable to the new single public higher education institution as from the date of the merger contemplated in subsection (1), but if any enquiry into incapacity or any



proceedings in respect of a charge of misconduct had been instituted or commenced against any employee or student before the date of the merger, such enquiry or proceedings continue in terms of the codes and rules applicable to the relevant public higher education institution immediately prior to the merger.

[Sub-s. (2E) inserted by s. 5 (c) of [Act 63 of 2002](#).]

(2F) Until the new single public higher education institution has made disciplinary codes or rules, the disciplinary codes and rules of the respective old public higher education institutions are applicable to the respective employees and students.

[Sub-s. (2F) inserted by s. 5 (c) of [Act 63 of 2002](#).]

(2G) Notwithstanding subsection (2A), the old employer may undertake rationalisation of its workforce according to operational requirements in accordance with [section 189](#) of the Labour Relations Act, 1995 ([Act 66 of 1995](#)), prior to the date of the merger contemplated in subsection (1).

[Sub-s. (2G) inserted by s. 5 (c) of [Act 63 of 2002](#).]

(2H) If two or more public higher education institutions are merged into a single public higher education institution as contemplated in subsection (1), the new single public higher education institution-

(i) continues with all academic programmes offered by the old higher education institutions under the rules applicable to the respective higher education institutions immediately before the date of the merger, until such programmes and rules are amended or restructured by the new council; and

(ii) awards a degree, diploma or certificate to a student who qualifies before or after the date of the merger in its own name, but such degree, diploma or certificate must also reflect the name of the education institution at which the student was registered immediately before the date of the merger if the student was so registered.

[Sub-s. (2H) inserted by s. 5 (c) of [Act 63 of 2002](#).]

(3) (a) The single public higher education institution contemplated in subsection (1) is deemed to be a public higher education institution established under section 20.

(b) The Minister must, after consultation with the councils of the public higher education institutions that are to be merged, determine by notice contemplated in section 23 (1)-

(i) the date of establishment of the institution;

(ii) the type and name of the institution; and

(iii) the physical location and official address of the institution.

[Sub-s. (3) substituted by s. 5 (d) of [Act 63 of 2002](#).]

(4) Section 22 (1) (b) to (6), with the changes required by the context, applies to a merger referred to in subsection (1).

(5) The Minister must in the notice contemplated in subsection (1) establish an interim council for a period not exceeding six months, to perform the functions relating to the governance of the single public higher education institution contemplated in subsection (1), except the making of an institutional statute.

[Sub-s. (5) added by s. 6 of [Act 23 of 2001](#).]

(6) The Minister may extend the period referred to in subsection (5) once for a further period not exceeding six months.

[Sub-s. (6) added by s. 6 of [Act 23 of 2001](#).]

(7) The members of the interim council contemplated in subsection (5) are appointed by the Minister and consist of-

(a) the chairperson; and

(b) a minimum of six members and a maximum of eight members.

[Para. (b) substituted by s. 5 (e) of [Act 63 of 2002](#).]

[Sub-s. (7) added by s. 6 of [Act 23 of 2001](#).]

(8) The members contemplated in subsection (7) (b)-

(a) must be appointed by the Minister from nominations received from the public higher education institutions concerned; and

(b) may not include any member of staff, or student, from the public higher education institutions concerned.

[Sub-s. (8) added by s. 6 of [Act 23 of 2001](#) and substituted by s. 5 (f) of [Act 63 of 2002](#).]

(9) The interim council must co-opt three members of the interim management contemplated in subsection (10) (a) and these members have no voting powers.

[Sub-s. (9) added by s. 6 of [Act 23 of 2001](#).]

(10) Apart from the functions contemplated in subsection (5) the interim council must in particular-

- (a) appoint an interim body to manage the day-to-day activities of the institution;
- (b) ensure that a council is constituted in terms of the standard institutional statute contemplated in section 33(3); and
- (c) ensure that such other structures as may be determined in the standard institutional statute contemplated in section 33(3) are constituted.

[Sub-s. (10) added by s. 6 of Act 23 of 2001.]

(11) Any decision of the interim council which may affect the right of any structure of the public higher education institution, may only be taken after consultation with such structure.

[Sub-s. (11) added by s. 6 of Act 23 of 2001.]

(12) Upon a written request by the Minister and within 60 days thereof, each of the public higher education institutions referred to in subsection (1) must provide the Minister with no fewer than four nominations for appointment of the members as contemplated in subsection (8) (a).

[Sub-s. (12) added by s. 5 (g) of Act 63 of 2002.]

(13) Notwithstanding subsection (8), if any of the public higher education institutions fail to provide the nominations in terms of subsection (12), the Minister may appoint the members referred to in subsection (7) (b) from the nominations received from the other institution concerned, or at his or her discretion.

[Sub-s. (13) added by s. 5 (g) of Act 63 of 2002.]

## **24 Incorporation of subdivisions of public higher education institutions**

(1) The Minister may, after consulting the CHE and by notice in the *Gazette*, incorporate a subdivision of a public higher education institution with another public higher education institution.

(2) The assets, liabilities, rights and obligations of the subdivisions concerned devolve upon the public higher education institution with which the subdivision has been incorporated in a manner agreed by the councils of the public higher education institutions concerned or failing such agreement, in a manner determined by the Minister after consulting such councils.

(3) Sections 22 (2) to (6) and 23 (2) to (2H), with the changes required by the context, apply to an incorporation referred to in subsection (1).

[Sub-s. (3) substituted by s. 2 of Act 38 of 2003.]

[S. 24 substituted by s. 6 of Act 63 of 2002.]

## **25 Closure of public higher education institutions**

(1) The Minister may, after consulting the CHE and by notice in the *Gazette*, close a public higher education institution.

(2) If a public higher education institution is closed under subsection (1), all assets and liabilities of such public higher education institution must after closure be dealt with according to law by the Minister and any assets remaining after payment of all liabilities vest in the Minister.

(3) Sections 22 (2) to (6) and 23 (2), with the changes required by the context, apply to a closure referred to in subsection (1).

## **CHAPTER 4**

### **GOVERNANCE OF PUBLIC HIGHER EDUCATION INSTITUTIONS (ss 26-380)**

## **26 Institutional governance structures**

(1) Every public higher education institution may appoint a chancellor as its titular head.

(2) Every public higher education institution must establish the following structures and offices:

- (a) A council;
- (b) a senate;
- (c) a principal;
- (d) a vice-principal;
- (e) a students' representative council;
- (f) an institutional forum; and

(g) such other structures and offices as may be determined by the institutional statute.

(3) Subject to subsection (4), a structure referred to in subsection (2) (a), (b), (e), (f) and (g) must elect a chairperson, vice-chairperson and other office-bearers from among its members in the manner determined by the institutional statute.  
[Sub-s. (3) substituted by s. 3 (a) of Act 55 of 1999 and by s. 7 of Act 23 of 2001.]

(4) Notwithstanding the provisions of subsection (3)-

(a) the principal is the chairperson of the senate;

(b) the registrar of the public higher education institution appointed by the council, is the secretary to the council; and

(c) the chairperson and the vice-chairperson of the council may not be elected from members contemplated in section 27

(4) (a), (b), (d), (e), (f) and (g).

[Sub-s. (4) added by s. 3 (b) of Act 55 of 1999.]

## **27 Council of public higher education institution**

(1) The council of a public higher education institution must govern the public higher education institution, subject to this Act and the institutional statute.

[Sub-s. (1) substituted by s. 8 (a) of Act 23 of 2001.]

(2) Subject to the policy determined by the Minister, the council, with the concurrence of the senate, must determine the language policy of a public higher education institution and must publish and make it available on request.

(3) The council, after consultation with the students' representative council, must provide for a suitable structure to advise on the policy for student support services within the public higher education institution.

(4) The council of a public higher education institution must consist of not more than 30 members, made up of-

(a) the principal;

(b) the vice-principal or vice-principals;

(c) not more than five persons appointed by the Minister;

(d) a member or members of the senate elected by the senate;

(e) an academic employee or academic employees of the public higher education institution, elected by such employees;

(f) a student or students of the public higher education institution, elected by the students' representative council;

(g) an employee or employees other than academic employees, elected by such employees of the public higher education institution; and

(h) such additional persons as may be determined by the institutional statute.

[Sub-s. (4) substituted by s. 7 of Act 63 of 2002.]

(5) The number of persons contemplated in subsection (4) (b), (d), (e), (f), (g) and (h) and the manner in which they are elected, where applicable, must be determined by the institutional statute.

[Sub-s. (5) substituted by s. 7 of Act 63 of 2002.]

(5A) The eligibility criteria for nomination and election as a member of a council of a public higher education institution referred to in subsection (4) must be determined by the institutional statute.

[Sub-s. (5A) inserted by s. 1 of Act 23 of 2012.]

(5B) Any person who has been a member of a council of a public higher education institution under circumstances contemplated in sections 49A (4) (a) and 49E and who is implicated in the report of the independent assessor contemplated in section 47 (1) (b), is not eligible for reappointment as a member of a council of a public higher education institution.

[Sub-s. (5B) inserted by s. 1 of Act 23 of 2012.]

(6) At least 60 per cent of the members of a council must be persons who are not employed by, or students of, the public higher education institution concerned.

(7) A member of a council or a member of a committee of a council-

(a) must be a person with knowledge and experience relevant to the objects and governance of the public higher education institution concerned;

(b) must participate in the deliberations of the council in the best interests of the public higher education institution concerned;

(c) must, before he or she assumes office, declare any business, commercial or financial activities undertaken for financial gain that may raise a conflict or a possible conflict of interest with the public higher education institution concerned;

(d) may not place himself or herself under any financial or other obligation to any individual or organisation that might seek to influence the performance of any function of the council; and

(e) (i) may not have a conflict of interest with the public higher education institution concerned;

(ii) may not have a direct or indirect financial, personal or other interest in any matter to be discussed at a meeting and which entails or may entail a conflict or possible conflict of interest with the public higher education institution concerned;

(iii) must, before the meeting and in writing, inform the chairperson of that meeting of that conflict or possible conflict of interest.

[Sub-s. (7) substituted by s. 1 (a) of Act 21 of 2011.]

(7A) Any person may, in writing, inform the chairperson of a meeting, before the meeting, of a conflict or possible conflict of interest of a member of the council with the public higher education institution concerned of which such person may be aware.

[Sub-s. (7A) inserted by s. 1 (b) of Act 21 of 2011.]

(7B) A member referred to in subsections (7) (e) and (7A) is obliged to recuse himself or herself from the meeting during the discussion of the matter and the voting thereon.

[Sub-s. (7B) inserted by s. 1 (b) of Act 21 of 2011.]

(7C) A committee of the council with delegated functions in terms of section 68 (2) may not take a decision on a matter considered by it if any member of the committee has a conflict of interest contemplated in this section.

[Sub-s. (7C) inserted by s. 1 (b) of Act 21 of 2011.]

(7D) A member of the council or a member of a committee of the council who contravenes subsection (7) (c), (d) or (e), (7A) or (7B), after Council has followed a due process, may be-

(a) suspended from attending a meeting; or

(b) disqualified as a member of the council or a member of a committee of the council.

[Sub-s. (7D) inserted by s. 1 (b) of Act 21 of 2011.]

(7E) The council must-

(a) having regard to the provisions of section 27 (9) and (7A) to (7D) and section 34 and after consultation with the institutional forum, adopt a code of conduct to which all the members of the council, all the members of committees of the council and all other persons who exercise functions of the council in terms of delegated authority must subscribe; and

(b) determine rules and procedures in terms of section 32 for an annual declaration-

(i) by each member of the council, each member of a council committee and each person who exercises functions of the council in terms of delegated authority;

(ii) of his or her financial interests and fiduciary roles, the latter to include but not be limited to offices, directorships of companies, memberships of close corporations and trusteeships held; and

(iii) of the financial interests and fiduciary roles of the members of his or her immediate family.

[Sub-s. (7E) inserted by s. 1 (b) of Act 21 of 2011.]

(8) If 75 per cent or more of the members of the council of a public higher education institution resign at a meeting of council, it is deemed that the council has resigned.

[Sub-s. (8) added by s. 8 (b) of Act 23 of 2001.]

(9) If a council resigns as contemplated in subsection (8) a new council must be constituted in terms of the institutional statute of the public higher education institution.

[Sub-s. (9) added by s. 8 (b) of Act 23 of 2001.]

## **28 Senate of public higher education institution**

(1) The senate of a public higher education institution is accountable to the council for the academic and research functions of the public higher education institution and must perform such other functions as may be delegated or assigned to it by the council.

(2) The senate of a public higher education institution must consist of-

(a) the principal;

(b) the vice-principal or vice-principals;

(c) academic employees of the public higher education institution;

(d) employees of the public higher education institution other than academic employees;

(e) members of the council;

(f) members of the students' representative council; and

(g) such additional persons as may be determined by the institutional statute.

(3) The number of persons contemplated in subsection (2) (b), (c), (d), (e), (f) and (g) and the manner in which they are appointed or elected, as the case may be, must be determined by the institutional statute.

[Sub-s. (3) substituted by s. 9 of Act 23 of 2001.]

(4) The majority of members of a senate must be academic employees of the public higher education institution concerned.

### **29 Committees of council and senate**

(1) The council and the senate of a public higher education institution may each establish committees to perform any of their functions and may appoint persons, who are not members of the council or the senate, as the case may be, as members of such committees.

(2) The council and the senate are not divested of responsibility for the performance of any function delegated or assigned to a committee under this section.

(3) The council and the senate of a public higher education institution may jointly nominate committees, to be known as joint committees, to perform functions that are common to the council and the senate.

(4) The composition, manner of election, functions, procedure at meetings and dissolution of a committee and a joint committee are determined by the institutional statute or institutional rules.

[Sub-s. (4) substituted by s. 10 of Act 23 of 2001.]

### **30 Principal of public higher education institution**

The principal of a public higher education institution is responsible for the management and administration of the public higher education institution.

### **31 Institutional forum**

(1) The institutional forum of a public higher education institution must-

(a) advise the council on issues affecting the institution, including-

(i) the implementation of this Act and the national policy on higher education;

(ii) race and gender equity policies;

(iii) the selection of candidates for senior management positions;

(iv) codes of conduct, mediation and dispute resolution procedures; and

(v) the fostering of an institutional culture which promotes tolerance and respect for fundamental human rights and creates an appropriate environment for teaching, research and learning; and

(b) perform such functions as determined by the council.

(2) The institutional forum of a public higher education institution must consist of a representative or representatives of-

(a) the management, as determined by the institutional statute;

[Para. (a) substituted by s. 11 (a) of Act 23 of 2001.]

(b) the council;

(c) the senate;

(d) the academic employees;

(e) the employees other than academic employees;

(f) the students; and

(g) any other category determined by the institutional statute.

[Sub-s. (2) amended by s. 8 of Act 63 of 2002.]

(3) The number of persons contemplated in subsection (2) and the manner in which they are appointed or elected, as the case may be, are determined by the institutional statute.

[Sub-s. (3) substituted by s. 11 (b) of Act 23 of 2001.]

### **32 Institutional statutes and institutional rules**

(1) The council of a public higher education institution may make-

(a) an institutional statute, subject to section 33, to give effect to any matter not expressly prescribed by this Act; and

[Para. (a) substituted by s. 12 of Act 23 of 2001.]

(b) institutional rules to give effect to the institutional statute.

- (2) An institutional statute or institutional rules in connection with-
- (a) the composition of the senate may not be amended or repealed except after consultation with such senate;
  - (b) the academic functions of the public higher education institution concerned, including the studies, instruction and examinations of students and research, may not be made, amended or repealed except with the concurrence of the senate of such institution;
  - (c) the composition of the students' representative council may not be amended or repealed except after consultation with such students' representative council; and
  - (d) the disciplinary measures and disciplinary procedures relating to students, may not be made except after consultation with the senate and the students' representative council of the public higher education institution concerned.

### **33 Institutional statutes to be approved or made by Minister**

- (1) Any institutional statute must be submitted to the Minister for approval, and if so approved must be published by notice in the *Gazette* and comes into operation on the date mentioned in such notice.
- (2) The Minister must table any institutional statute made under section 32 in Parliament as soon as reasonably practicable after it has been published as contemplated in subsection (1).
- (3) The Minister must make a standard institutional statute, which applies to every public higher education institution that has not made an institutional statute until such time as the council of such public higher education institution makes its own institutional statute under section 32.

### **34 Appointment and conditions of service of employees of public higher education institutions**

- (1) The council of a public higher education institution must appoint the employees of the public higher education institution.
- (2) Notwithstanding subsection (1) the academic employees of the public higher education institution must be appointed by the council after consultation with the senate.
- (3) The council must determine the conditions of service, disciplinary provisions, privileges and functions of the employees of the public higher education institution, subject to the applicable labour law.
- (4) An employee must in writing-
- (a) before he or she assumes office, declare any business that may raise a conflict or possible conflict of interest with the public higher education institution concerned; and
  - (b) notify the public higher education institution concerned of any conflict or possible conflict of interest before such public higher education institution procures any goods or services from the employee or an organisation within which the employee holds an interest.

[Sub-s. (4) added by s. 2 of Act 21 of 2011.]

- (5) An employee may not conduct business directly or indirectly with the public higher education institution at which he or she is employed that entails or may entail a conflict of interest with the public higher education institution unless the council of such public higher education institution is of the opinion that-
- (a) the goods, product or service in question are unique;
  - (b) the supplier is a sole provider; and
  - (c) it is in the best interest of the institution.

[Sub-s. (5) added by s. 2 of Act 21 of 2011.]

- (6) An employee may not on behalf of that public higher education institution contract with himself or herself or any entity in which he or she has a direct or indirect financial or personal interest.

[Sub-s. (6) added by s. 2 of Act 21 of 2011.]

- (7) Contracting referred in subsection (6) relates to conduct that is aimed at receiving any direct or indirect personal gain that does not form part of the employment relationship contemplated in subsection (1).

[Sub-s. (7) added by s. 2 of Act 21 of 2011.]

### **35 Students' representative council**

The establishment and composition, manner of election, term of office, functions and privileges of the students' representative council of a public higher education institution must be determined by the institutional statute and the institutional rules.

[S. 35 substituted by s. 13 of Act 23 of 2001.]

### **36 Disciplinary measures**

Every student at a public higher institution is subject to such disciplinary measures and disciplinary procedures as may be determined by the institutional statute or the institutional rules.

[S. 36 substituted by s. 14 of Act 23 of 2001.]

### **37 Admission to public higher education institutions**

(1) Subject to this Act, the council of a public higher education institution, after consulting the senate of the public higher education institution, determines the admission policy of the public higher education institution.

(2) The council must publish the admission policy and make it available on request.

(3) The admission policy of a public higher education institution must provide appropriate measures for the redress of past inequalities and may not unfairly discriminate in any way.

(4) Subject to this Act, the council may, with the approval of the senate-

- (a) determine entrance requirements in respect of particular higher education programmes;
  - (b) determine the number of students who may be admitted for a particular higher education programme and the manner of their selection;
  - (c) determine the minimum requirements for readmission to study at the public higher education institution concerned;
- and
- (d) refuse readmission to a student who fails to satisfy such minimum requirements for readmission.

### **38 Co-operation between public higher education institutions**

(1) Public higher education institutions may co-operate with each other in any manner to achieve the optimal utilisation of resources and the performance of their functions.

(2) Public higher education institutions may establish regional or national structures to assist and facilitate the co-operation contemplated in subsection (1).

(3) The Minister may provide financial incentives to such structures and to public higher education institutions participating in such structures to achieve the aims of such co-operation.

### **38A Establishment of national institute for higher education**

(1) The Minister may, after consultation with the Council on Higher Education, establish a national institute for higher education as a juristic person with a specific scope or application.

(2) A national institute for higher education is managed, governed and administered by a board.

(3) If the Minister establishes a national institute for higher education in terms of subsection (1), the Minister must prescribe particulars of the establishment of the national institute for higher education, its board and its specific scope or application in the *Government Gazette*.

[S. 38A added by s. 3 of Act 38 of 2003 and substituted by s. 2 of Act 23 of 2012.]

### **38B Functions of national institute for higher education**

(1) The functions of a national institute for higher education relate to its specific scope or application and are to-

- (a) provide services to higher education within its specific scope or application;
- (b) advance learning within its specific scope or application by ensuring collaboration, co-ordination or collaboration and co-ordination of the work of higher education institutions and national institutes for higher education; and

(c) advise the Minister on matters relating to its specific scope or application, or to higher education generally.

(2) Subject to subsection (1), the Minister must prescribe the functions of each national institute for higher education.  
[S. 38B added by s. 3 of Act 38 of 2003 and substituted by s. 3 of Act 23 of 2012.]

### **38C Composition of board**

(1) The board of a national institute for higher education consists of-

- (a) a chairperson; and
- (b) not more than 10 ordinary members.

(1A) The majority of members contemplated in subsection (1) must have specific knowledge and experience-

- (a) in higher education, generally; and
- (b) in the scope and application of the institute established in terms of section 38A (1), specifically.

[Sub-s. (1A) inserted by s. 4 of Act 23 of 2012.]

(2) The board may co-opt persons to the board for a period determined by the board.

(3) The chairperson and members contemplated in subsection (1) are appointed by the Minister from nominations received in the manner prescribed for that national institute for higher education.

[S. 38C added by s. 3 of Act 38 of 2003.]

### **38D Term of office of chairperson and members**

The chairperson and an appointed member of the board hold office for a renewable period of four years.

[S. 38D added by s. 3 of Act 38 of 2003.]

### **38E Vacation of office**

A person ceases to be a member of the board if he or she-

- (a) resigns by giving written notice to the chairperson or, in the case of the chairperson, to the Minister;
- (b) is absent from three consecutive meetings of the board without the leave of the chairperson;
- (c) is declared insolvent, is removed from an office of trust by a court of law or is convicted of an offence involving dishonesty or an offence for which the sentence is imprisonment without the option of a fine; or
- (d) is declared unfit to attend to his or her personal affairs by a court of law.

[S. 38E added by s. 3 of Act 38 of 2003.]

### **38F Filling of vacancies**

(1) In the event of a vacancy occurring in the office, such vacancy is filled by the Minister in terms of section 38C (3).

(2) Any person appointed to fill a vacancy holds office for the unexpired portion of the vacating member's term.

[S. 38F added by s. 3 of Act 38 of 2003.]

### **38G Funds of national institute for higher education**

(1) The funds of a national institute for higher education consist of-

- (a) money appropriated by Parliament;
- (b) donations or contributions;
- (c) interest; and
- (d) any other income received.

(2) The board-

- (a) must keep a record of all-
  - (i) funds received and spent;
  - (ii) assets and liabilities; and
  - (iii) financial transactions;
- (b) must, in each financial year, submit to the Minister, at the time and in the manner which the Minister may determine, a statement of estimated income and expenditure for the ensuing financial year for the Minister's approval, granted with the concurrence of the Minister of Finance;
- (c) may in any financial year submit an adjusted statement of its estimated income and expenditure to the Minister for approval, granted with the concurrence of the Minister of Finance; and
- (d) may not incur any expenses which exceed the total amount approved in terms of paragraphs (b) and (c).



(3) If the Minister does not approve of the board's statement of estimated income and expenditure or adjusted statement of estimated income and expenditure, it must submit a revised statement to him or her within a specified period.

(4) (a) The money contemplated in subsection (1) must be used in accordance with the approved statement referred to in subsection (2).

(b) Any balance not spent within the specified financial year must be carried over as a credit to the following financial year.

(5) Subject to subsection (4), the board may invest any portion of its funds in such manner as the Minister, with the concurrence of the Minister of Finance, may approve.

[S. 38G added by s. 3 of Act 38 of 2003.]

### **38H Annual audit**

The Auditor-General must audit the books of account and financial statements of a national institute for higher education and submit an audit report to the Minister within three months of receipt of the financial statements.

[S. 38H added by s. 3 of Act 38 of 2003 and substituted by s. 5 of Act 23 of 2012.]

### **38I Annual report**

(1) The board must, within three months after the end of each financial year, submit a report to the Minister which includes a financial statement on the performance of its functions during the preceding financial year.

(2) The annual report contemplated in subsection (1) must-

(a) fairly present the financial state of affairs of the national institute for higher education;

(b) fairly present its business;

(c) fairly present its financial results and financial position at year end;

(d) fairly present its performance against predetermined objectives;

(e) contain the audit committee's report; and

(f) contain any other prescribed information.

[S. 38I added by s. 3 of Act 38 of 2003 and substituted by s. 6 of Act 23 of 2012.]

### **38J Intervention by Minister**

(1) The Minister may issue a directive to the board of a national institute for higher education to take such action specified by the Minister if the national institute for higher education-

(a) is involved in financial impropriety or is being otherwise mismanaged;

(b) is unable to perform its functions effectively;

(c) has acted unfairly or in a discriminatory or an inequitable way towards a person to whom it owes a duty under this Act;

(d) has failed to comply with any law;

(e) has failed to comply with any directive given by the Minister under this Act; or

(f) has obstructed the Minister or a person authorised by the Minister in performing a function in terms of this Act.

(2) A directive contemplated in subsection (1) must state-

(a) the nature of the deficiency;

(b) the steps which must be taken to remedy the situation; and

(c) a reasonable period within which the steps contemplated in paragraph (b) must be taken.

(3) Before making a decision under subsection (1) the Minister must, subject to the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)-

(a) give notice to the board of the intention to issue a directive;

(b) give the board a reasonable opportunity to make representations; and

(c) consider the representations contemplated in paragraph (b).

(4) (a) If the board fails to comply with the directive within the stated period, the Minister must dissolve the board and appoint an administrator to take over the functions of the board.

(b) For the purposes of paragraph (a), sections 38K, 38L and 38M apply with the changes required by the context.

(5) If the Minister appoints an administrator in terms of subsection (4), the administrator may perform all the functions of the board, and an employee of the national institute for higher education in question must comply with a directive given by the administrator.

(6) The costs associated with the appointment of an administrator shall be for the account of the national institute for higher education in question.

[S. 38J added by s. 7 of Act 23 of 2012.]

### **38K Appointment of administrator**

(1) Notwithstanding any other provision of this Act, the Minister may, after consultation with the board of a national institute for higher education, if practicable, appoint a person as administrator to take over the management, governance and administration of the national institute for higher education and to perform the functions of the national institute for higher education, if any of the following circumstances occur:

(a) An audit of the financial records of the national institute for higher education or a report by a Ministerial Committee reveals financial or other maladministration of a serious nature or the serious undermining of the effective functioning of the national institute for higher education;

(b) any other circumstances arising that reveal financial or other maladministration of a serious nature or the serious undermining of the effective functioning of the national institute for higher education; or

(c) the board of the national institute for higher education requests such appointment.

(2) The Minister may only act in terms of subsection (1) (a) or (b) if the appointment of an administrator is in the interest of the national institute for higher education in question and of higher education and training in an open and democratic society.

(3) (a) The Minister appoints an administrator for such period as may be determined by the Minister, but such period may not exceed two years.

(b) The Minister may extend the period contemplated in paragraph (a) once for a period not exceeding six months.

[S. 38K added by s. 7 of Act 23 of 2012.]

### **38L Assistance to administrator**

An administrator appointed under section 38K may, with the approval of the Minister, appoint any other person with suitable knowledge and experience to assist him or her in the performance of his or her functions.

[S. 38L added by s. 7 of Act 23 of 2012.]

### **38M Remuneration and allowances**

The Minister, in consultation with the Minister of Finance, may determine the remuneration and allowances to be paid to the administrator and to any other person appointed in terms of section 38L.

[S. 38M added by s. 7 of Act 23 of 2012.]

### **38N Dissolution of board**

The board is dissolved from the date on which the Minister appoints the administrator in terms of section 38K.

[S. 38N added by s. 7 of Act 23 of 2012.]

### **38O Disestablishment of national institute for higher education**

(1) The Minister may, after consultation with the Council on Higher Education and by notice in the Gazette, disestablish any national institute for higher education.

(2) Before making a decision under subsection (1) the Minister must, subject to the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)-

(a) give notice to the board of the intention to disestablish a national institute for higher education contemplated in subsection (1);

(b) give the board a reasonable opportunity to make representations; and

(c) consider such representations.

[S. 38O added by s. 7 of Act 23 of 2012.]

CHAPTER 5  
FUNDING OF PUBLIC HIGHER EDUCATION (ss 39-42)

**39 Allocation of funds by Minister**

(1) The Minister must, after consulting the CHE and with the concurrence of the Minister of Finance, determine the policy on the funding of public higher education, which must include appropriate measures for the redress of past inequalities, and publish such policy by notice in the *Gazette*.

(2) The Minister must, subject to the policy determined in terms of subsection (1), allocate public funds to public higher education on a fair and transparent basis.

(3) The Minister may, subject to the policy determined in terms of subsection (1), impose-

- (a) any reasonable condition in respect of an allocation contemplated in subsection (2); and
- (b) different conditions in respect of different public higher education institutions, different instructional programmes or different allocations, if there is a reasonable basis for such differentiation.

(4) The policy referred to in subsection (1) may discriminate in a fair manner between students who are not citizens or permanent residents of the Republic and students who are citizens or permanent residents of the Republic.

[Sub-s. (4) added by s. 4 of Act 55 of 1999.]

**40 Funds of public higher education institutions**

(1) The funds of a public higher education institution consist of-

- (a) funds allocated by the Minister in terms of section 39;
- (b) any donations or contributions received by the institution;
- (c) money raised by the institution;
- (d) money raised by means of loans and overdrafts;

[Para. (d) substituted by s. 4 (a) of Act 54 of 2000.]

- (e) income derived from investments;
- (f) money received for services rendered to any other institution or person;
- (g) money payable by students for higher education programmes provided by the institution, but the council may discriminate in a fair manner between students who are not citizens or permanent residents of the Republic and students who are citizens or permanent residents of the Republic when the amount payable is determined;

[Para. (g) substituted by s. 5 of Act 55 of 1999.]

(h) money received from students or employees of the institution for accommodation or other services provided by the institution; and

- (i) other receipts from whatever source.

(2) (a) Subject to paragraph (b), a public higher education institution may only with a resolution of its council, not taking into account any vacancy that may exist, enter into a loan or an overdraft agreement.

(b) A resolution contemplated in paragraph (a) must be approved by the Minister if the sum of the borrowing it authorises plus the borrowing previously approved but not yet taken up, plus the institution's short-term and long-term debt at that date exceeds-

- (i) such amount as the Minister has determined for such institution; or
- (ii) in the absence of such determination, five per cent of the average annual income of the public higher education institution during the two years immediately preceding the date of such resolution.

[Para. (b) substituted by s. 9 of Act 63 of 2002.]

[Sub-s. (2) added by s. 4 (b) of Act 54 of 2000.]

(3) (a) Subject to paragraph (b), a public higher education institution may only with a resolution of its council, not taking into account any vacancy that may exist, embark on any-

- (i) construction of a permanent building or other immovable infrastructural development;
- (ii) purchasing of immovable property; or
- (iii) long-term lease of immovable property.

(b) Any action contemplated in paragraph (a) must be approved by the Minister if the value of such development or property exceeds five per cent of the average income of that public higher education institution received during the two years immediately preceding such action.

[Sub-s. (3) added by s. 4 (b) of Act 54 of 2000.]

#### **41 Records to be kept and information to be furnished by council**

- (1) The council of a public higher education institution must in the manner prescribed by the Minister-
- (a) keep records of all its proceedings; and
  - (b) keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions of the public higher education institution as a whole, of its substructures and of other bodies operating under its auspices.
- (2) The council of a public higher education institution must, in respect of the preceding year and by a date or dates and in the manner prescribed by the Minister, provide the Minister with such information, in such format, as the Minister prescribes. [S. 41 amended by s. 5 of Act 54 of 2000 and substituted by s. 10 of Act 63 of 2002.]

#### **41A Appointment of administrator**

- (1) .....
- [Sub-s. (1) substituted by s. 15 of Act 23 of 2001 and deleted by s. 8 of Act 23 of 2012.]

- (2) .....
- [Sub-s. (2) deleted by s. 8 of Act 23 of 2012.]

- (3) Notwithstanding subsection (1), if a council is deemed to have resigned as contemplated in section 27 (8), the Minister must appoint a person for a period of not longer than six months as an administrator on behalf of the institution to-
- (a) take over the authority of the council;
  - (b) perform the council's functions relating to governance; and
  - (c) ensure that a new council is constituted.
- [Sub-s. (3) added by s. 11 of Act 63 of 2002.]  
[S. 41A inserted by s. 6 of Act 55 of 1999.]

#### **42 Action on failure of council to comply with this Act or certain conditions**

- (1) If the council of a public higher education institution fails to comply with any provision of this Act under which an allocation from money appropriated by Parliament is paid to the institution, or with any condition subject to which any such allocation is paid to such institution, the Minister may call upon such council to comply with the provision or condition within a specified period.
- (2) If such council thereafter fails to comply with the provision or condition, the Minister may withhold payment of any commensurate portion of any allocation appropriated by Parliament in respect of the public higher education institution concerned.
- (3) Before taking action under subsection (2), the Minister must-
- (a) give notice to the council of the public higher education institution concerned of the intention so to act;
  - (b) give such council a reasonable opportunity to make representations; and
  - (c) consider such representations.
- (4) If the Minister acts under subsection (2), a report regarding such action must be tabled in Parliament by the Minister as soon as reasonably practicable after such action.

### **CHAPTER 6 INDEPENDENT ASSESSOR (ss 43-49E)**

#### **43 Appointment of independent assessment panel**

- (1) The CHE must appoint an independent assessment panel consisting of at least three suitable persons who-
- (a) have knowledge and experience of higher education;
  - (b) are not members of the CHE; and
  - (c) comply with any other requirements determined by the CHE.
- (2) A member of the panel contemplated in subsection (1) is appointed for a period of not more than two years, and may be reappointed.

#### **44 Appointment of independent assessor**

(1) The Minister may, from the independent assessment panel contemplated in section 43, appoint an assessor who is independent in relation to the public higher education institution concerned, to conduct an investigation at the public higher education institution-

- (a) in the cases referred to in section 45; and
- (b) after consulting the council of the public higher education institution concerned, if practicable.

(2) The council of the public higher education institution and any person affected by the investigation must assist and co-operate with the independent assessor in the performance of his or her functions in terms of section 47.

#### **45 Cases where independent assessor may be appointed**

An independent assessor may be appointed under section 44 if-

- (a) the council of a public higher education institution requests the appointment; or
- (b) circumstances arise at a public higher education institution that-
  - (i) involve financial or other maladministration of a serious nature; or
  - (ii) seriously undermine the effective functioning of the public higher education institution; or
- (c) the council of the public higher education institution has failed to resolve such circumstances; and
- (d) the appointment is in the interests of higher education in an open and democratic society.

#### **45A Investigation by independent assessor**

(1) (a) The independent assessor has the power on receipt of a complaint or an allegation or on the ground of information that has come to his or her knowledge and which points to conduct such as referred to in section 45, to conduct an investigation for the purpose of determining the merits of the complaint, allegation or information and the manner in which the matter concerned should be dealt with.

(b) The format and the procedure to be followed in conducting any investigation shall be determined by the independent assessor with due regard to the circumstances of the case.

(c) The independent assessor may direct that any category of persons or all persons whose presence is not desirable shall not be present at any proceedings pertaining to any investigation or part thereof.

(2) Notwithstanding anything to the contrary contained in any law, no person may disclose to any other person the contents of any document in the possession of the independent assessor or the record of any evidence given to the independent assessor during an investigation, unless the independent assessor determines otherwise.

(3) The independent assessor may, at any time prior to or during an investigation, request any person contemplated in section 48 to assist him or her in the performance of his or her functions with regard to a particular investigation or investigations in general.

(4) (a) For the purposes of conducting an investigation the independent assessor may direct any person to submit an affidavit or affirmed declaration or to appear before him or her to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person.

(b) The independent assessor or any person contemplated in section 48 and duly authorised thereto by the independent assessor may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on a matter being or to be investigated.

(5) A direction referred to in subsection (4) must contain particulars of the matter in connection with which the person is required to appear before the independent assessor and shall be signed by the independent assessor and served on the person either by a registered letter sent through the post or delivered by a person contemplated in section 48.

(6) The independent assessor may require any person appearing as a witness before him or her under subsection (4) to give evidence under oath or after having made an affirmation.

(7) The independent assessor or any person contemplated in section 48 may administer an oath to or accept an affirmation from any such person.

(8) (a) If it appears to the independent assessor during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse recommendation pertaining to that person may result, the independent assessor must afford such person or the council an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances.

(b) If such implication forms part of the evidence submitted to the independent assessor during an appearance in terms of the provisions of subsection (4), such person must be afforded an opportunity to be heard in connection therewith by way of giving evidence.

(9) The independent assessor may allow a legal representative to assist a person contemplated in subsection (8), in accordance with section 3 (5) of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).  
[S. 45A inserted by s. 9 of Act 23 of 2012.]

#### **45B Entering upon premises by independent assessor**

The independent assessor shall be competent to enter, or to authorise another person contemplated in section 48 to enter, any building or premises of the public higher education institution under investigation in terms of section 45 and to make such investigation or assessment as he or she may deem necessary, and to copy any documents on those premises which in his or her opinion ha[ve] a bearing on the investigation.

[S. 45B inserted by s. 9 of Act 23 of 2012.]

#### **46 Independent assessor may be appointed for two or more public higher education institutions**

The Minister may appoint an independent assessor under section 44 to conduct an investigation at two or more public higher education institutions.

#### **47 Functions of independent assessor**

(1) An independent assessor appointed under section 44 must, within a period determined by the Minister, but not exceeding 90 days and on the terms of reference specified by the Minister-

- (a) conduct an investigation at the public higher education institution concerned;
- (b) report in writing to the Minister of the findings of his or her investigation together with the reasons upon which the findings are based; and

[Para. (b) substituted by s. 10 of Act 23 of 2012.]

- (c) suggest appropriate measures and the reasons why the measures are needed.

[Para. (c) substituted by s. 10 of Act 23 of 2012.]

[Sub-s. (1) amended by s. 3 of Act 21 of 2011.]

(2) The Minister must as soon as practicable provide a copy of the report referred to in subsection (1) to the council concerned and publish such report in the *Gazette*.

#### **48 Assistance to independent assessor**

An independent assessor appointed under section 44 may, with the concurrence of the Minister, appoint any other person with suitable knowledge and experience to assist him or her in the performance of his or her functions.

#### **49 Remuneration and allowances**

The Minister, with the concurrence of the Minister of Finance, may determine the remuneration and allowances to be paid to an independent assessor and any other person appointed under section 48.

#### **49A Intervention by Minister**

(1) The Minister may issue a directive to the council of a public higher education institution to take such action specified by the Minister if the public higher education institution-

- (a) is involved in financial impropriety or is being otherwise mismanaged;
- (b) is unable to perform its functions effectively;
- (c) has acted unfairly or in a discriminatory or inequitable way towards a person to whom it owes a duty under this Act;
- (d) has failed to comply with any law;
- (e) has failed to comply with any directive given by the Minister in terms of section 42; or
- (f) has obstructed the Minister or a person authorised by the Minister in performing a function in terms of this Act.

(2) A directive contemplated in subsection (1) must state-

- (a) the nature of the deficiency;
- (b) the steps which must be taken to remedy the situation; and

(c) a reasonable period within which the steps contemplated in paragraph (b) must be taken.

(3) Before making a decision under subsection (1), the Minister must subject to the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)-

- (a) give notice to the council of the intention to issue a directive;
- (b) give the board a reasonable opportunity to make representations; and
- (c) consider the representations contemplated in paragraph (b).

(4) (a) If the council fails to comply with the directive within the stated period, the Minister must dissolve the council and appoint an administrator to take over the functions of the council.

(b) For the purposes of paragraph (a), sections 49B, 49C and 49D apply with the changes required by the context.

(5) If the Minister appoints an administrator in terms of subsection (4), the administrator must perform all the functions of the council and an employee of the public higher education institution in question must comply with a directive given by the administrator.

(6) The costs associated with the appointment of an administrator shall be for the account of the public higher education institution in question.

[S. 49A added by s. 11 of Act 23 of 2012.]

#### **49B Appointment of administrator**

(1) Notwithstanding any other provision of this Act, the Minister may, after consultation with the council of a public higher education institution, if practicable, appoint a person as administrator to take over the management, governance and administration of the public higher education institution and to perform the functions of the public higher education institution, if any of the following circumstances occur:

(a) An audit of the financial records of a public higher education institution or a report by an independent assessor reveals financial or other maladministration of a serious nature or serious undermining of the effective functioning of the public higher education institution;

(b) any other circumstances arising that reveal financial or other maladministration of a serious nature or the serious undermining of the effective functioning of the public higher education institution; or

(c) the council of the public higher education institution requests such appointment.

(2) The Minister may only act in terms of subsection (1) (a) or (b) if the appointment of an administrator is in the interest of the public higher education institution in question and of higher education in an open and democratic society.

(3) (a) The Minister appoints an administrator for such period as may be determined by the Minister but such period may not exceed two years.

(b) The Minister may extend the period contemplated in paragraph (a) once for a period not exceeding six months.

[S. 49B added by s. 11 of Act 23 of 2012.]

[a101y1997s49C]49C Assistance to administrator

An administrator appointed under section 49B may, with the approval of the Minister, appoint any other person with suitable knowledge and experience to assist him or her in the performance of his or her functions.

[S. 49C added by s. 11 of Act 23 of 2012.]

#### **49D Remuneration and allowances**

The Minister, in consultation with the Minister of Finance, may determine the remuneration and allowances to be paid to the administrator and to any other person appointed under section 49C.

[S. 49D added by s. 11 of Act 23 of 2012.]

#### **49E Dissolution of council**

The council is dissolved from the date the Minister appoints the administrator in terms of section 49B.

[S. 49E added by s. 11 of Act 23 of 2012.]

**CHAPTER 7**  
**PRIVATE HIGHER EDUCATION INSTITUTIONS (ss 50-64)**

**50 Designation of registrar**

(1) The Director-General is the registrar of private higher education institutions.

[Sub-s. (1) substituted by s. 7 of Act 55 of 1999.]

(2) The Minister may designate any other employee of the Department of Education to assist the registrar in the performance of his or her functions in terms of this Act.

[Sub-s. (2) substituted by s. 7 of Act 55 of 1999.]

(3) The registrar may delegate any of his or her functions in terms of this Act to an employee contemplated in subsection (2).

**51 Registration of private higher education institutions**

(1) No person other than a public higher education institution or an organ of state may provide higher education unless that person is-

(a) in the prescribed manner, registered or conditionally registered as a private higher education institution in terms of this Act; and

(b) registered or recognised as a juristic person in terms of the Companies Act, 1973 (Act 61 of 1973), before such person is registered or conditionally registered in accordance with paragraph (a).

(2) If the person contemplated in subsection (1) is a foreign juristic person, that person must ensure that any qualification or part-qualification offered within the Republic is registered on the sub-framework for higher education on the National Qualifications Framework contemplated in section 7 (b) read with section 13 (1) (h) of the National Qualifications Framework Act.

[S. 51 substituted by s. 6 of Act 54 of 2000 and by s. 2 of Act 26 of 2010.]

**52 Application for registration**

An application for registration as a private higher education institution must be made to the registrar in the manner determined by the registrar and must be accompanied by the prescribed fee.

**53 Requirements for registration**

(1) The registrar may register an applicant as a private higher education institution if the registrar has reason to believe that the applicant-

(a) is financially capable of satisfying its obligations to prospective students;

(b) with regard to all of its higher education programmes-

(i) will maintain acceptable standards that are not inferior to standards at a comparable public higher education institution;

(ii) will comply with the requirements of the Higher Education Quality Committee; and

[Sub-para. (ii) substituted by s. 5 of Act 39 of 2008.]

(iii) .....

[Sub-para. (iii) substituted by s. 8 of Act 55 of 1999 and deleted by s. 7 (b) of Act 54 of 2000.]

(c) complies with any other reasonable requirement prescribed by the Minister.

[Para. (c) added by s. 7 (c) of Act 54 of 2000 and substituted by s. 16 of Act 23 of 2001.]

[Sub-s. (1) amended by s. 7 (a) of Act 54 of 2000.]

(2) The registrar may require further information, particulars and documents in support of any application for registration.

**54 Determination of application for registration**

(1) The registrar-

(a) must consider any application for registration as a private higher education institution and any further information, particulars or documents provided by the applicant;

(b) may, when considering the application, differentiate between a foreign juristic person and local juristic person with regard to matters such as its scope and range of operations, its size and its institutional configuration; and



(c) may register the applicant as a private higher education institution if the requirements for registration contemplated in section 53 are fulfilled.

[Sub-s. (1) substituted by s. 8 (a) of Act 54 of 2000.]

(2) If the registrar decides-

(a) to grant the application, the registrar must-

(i) enter the applicant's name in the appropriate register of private higher education institutions;

(ii) issue a certificate of registration, stating the terms of such registration;

(iii) provide the certificate to the applicant; and

(iv) as soon as practicable after the decision, publish the certificate of registration in the *Gazette*; or

(b) not to grant the application, the registrar must advise the applicant in writing of the decision and provide the applicant with written reasons for his or her decision.

(3) Notwithstanding subsection (1), the registrar may provisionally register an applicant, other than a foreign juristic person, who does not fulfil the requirements for registration contemplated in section 53 if the registrar believes that the applicant will be able to fulfill the relevant requirements within a reasonable period.

[Sub-s. (3) substituted by s. 8 (b) of Act 54 of 2000 and by s. 17 (a) of Act 23 of 2001.]

(4) If the registrar provisionally registers an applicant under subsection (3), the registrar must-

(a) determine the period within which the applicant must satisfy the requirements for registration;

(b) enter the applicant's name in the appropriate register of private higher education institutions;

(c) issue a certificate of provisional registration, stating the terms and the duration of such registration;

(d) provide the certificate of provisional registration to the applicant; and

(e) as soon as practicable after the decision, publish the certificate of provisional registration in the *Gazette*.

[Sub-s. (4) substituted by s. 17 (a) of Act 23 of 2001.]

(5) The registrar may on good cause shown extend the period referred to in subsection (4) (a).

(6) If, on the expiry of the period referred to in subsection (4) (a) or any extension thereof, the applicant-

(a) satisfies the requirements for registration specified by the registrar, the registrar must register the applicant in accordance with subsection (2) (a); or

(b) fails to satisfy the requirements for registration specified by the registrar, the applicant's provisional registration lapses.

[Para. (b) substituted by s. 17 (b) of Act 23 of 2001.]

(7) No independent school as defined in the South African Schools Act, 1996 (Act 84 of 1996), or other private education institution may call itself a university or a technikon or confer a professorship or an honorary degree or use the title of rector, vice-chancellor or chancellor, unless it is registered as a private higher education institution in terms of Chapter 7 and the word 'university' or 'technikon' appears in its name.

[Sub-s. (7) added by s. 8 (c) of Act 54 of 2000.]

## 55 Certificate of registration

(1) A private higher education institution must conspicuously display-

(a) its certificate of registration or provisional registration or a certified copy thereof on its premises; and

(b) its registration number and an indication that it is registered or provisionally registered on all its official documents.

(2) If the registrar has cancelled the registration or provisional registration of a private higher education institution under section 62, the private higher education institution must return the original certificate of registration or provisional registration to the registrar within 14 days.

[S. 55 substituted by s. 18 of Act 23 of 2001.]

## 56 Access to information

(1) Any person may inspect-

(a) the register of private higher education institutions; and

(b) the auditor's report provided in terms of section 57.

(2) The registrar must provide a certified copy of, or extract from, any of the documents referred to in subsection (1) to any person who has paid the prescribed fee.

## 57 Records and audits

(1) Every private higher education institution must, in accordance with generally accepted accounting practice, principles and procedures-

- (a) keep books and records of income, expenditure, assets and liabilities;
- (b) prepare financial statements within three months of the end of the year, including at least-
  - (i) a statement of income and expenditure for the previous year;
  - (ii) a balance sheet as at the end of the previous year; and
  - (iii) any other information the registrar may reasonably require.

(2) Every private higher education institution must, within the period determined by the registrar-

- (a) ensure an annual audit of its books, records of account and financial statements by an auditor, who must conduct the audit in accordance with generally accepted auditing standards;
- (b) provide to the registrar a certified copy of the auditor's report in respect of the financial statements referred to in subsection (1); and
- (c) provide to the registrar any additional information, particulars or documents in the manner determined by the registrar.

## 58 Amendment of registration

A private higher education institution may apply to the registrar to amend its registration or provisional registration-

- (a) in the manner determined by the registrar; and
- (b) by paying the prescribed fee.

[S. 58 amended by s. 19 of Act 23 of 2001.]

## 59 Requirements for amendment of registration and determination of application

(1) The registrar may not amend the registration of a private higher education institution unless the registrar is satisfied that such amendment is in the interests of higher education and complies with the provisions of this Act.

(2) The registrar may require further information, particulars or documents in support of any application for such amendment.

(3) If the registrar decides-

- (a) to grant the application, the registrar must-
  - (i) amend the certificate of registration or provisional registration accordingly;

[Sub-para. (i) substituted by s. 20 of Act 23 of 2001.]

- (ii) provide a copy of the amended certificate to the applicant; and
  - (iii) as soon as reasonably practicable after the decision, publish the amended certificate in the *Gazette*; or
- (b) not to grant the application, the registrar must advise the applicant in writing of the decision and provide the applicant with written reasons for the decision.

## 60 Conditions for registration

(1) The registrar may impose any reasonable condition, which may include a condition that none of the words or any derivatives of the words 'university' or 'technikon' may appear in its name, on a private higher education institution in respect of-

- (a) its registration;
- (b) its provisional registration; or
- (c) any amendment of its registration or provisional registration.

[Sub-s. (1) substituted by s. 21 of Act 23 of 2001.]

(2) The registrar may impose different conditions under subsection (1) in respect of different institutions, if there is a reasonable basis for such differentiation.

## 61 Amendment or cancellation of conditions

Subject to section 63, the registrar may, on reasonable grounds, amend or cancel any condition imposed under section 60 or impose new conditions under that section.

## 62 Cancellation of registration

(1) Subject to section 63, the registrar may, on reasonable grounds, cancel any registration or provisional registration in terms of this Act.

[Sub-s. (1) substituted by s. 22 of Act 23 of 2001.]

(2) If the accreditation of any programme offered by a private higher education institution is withdrawn, the registrar must review such institution's registration.

## 63 Steps before amendment or cancellation

The registrar may not act under section 61 or 62 unless the registrar-

- (a) has informed the private higher education institution of the intention so to act and the reasons therefor;
- (b) has granted the private higher education institution and other interested persons an opportunity to make representations in relation to such action; and
- (c) has considered such representations.

## 64 Appeal to Minister

(1) Any interested person may appeal to the Minister against any decision of the registrar in terms of this Chapter.

(2) An appeal referred to in subsection (1) must be lodged with the Minister within 60 days of the date of the registrar's decision.

(3) The Minister, on good cause shown, may extend the period within which an appeal may be noted against the decision of the registrar.

(4) .....

[Sub-s. (4) deleted by s. 23 of Act 23 of 2001.]

## CHAPTER 8 GENERAL (ss 65-70)

### 65 Name change of public higher education institution

(1) Notwithstanding anything to the contrary contained in any other law, a council of a public higher education institution may, with the approval of the Minister and by notice in the *Gazette*, change the name of such higher education institution.

(2) Any change of name contemplated in subsection (1) does not affect any right, duty, liability or obligation of the public higher education institution in question.

[S. 65 substituted by s. 9 of Act 54 of 2000.]

### 65A Seat of public higher education institution

(1) The seat of a public higher education institution is the physical location of the institution, as contemplated in sections 20 (3) (c), 21 (2) (c) and 23 (3) (c), where an institution carries out its teaching activities and must be defined in the institutional statute.

[Sub-s. (1) substituted by s. 12 of Act 63 of 2002.]

(2) Subject to the approval of the Minister, a public higher education institution may conduct its teaching activities beyond the seat contemplated in subsection (1).

(3) If the teaching activities contemplated in subsection (2) fall within the seat of another public higher education institution or at a place where the teaching and research activities of another public higher education institution are conducted, the Minister's approval is subject to consultation with such other public higher education institution.

[S. 65A inserted by s. 24 of Act 23 of 2001.]

### 65B Degrees, diplomas and certificates

(1) A public higher education institution may, subject to its institutional statute and this Act, award diplomas and certificates and confer degrees.

(2) Save as is provided in section 65C, no diploma or certificate may be awarded and no degree may be conferred by a public higher education institution upon any person who has not-

(a) been registered as a student of such public higher education institution for the period prescribed by the senate of such institution; and

(b) completed the work and attained the standard of proficiency determined through assessment as required by the senate of the public higher education institution, subject to section 7.

[S. 65B inserted by s. 24 of Act 23 of 2001.]

### **65C Honorary degrees**

(1) Subject to its institutional statute, a public higher education institution may, without examination, confer honorary degrees of master or doctor in any faculty upon any person whom the public higher education institution may deem worthy of such a degree.

(2) The award of a degree contemplated in subsection (1) does not entitle the holder to practice any profession.

[S. 65C inserted by s. 24 of Act 23 of 2001.]

### **65D Qualifications registered on National Qualifications Framework**

(1) No person may offer, award or confer a degree, or a higher education diploma or a higher education certificate, provided for on the HEQF unless such degree, diploma or certificate is registered on the sub-framework for higher education on the National Qualifications Framework contemplated in section 7 (b) read with section 13 (1) (h) of the National Qualifications Framework Act.

(2) Notwithstanding subsection (1), a public higher education institution intending to offer any education programme or trade and occupational learning programme that leads to a qualification or part-qualification on the sub-framework for trade and occupation contemplated in section 7 (c) of the National Qualifications Framework Act may offer the qualification or part-qualification subject to-

(a) the approval of the Minister; and

(b) compliance with any condition set by the Minister.

[S. 65D inserted by s. 3 of Act 26 of 2010.]

### **66 Offences**

(1) Any person other than a higher education institution, who, without the authority of a higher education institution-

(a) offers or pretends to offer any higher education programme or part thereof;

(b) purports to confer a qualification granted by a higher education institution, or in collaboration with a higher education institution; or

(c) purports to perform an act on behalf of a higher education institution,

is guilty of an offence and is liable on conviction to a sentence which may be imposed for fraud.

(2) Any person who pretends that a qualification has been awarded to him or her by a higher education institution, whereas in fact no such qualification has been so awarded, is guilty of an offence and is liable on conviction to a sentence which may be imposed for fraud.

(3) Any person who contravenes section 51 (1) (a), 54 (7) or 55 (2) is guilty of an offence and is liable on conviction to a fine or to imprisonment not exceeding five years or to both such fine and imprisonment.

[Sub-s. (3) substituted by s. 10 of Act 54 of 2000.]

(4) Any private higher education institution which does not comply with section 55 (1) is guilty of an offence and is liable on conviction to a fine not exceeding R20 000.

### **67 Limitation of liability**

The State, the CHE and any person appointed in terms of this Act are not liable for any loss or damage suffered by any person as a result of any act performed or omitted in good faith in the course of performing any function contemplated in this Act.

## 68 Delegation of powers

(1) The Minister may, on such conditions as he or she may determine, delegate any of his or her powers under this Act, except the power to make regulations, and assign any of his or her duties in terms of this Act, to-

- (a) the council of a public higher education institution;
- (b) the CHE;
- (c) any employee of the Department of Education;
- (d) any organ of state.

(2) The council of a public higher education institution may, on such conditions as it may determine, delegate any of its powers under this Act or delegated to it in terms of subsection (1), except the power to-

- (a) make an institutional statute;
- (b) enter into an agreement contemplated in section 40 (2); or
- (c) perform an action contemplated in section 40 (3),

and assign any of its duties in terms of this Act or assigned to it in terms of subsection (1), to the other internal structures, the principal or any other employee of the public higher education institution concerned.

[Sub-s. (2) substituted by s. 11 of Act 54 of 2000.]

(3) The principal of a public higher education institution may, on such conditions as he or she may determine, delegate any of his or her powers under this Act and assign any of his or her duties in terms of this Act to any other employee of the public higher education institution concerned.

[Sub-s. (3) added by s. 9 of Act 55 of 1999.]

(4) The CHE may, on such conditions as it may determine, delegate any of its powers under this Act and assign any of its duties in terms of this Act to any of its committees or employees.

[Sub-s. (4) added by s. 9 of Act 55 of 1999.]

## 69 Regulations

The Minister may make regulations consistent with this Act on-

- (a) any matter which the Minister is empowered or required to prescribe by regulation in terms of this Act;
- (b) the maximum remuneration of council members;
- (c) the annual reporting framework;
- (d) any policy matter as contemplated in section 3;
- (dA) the composition, procedures and duration of any committee of the CHE;

[Para. (dA) inserted by s. 6 of Act 39 of 2008.]

- (dB) the circumstances and manner in which fees for services contemplated in section 7 must be paid; and

[Para. (dB) inserted by s. 6 of Act 39 of 2008.]

- (e) any other matter which it is necessary or expedient to prescribe in order to achieve the objects of this Act.

[S. 69 substituted by s. 13 of Act 63 of 2002.]

## 70 Application of Act when in conflict with other laws

This Act prevails over any other law dealing with higher education other than the Constitution.

### CHAPTER 9

#### TRANSITIONAL AND OTHER ARRANGEMENTS (ss 71-77)

## 71 Existing statutes and rules of public higher education institutions

The existing statute and rules of a public higher education institution in force at the commencement of this Act continue to apply to the extent that such statute and rules are consistent with this Act.

## 72 Existing technikons and universities

(1) Any technikon which was established or is deemed to have been established in terms of the Technikons Act, 1993 (Act 125 of 1993), and which existed immediately prior to the commencement of this Act, is deemed to be a technikon established in terms of this Act.

(2) Any university established or incorporated by a Private Act of Parliament continues to exist and is deemed to be a university established in terms of this Act, notwithstanding the repeal of such Private Act by the Higher Education Amendment Act, 2001.

[Sub-s. (2) substituted by s. 25 of Act 23 of 2001.]

(3) Subject to any other applicable law, all conditions of service or service benefits applicable immediately prior to the commencement of this Act to a university or technikon continue to exist until changed by the council of the public higher education institution concerned.

(4) Councils, senates and forums of technikons and universities which existed at the commencement of this Act continue to exist and perform the functions which they performed prior to such commencement, but must comply with the provisions of this Act within 18 months after the commencement of this Act.

### **73 Abolition of University and Technikons Advisory Council**

(1) The University and Technikons Advisory Council established in terms of the University and Technikons Advisory Council Act, 1983 (Act 99 of 1983), continues to exist and to perform its functions as if that Act had not been repealed, until the CHE commences its functions in terms of this Act.

(2) The CHE commences its functions on a date determined by the Minister by notice in the *Gazette*.

### **74 Abolition of statutory status of Committee of University Principals, Matriculation Board and Committee of Technikon Principals**

(1) The Committee of University Principals, the Matriculation Board and the Committee of Technikon Principals continue to exist and to perform their functions until the date or dates contemplated in subsection (2), as if the Universities Act, 1955 (Act 61 of 1955), and the Technikons Act, 1993 (Act 125 of 1993), had not been repealed.

(2) Subject to subsection (3), the Committee of University Principals, the Matriculation Board and the Committee of Technikon Principals cease to exist as statutory bodies on a date or dates determined by the Minister by notice in the *Gazette*.

(3) The Minister may only make a determination in terms of subsection (2)-

(a) after consulting SAQA and the body concerned; and

(b) after the Minister has considered the recommendations made by SAQA and the body concerned, as contemplated in section 15 (2) of the South African Qualifications Authority Act, 1995 (Act 58 of 1995).

(4) Notwithstanding subsection (3) (b) the Minister may make a determination in terms of subsection (2) if SAQA and the body concerned have not made recommendations as contemplated in subsection (3) (b) within a reasonable period after a written request by the Minister to do so.

(5) The Committee of University Principals and the Committee of Technikon Principals must determine the manner in which their assets and liabilities are dealt with upon their dissolution as statutory bodies.

(6) The joint statutes and joint regulations and rules made in terms of the Universities Act, 1955 (Act 61 of 1955), and the Technikons Act, 1993 (Act 125 of 1993), continue to exist until the date or dates contemplated in subsection (2).

### **75 Exemption of existing private higher education institutions**

Sections 51 and 66 (3) and (4) do not apply to a person who provides higher education at the date of commencement of this Act, until a date determined by the Minister by notice in the *Gazette*.

### **76 Repeal of laws**

(1) The University and Technikons Advisory Council Act, 1983 (Act 99 of 1983), is hereby repealed in its entirety.

(2) The Universities Act, 1955 (Act 61 of 1955), is hereby repealed in its entirety.

(3) The Technikons Act, 1993 (Act 125 of 1993), is hereby repealed in its entirety.

(4) The Tertiary Education Act, 1988 (Act 66 of 1988), is hereby repealed in its entirety.

(5) The Technikons Amendment Act, 1995 (Act 27 of 1995), is hereby repealed in its entirety.  
[Sub-s. (5) added by s. 10 of Act 55 of 1999.]

(6) The Education Policy Act, 1967 (Act 39 of 1967), is hereby repealed in its entirety.  
[Sub-s. (6) added by s. 10 of Act 55 of 1999.]

(7) The University Staff (Education and Training) Act, 1984 (Act 91 of 1984), is hereby repealed in its entirety.  
[Sub-s. (7) added by s. 12 of Act 54 of 2000.]

## 77 Short title

This Act is called the Higher Education Act, 1997.

## HIGHER EDUCATION AMENDMENT ACT 55 OF 1999

|                                |  |
|--------------------------------|--|
| [ASSENTED TO 18 NOVEMBER 1999] | [DATE OF COMMENCEMENT: 19 NOVEMBER 1999] |
|--------------------------------|--|

(English text signed by the President)

### ACT

To amend the Higher Education Act, 1997, so as to substitute a definition; to extend the period within which the CHE must submit a report to the Minister; to provide that the principal is the chairperson of the senate and the registrar of a public higher education institution appointed by the council is the secretary to the council; to provide that the chairperson and the vice-chairperson of the council must be elected from the external members of the council; to empower a council to discriminate fairly between students who are not citizens or permanent residents and students who are citizens or permanent residents with regard to certain matters; to empower the Minister to appoint an administrator for a public higher education institution where there is financial or other maladministration of a serious nature; to designate the Director-General as the registrar of private higher education institutions and to empower the Minister to designate an assistant for the registrar; to extend the requirements to be determined by the registrar for the registration of private higher education institutions; to provide for the delegation of powers and assignment of duties by the principal of a higher education institution and the CHE; and to provide for matters connected therewith.

1

Amends section 1 of the Higher Education Act 101 of 1997 by substituting the definition of 'registrar'.

2

Amends section 19 of the Higher Education Act 101 of 1997 by substituting subsection (1).

3

Amends section 26 of the Higher Education Act 101 of 1997, as follows: paragraph (a) substitutes subsection (3); and paragraph (b) adds subsection (4).

4

Amends section 39 of the Higher Education Act 101 of 1997 by adding subsection (4).

5

Amends section 40 of the Higher Education Act 101 of 1997 by substituting paragraph (g).

6

Inserts section 41A in the Higher Education Act 101 of 1997.

7

Amends section 50 of the Higher Education Act 101 of 1997 by substituting subsections (1) and (2).

8

Amends section 53 (1) (b) of the Higher Education Act 101 of 1997 by substituting subparagraph (iii).

9

Amends section 68 of the Higher Education Act 101 of 1997 by adding subsections (3) and (4).

10

Amends section 76 of the Higher Education Act 101 of 1997 by adding subsections (5) and (6).

11 Short title

This Act is the Higher Education Amendment Act, 1999.

## HIGHER EDUCATION AMENDMENT ACT 54 OF 2000

|                                |  |
|--------------------------------|--|
| [ASSENTED TO 17 NOVEMBER 2000] | [DATE OF COMMENCEMENT: 22 NOVEMBER 2000] |
|--------------------------------|--|

(English text signed by the President)

### ACT

To amend the Higher Education Act, 1997, so as to define certain expressions; to extend the power of the Minister of Education with regard to the determination of higher education policy; to provide that vacancies in the Council on Higher Education are filled for the unexpired term of office of the predecessor; to provide for the nominations to fill vacancies in the Council; to provide that a public higher education institution may not without the approval of its council and, under certain circumstances, without the concurrence of the Minister, enter into a loan or overdraft agreement or develop infrastructure; to make further provision for information a council has to furnish to the Minister; to make further provision for the registration of private higher education institutions, the requirements for their registration and the determination of applications for their registration; to provide afresh for the change of the name of a public higher education institution; and to make further provision for the repeal of laws; and to provide for matters connected therewith.

1

Amends section 1 of the Higher Education Act 101 of 1997, as follows: paragraph (a) inserts the definition of 'foreign juristic person'; paragraph (b) inserts the definition of 'local juristic person'; and paragraph (c) inserts the definition of 'to provide higher education'.

2

Amends section 3 of the Higher Education Act 101 of 1997 by adding subsection (3).

3

Amends section 11 of the Higher Education Act 101 of 1997 by adding subsections (2) and (3), the existing section becoming subsection (1).

4

Amends section 40 of the Higher Education Act 101 of 1997, as follows: paragraph (a) substitutes paragraph (d); and paragraph (b) adds subsections (2) and (3), the existing section becoming subsection (1).

[a54y2000s5]5

Amends section 41 of the Higher Education Act 101 of 1997 by substituting subsection (3).

6

Substitutes section 51 of the Higher Education Act 101 of 1997.

7

Amends section 53 (1) of the Higher Education Act 101 of 1997, as follows: paragraph (a) substitutes the words preceding paragraph (a); paragraph (b) deletes paragraph (b) (iii); and paragraph (c) adds paragraph (c).

8



Amends section 54 of the Higher Education Act 101 of 1997, as follows: paragraph (a) substitutes subsection (1); paragraph (b) substitutes subsection (3); and paragraph (c) adds subsection (7).

9

Substitutes section 65 of the Higher Education Act 101 of 1997.

10

Amends section 66 of the Higher Education Act 101 of 1997 by substituting subsection (3).

11

Amends section 68 of the Higher Education Act 101 of 1997 by substituting subsection (2).

12

Amends section 76 of the Higher Education Act 101 of 1997 by adding subsection (7).

13 Short title

This Act is called the Higher Education Amendment Act, 2000.

#### HIGHER EDUCATION AMENDMENT ACT 23 OF 2001

|                               |   |
|-------------------------------|---|
| [ASSENTED TO 30 OCTOBER 2001] | [DATE OF COMMENCEMENT: 2 NOVEMBER 2001] |
|-------------------------------|---|

*(English text signed by the President)*

#### ACT

To amend the Higher Education Act, 1997, so as to provide that the Higher Education Quality Committee is deemed to be accredited as an Education and Training Quality Assurance Body; to provide for the establishment of interim councils for new, declared or merged public higher education institutions; to provide for the dissolution of the council of a public higher education institution if 75 per cent or more of the members resign, and for the constitution of a new council; to provide for a seat for a public higher education institution; to provide for the conferring of degrees and honorary degrees by a public higher education institution; to provide for the repeal of the Certification Council for Technikon Education Act 1986, the universities' Private Acts and certain obsolete Acts; to make certain textual alterations; and to provide for matters connected therewith.

1

Amends section 7 of the Higher Education Act 101 of 1997 by inserting subsection (1A).

2

Amends section 8 of the Higher Education Act 101 of 1997 by substituting subsection (6).

3

Amends section 17 of the Higher Education Act 101 of 1997 by substituting paragraph (b).

4

Amends section 20 of the Higher Education Act 101 of 1997, as follows: paragraph (a) deletes subsection (2); and paragraph (b) adds subsections (6), (7), (8), (9), (10) and (11).

5

Amends section 21 of the Higher Education Act 101 of 1997 by inserting subsection (3A).

6

Amends section 23 of the Higher Education Act 101 of 1997 by adding subsections (5), (6), (7), (8), (9), (10) and (11).

7

Amends section 26 of the Higher Education Act 101 of 1997 by substituting subsection (3).

8

Amends section 27 of the Higher Education Act 101 of 1997, as follows: paragraph (a) substitutes subsection (1); and paragraph (b) adds subsections (8) and (9).

9

Amends section 28 of the Higher Education Act 101 of 1997 by substituting subsection (3).

10

Amends section 29 of the Higher Education Act 101 of 1997 by substituting subsection (4).

11

Amends section 31 of the Higher Education Act 101 of 1997, as follows: paragraph (a) substitutes subsection (2) (a); and paragraph (b) substitutes subsection (3).

12

Amends section 32 (1) of the Higher Education Act 101 of 1997 by substituting paragraph (a).

13 and 14

Substitute respectively sections 35 and 36 of the Higher Education Act 101 of 1997.

15

Amends section 41A of the Higher Education Act 101 of 1997 by substituting subsection (1).

16

Amends section 53 (1) of the Higher Education Act 101 of 1997 by substituting paragraph (c).

17

Amends section 54 of the Higher Education Act 101 of 1997, as follows: paragraph (a) substitutes subsections (3) and (4); and paragraph (b) substitutes subsection (6) (b).

18

Substitutes section 55 of the Higher Education Act 101 of 1997.

19

Amends section 58 of the Higher Education Act 101 of 1997 by substituting the words preceding paragraph (a).

20

Amends section 59 (3) (a) of the Higher Education Act 101 of 1997 by substituting subparagraph (i).

21

Amends section 60 of the Higher Education Act 101 of 1997 by substituting subsection (1).

22

Amends section 62 of the Higher Education Act 101 of 1997 by substituting subsection (1).

23

Amends section 64 of the Higher Education Act 101 of 1997 by deleting subsection (4).

24

Inserts sections 65A, 65B and 65C in the Higher Education Act 101 of 1997.

25

Amends section 72 of the Higher Education Act 101 of 1997 by substituting subsection (2).

26 Repeal of laws

(1) The laws listed in the Schedule are hereby repealed.

(2) Notwithstanding subsection (1), section 3 (4), (5) and (6) of the University of Cape Town (Private) Act, 1999 (Act 8 of 1999), continue to exist as if that Act had not been repealed.

27 Transitional arrangements pertaining to Certification Council for Technikon Education

(1) For the purposes of this section-

- (a) **'agricultural college'** means an agricultural college administered by the Department of Agriculture;
- (b) **'agricultural college training'** means higher education provided partly or in full at or by an agricultural college with a view to obtaining a certificate for agricultural college training, and which is aimed at-
  - (i) the advancement, application, development and transfer of agricultural technology;
  - (ii) the provision of community services relating to farms; and
  - (iii) the undertaking of research relating to agriculture;
- (c) **'certificate for agricultural college training'** means an education certificate or diploma that may be obtained as a result of successful study at an agricultural college, including a certificate of success in a subdivision of a higher education programme;
- (d) **'CHE'** means the Council on Higher Education established by section 4 of the principal Act;
- (e) **'Council'** means the Certification Council for Technikon Education established by section 2 of the Certification Council for Technikon Education Act, 1986 (Act 88 of 1986); and
- (f) **'repealed Act'** means the Certification Council for Technikon Education Act, 1986 (Act 88 of 1986), as it existed immediately before its repeal by section 24.

(2) The CHE must ensure that certificates for agricultural college training issued by the CHE and the relevant agricultural college, represent the required standard of education and training.

(3) (a) An agricultural college that was accredited as an examination body by the Council prior to the commencement of this Act continues to operate as an examining body.

(b) The norms, standards and conditions contemplated in section 9 (1) (b) of the repealed Act which existed in respect of the accreditation of an examining body immediately before the commencement of this Act, remain in full force and effect until repealed or overridden in terms of the principal Act.

(c) The CHE may withdraw the accreditation contemplated in paragraph (a) if the higher education programme in question no longer complies with the norms and standards or the examining body does not comply with the conditions-

- (i) referred to in paragraph (b); or
- (ii) determined by the CHE.

(4) The CHE, in conjunction with an agricultural college, must issue certificates for agricultural college training, in the form prescribed by the CHE in conjunction with the agricultural college, to candidates who have complied with the norms and standards for higher education.

(5) From the date of commencement of this Act, all assets, liabilities, rights and obligations of the Council immediately prior to the commencement of this Act, devolve upon the CHE.

(6) As soon as possible after the commencement of this Act all records, documents and electronic information pertaining to any function performed by the Council must be handed to the CHE.

(7) The CHE is responsible for the safekeeping of all records, documents and electronic information received in terms of subsection (6).

## 28 Transitional arrangements pertaining to universities

(1) The institutional statutes of universities that existed prior to the commencement of this Act continue to exist and are deemed to have been made under the principal Act.

(2) If there is a matter contained in a Private Act but not dealt with in the principal Act or the relevant institutional statute, and which is indispensable for the effective functioning of a university, such provision in the Private Act is deemed to remain in force for a period not longer than two years, despite the repeal of such Private Act.

## 29 Short title

This Act is called the Higher Education Amendment Act, 2001.  
Schedule

## LAWS REPEALED

(Section 26)

Rhodes University (Private) Act, 1949 (Act 15 of 1949);

University of the Orange Free State (Private) Act, 1949 (Act 21 of 1949);

University Laws Amendment Act, 1953 (Act 23 of 1953);  
University of the Witwatersrand, Johannesburg, (Private) Act, 1959 (Act 15 of 1959);  
University of South Africa Act, 1959 (Act 19 of 1959);  
University of the Orange Free State (Private) Act Amendment Act, 1959 (Act 36 of 1959);  
Universities Amendment Act, 1959 (Act 82 of 1959);  
Rhodes University Act Amendment (Private) Act, 1960 (Act 6 of 1960);  
University of Natal (Private) Act, 1960 (Act 7 of 1960);  
Universities Amendment Act, 1961 (Act 46 of 1961);  
University of the Orange Free State (Private) Act Amendment (Private) Act, 1962 (Act 29 of 1962);  
University of Port Elizabeth Act, 1964 (Act 1 of 1964);  
University of South Africa Amendment Act, 1964 (Act 13 of 1964);  
Rhodes University (Private) Act Amendment Act, 1965 (Act 7 of 1965);  
University of Port Elizabeth Amendment Act, 1965 (Act 40 of 1965);  
Universities Amendment Act, 1965 (Act 43 of 1965);  
Rand Afrikaans University Act, 1966 (Act 51 of 1966);  
University of Port Elizabeth Amendment Act, 1967 (Act 31 of 1967);  
University of South Africa Amendment Act, 1967 (Act 53 of 1967);  
Universities Amendment Act, 1968 (Act 24 of 1968);  
University of the Witwatersrand, Johannesburg, (Private) Amendment Act, 1968 (Act 32 of 1968);  
University of Fort Hare Act, 1969 (Act 40 of 1969);  
University of Zululand Act, 1969 (Act 43 of 1969);  
University of the North Act, 1969 (Act 47 of 1969);  
University of South Africa (Private) Amendment Act, 1969 (Act 62 of 1969);  
University of Port Elizabeth (Private) Amendment Act, 1969 (Act 66 of 1969);  
Universities Amendment Act, 1969 (Act 67 of 1969);  
Rand Afrikaans University (Private) Amendment Act, 1969 (Act 70 of 1969);  
Rand Afrikaans University (Private) Amendment Act, 1970 (Act 84 of 1970);  
University of Fort Hare Amendment Act, 1971 (Act 28 of 1971);  
University of the Orange Free State (Private) Amendment Act, 1971 (Act 70 of 1971);  
Black Education Account Abolition Act, 1972 (Act 20 of 1972);  
Rhodes University (Private) Amendment Act, 1972 (Act 81 of 1972);  
Black Universities Amendment Act, 1973 (Act 6 of 1973);  
Rhodes University (Private) Amendment Act, 1973 (Act 21 of 1973);  
University of South Africa (Private) Amendment Act, 1973 (Act 22 of 1973);  
University of the Orange Free State (Private) Amendment Act, 1974 (Act 69 of 1974);  
Universities Amendment Act, 1975 (Act 67 of 1975);  
Medical University of Southern Africa Act, 1976 (Act 78 of 1976);  
University of Port Elizabeth (Private) Amendment Act, 1976 (Act 114 of 1976);  
Black Universities Amendment Act, 1977 (Act 57 of 1977);  
Universities Amendment Act, 1977 (Act 65 of 1977);  
University of Natal (Private) Amendment Act, 1977 (Act 66 of 1977);  
University of the Orange Free State (Private) Amendment Act, 1978 (Act 108 of 1978);  
Universities for Blacks Amendment Act, 1979 (Act 52 of 1979);  
Rhodes University (Private) Amendment Act, 1979 (Act 62 of 1979);  
University of Natal (Private) Amendment Act, 1979 (Act 71 of 1979);  
University of Port Elizabeth (Private) Amendment Act, 1979 (Act 86 of 1979);  
University of the Witwatersrand, Johannesburg, (Private) Amendment Act, 1980 (Act 37 of 1980);  
Rand Afrikaans University (Private) Amendment Act, 1980 (Act 49 of 1980);  
Universities for Blacks Amendment Act, 1982 (Act 14 of 1982);  
Rand Afrikaans University (Private) Amendment Act, 1982 (Act 93 of 1982);  
Technikons (Education and Training) Amendment Act, 1983 (Act 48 of 1983);  
University of Port Elizabeth (Private) Amendment Act, 1983 (Act 68 of 1983);  
Rhodes University (Private) Amendment Act, 1983 (Act 69 of 1983);  
University of Natal (Private) Amendment Act, 1983 (Act 71 of 1983);  
University of the Western Cape Act, 1983 (Act 78 of 1983);  
University of Durban-Westville Act, 1983 (Act 81 of 1983);  
Universities Amendment Act, 1983 (Act 83 of 1983);  
Rand Afrikaans University (Private) Amendment Act, 1983 (Act 107 of 1983);  
Universities, National Education Policy and Technikons Amendment Act, 1984 (Act 75 of 1984);  
Technikons (Education and Training) Amendment Act, 1984 (Act 77 of 1984);

Tertiary Education (Education and Training) Act, 1984 (Act 92 of 1984);  
University of the Orange Free State (Private) Amendment Act, 1984 (Act 97 of 1984)  
University Staff (Education and Training) Amendment Act, 1985 (Act 28 of 1985);  
Universities and Technikons for Blacks, Tertiary Education (Education and Training) and Education and Training  
Amendment Act, 1986 (Act 3 of 1986);  
Universities Amendment Act, 1986 (Act 86 of 1986);  
Certification Council for Technikon Education Act, 1986 (Act 88 of 1986);  
Technikons (National Education) Amendment Act, 1986 (Act 89 of 1986);  
Rhodes University (Private) Amendment Act, 1986 (Act 99 of 1986);  
Universities (Education and Training) Amendment Act, 1987 (Act 34 of 1987);  
Rand Afrikaans University (Private) Amendment Act, 1987 (Act 44 of 1987);  
Education Laws (Education and Training) Amendment Act, 1987 (Act 95 of 1987);  
Education Laws (Education and Training) Amendment Act, 1988 (Act 31 of 1988);  
Technikons (National Education) Amendment Act (House of Assembly) Act, 1988 (Act 33 of 1988);  
University of Port Elizabeth (Private) Amendment Act, 1988 (Act 98 of 1988);  
Rand Afrikaans University (Private) Amendment Act, 1989 (Act 33 of 1989);  
University of the Orange Free State (Private) Amendment Act, 1989 (Act 34 of 1989)  
Universities Amendment Act, 1989 (House of Assembly) (Act 64 of 1989);  
Universities and Technikons (Education and Training) Amendment Act, 1990 (Act 41 of 1990);  
University of Pretoria (Private) Act, 1990 (House of Assembly) (Act 106 of 1990);  
Universities and Technikons Advisory Council Amendment Act, 1991 (Act 24 of 1991);  
University of the Witwatersrand, Johannesburg, (Private) Amendment Act, 1991 (House of Assembly) (Act 78 of 1991);  
Universities Amendment Act, 1991 (Act 123 of 1991);  
University of the Orange Free State (Private) Amendment Act, 1992 (House of Assembly) (Act 68 of 1992);  
University of Port Elizabeth (Private) Amendment Act, 1992 (House of Assembly) (Act 69 of 1992);  
University of Stellenbosch (Private) Act, 1992 (House of Assembly) (Act 107 of 1992);  
University of the North Amendment Act, 1992 (Act 150 of 1992);  
Universities Amendment Act, 1993 (Act 21 of 1993);  
University of Durban-Westville Amendment Act (House of Delegates), 1993 (Act 51 of 1993);  
University of South Africa (Private) Amendment Act (House of Assembly), 1993 (Act 54 of 1993);  
University of the Witwatersrand, Johannesburg, (Private) Amendment Act, 1993 (House of Assembly) (Act 78 of 1993);  
Potchefstroomse Universiteit vir Christelike Hoër Onderwys (Private) Act (House of Assembly), 1993 (Act 80 of 1993);  
University of the Orange Free State (Private) Amendment Act, 1993 (House of Assembly) (Act 81 of 1993);  
University of Pretoria (Private) Amendment Act, 1993 (House of Assembly) (Act 158 of 1993);  
Rhodes University (Private) Amendment Act (House of Assembly) Act, 1993 (Act 159 of 1993);  
University of Natal (Private) Amendment Act, 1993 (House of Assembly) (Act 163 of 1993);  
Certification Council for Technikon Education Amendment Act, 1993 (Act 185 of 1993);  
University of North-West (Private) Act, 1996 (Act 17 of 1996);  
University of Zululand (Private) Amendment Act, 1996 (Act 80 of 1996);  
University of Transkei (Private) Act, 1996 (Act 81 of 1996);  
University of Durban-Westville (Private) Amendment Act, 1996 (Act 82 of 1996);  
University of Port Elizabeth (Private) Amendment Act, 1996 (Act 83 of 1996);  
University of Venda (Private) Act, 1996 (Act 89 of 1996);  
University of the Witwatersrand, Johannesburg (Private) Amendment Act, 1997 (Act 21 of 1997);  
Medical University of Southern Africa (Private) Amendment Act, 1997 (Act 25 of 1997);  
University of Durban-Westville (Private) Amendment Act, 1997 (Act 32 of 1997);  
University of Cape Town (Private) Act, 1999 (Act 8 of 1999).

HIGHER EDUCATION AMENDMENT ACT 63 OF 2002

|                               |  |
|-------------------------------|--|
| [ASSENTED TO 9 DECEMBER 2002] | [DATE OF COMMENCEMENT: 19 DECEMBER 2002] |
|-------------------------------|--|

(English text signed by the President)

ACT

To amend the Higher Education Act, 1997, so as to provide for consequential matters arising out of declarations and mergers of public higher education institutions in relation to labour and student matters; to provide for changes in the size of councils and institutional forums; to provide for the appointment of an administrator to take over the functions of a council which is deemed to have resigned; to make new provision for the Minister's authority to make regulations; and to make certain textual alterations; and to provide for matters connected therewith.

1

Amends section 1 of the Higher Education Act 101 of 1997, as follows: paragraph (a) substitutes the definition of 'higher education institution'; paragraph (b) inserts the definition of 'incorporation of a subdivision'; and paragraph (c) inserts the definition of 'merger'.

2

Amends section 8 (3) of the Higher Education Act 101 of 1997 by substituting paragraph (b).

3

Amends section 20 of the Higher Education Act 101 of 1997 by substituting subsection (4).

4

Amends section 21 of the Higher Education Act 101 of 1997, as follows: paragraph (a) substitutes subsection (1) (b); paragraph (b) substitutes subsection (3) (b) (i); and paragraph (c) substitutes subsections (5), (6) and (7) for subsection (5).

5

Amends section 23 of the Higher Education Act 101 of 1997, as follows: paragraph (a) substitutes subsection (2) (b); paragraph (b) deletes subsection (2) (e); paragraph (c) inserts subsections (2A), (2B), (2C), (2D), (2E), (2F), (2G) and (2H); paragraph (d) substitutes subsection (3); paragraph (e) substitutes subsection (7) (b); paragraph (f) substitutes subsection (8); and paragraph (g) inserts subsections (12) and (13).

6

Substitutes section 24 of the Higher Education Act 101 of 1997.

7

Amends section 27 of the Higher Education Act 101 of 1997 by substituting subsections (4) and (5).

8

Amends section 31 (2) of the Higher Education Act 101 of 1997 by substituting the words preceding paragraph (a).

9

Amends section 40 (2) of the Higher Education Act 101 of 1997 by substituting paragraph (b).

10

Substitutes section 41 of the Higher Education Act 101 of 1997.

11

Amends section 41A of the Higher Education Act 101 of 1997 by inserting subsection (3).

12

Amends section 65A of the Higher Education Act 101 of 1997 by substituting subsection (1).

Substitutes section 69 of the Higher Education Act 101 of 1997.

#### 14 Transitional arrangements

(1) If the institutional statute of a public higher education institution provides for a council of more than 30 members the council must amend the institutional statute to provide for a council of not more than 30 members, and must do so within 12 months of the commencement of this Act.

(2) If a council fails to comply with subsection (1) the Minister must amend the institutional statute of that institution, after consultation with its council, to provide for a council of not more than 30 members, and must do so within 24 months of the commencement of this Act.

(3) Notwithstanding any other provision, the terms of office of members of any council which has a membership of more than 30 terminate on a date to be determined by the Minister by notice in the *Gazette*.

(4) The date contemplated by subsection (3) must be-

- (a) at least three months after the promulgation of provisions in terms of subsection (1) or subsection (2);
- (b) not later than 30 months after the date of commencement of this Act.

(5) The council of such institution must be reconstituted in terms of the amended provisions on the day after the date contemplated in subsection (3).

#### 15 Short title

This Act is called the Higher Education Amendment Act, 2002.

### HIGHER EDUCATION AMENDMENT ACT 38 OF 2003

|                                |  |
|--------------------------------|--|
| [ASSENTED TO 10 DECEMBER 2003] | [DATE OF COMMENCEMENT: 15 DECEMBER 2003] |
|--------------------------------|--|

(English text signed by the President)

#### ACT

To amend the Higher Education Act, 1997, so as to provide for the regular reporting by the Council on Higher Education on the state of higher education; to provide for consequential changes arising out of the incorporation of public higher education institutions in relation to labour and student matters; to provide for the establishment of a National Institute for Higher Education in Mpumalanga and a National Institute for Higher Education in the Northern Cape to coordinate the regional provision of higher education; and to provide for matters connected therewith.

1

Amends section 5 (1) of the Higher Education Act 101 of 1997 by substituting paragraph (d).

2

Amends section 24 of the Higher Education Act 101 of 1997 by substituting subsection (3).

3

Inserts sections 38A, 38B, 38C, 38D, 38E, 38F, 38G, 38H and 38I in the Higher Education Act 101 of 1997.

4 Short title

This Act is called the Higher Education Amendment Act, 2003.

HIGHER EDUCATION AMENDMENT ACT 39 OF 2008

|                                |  |
|--------------------------------|--|
| [ASSENTED TO 25 NOVEMBER 2008] | [DATE OF COMMENCEMENT: 27 NOVEMBER 2008] |
|--------------------------------|--|

(English text signed by the President)

ACT

To amend the Higher Education Act, 1997, so as to make it consistent with the National Qualifications Framework Act, 2008; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

1

Amends section 1 of the Higher Education Act 101 of 1997, as follows: paragraph (a) inserts the definition of 'HEQF'; paragraph (b) substitutes the definition of 'higher education'; paragraph (c) inserts the definition of 'Higher Education Qualifications Framework'; paragraph (d) inserts the definitions of 'National Qualifications Framework' and 'National Qualifications Framework Act'; paragraph (e) inserts the definition of 'quality council'; and paragraph (f) substitutes in the definition of 'to provide higher education' paragraph (a).

2

Amends section 5 of the Higher Education Act 101 of 1997, as follows: paragraph (a) substitutes subsection (1) (f) (i); and paragraph (b) substitutes subsection (2) (a).

3

(1) Substitutes section 7 of the Higher Education Act 101 of 1997.

(2) Despite the substitution of section 7 of the principal Act by subsection (1), the Higher Education Quality Committee that existed immediately prior to the commencement of this section continues to exist-

(a) as if it were established in terms of section 7 (3) of the principal Act; and

(b) until a Higher Education Quality Committee is established in terms of section 7 (3) of the principal Act.

4

Amends section 8 of the Higher Education Act 101 of 1997 by substituting subsection (6).

5

Amends section 53 (1) (b) of the Higher Education Act 101 of 1997 by substituting subparagraph (ii).

6

Amends section 69 of the Higher Education Act 101 of 1997 by deleting the word 'and' at the end of paragraph (d) and by inserting paragraphs (dA) and (dB).

7 Short title

This Act is called the Higher Education Amendment Act, 2008.





# INVITATION TO ALL HIGHER EDUCATION AND TRAINING STAKEHOLDERS

## HAVE YOUR SAY on legislation

Higher Education Amendment Bill [B36 – 2015]

### Submissions and Hearings

The Portfolio Committee on Higher Education and Training invites stakeholders and interested parties to submit written submissions on the above-mentioned bill.

#### **The purpose of the Higher Education Amendment Bill [B36 – 2015]**

**is:** To amend the Higher Education Act, 1997, so as to provide for the insertion of new definitions; to provide for the determination of transformation goals and oversight mechanisms for the public higher education system; to provide for the development of articulation and recognition of prior learning frameworks; to provide for the conversion of public higher education institutions; to provide for the powers of the council of a public higher education institution to invest funds; to provide further for the issuing of Ministerial directives; to provide for indemnification of an independent assessor; to provide for the indemnification and termination of the term of office of an administrator; to provide for different categories of registration of private higher education institutions and the associated rights; to provide for the withdrawal and revocation of qualifications by public higher education institutions; and to provide for matters connected therewith.

**Public hearings on the Bill will be held at Parliament on Tuesday, Wednesday and Friday 16, 17 & 19 February 2016. Submissions must be addressed to Mr Anele Kabingesi, Committee Secretary, Portfolio Committee on Higher Education and Training, 3<sup>rd</sup> Floor, 90 Plein Street, Cape Town, 8000 and must be received by no later than 12:00 on Thursday, 11 February 2016. Please indicate your interest in making a verbal presentation.**

**For enquiries or to obtain a copy of the Bill, please contact Mr Anele Kabingesi on Tel: 021 403 3760; Cell: 083 412 1585; fax: 086 570 7078; e-mail: [akabingesi@parliament.gov.za](mailto:akabingesi@parliament.gov.za); or visit the Parliamentary website on [www.parliament.gov.za](http://www.parliament.gov.za)**

**Issued by: Ms Y Phosa, MP, Chairperson: Portfolio Committee on Higher Education and Training**

# Higher Education and Training

## Higher Education Amendment Bill [B36-2015]: briefing

Chairperson: Ms Y Phosa (ANC)

Date of Meeting: 27 January 2016

### Summary

In its first meeting of 2016, the Portfolio Committee was briefed by the Department of Higher Education and Training on the Higher Education Amendment Bill. The Department held that the Bill did not represent a major policy shift from the original Higher Education Act of 1997. Rather, the Bill seeks to clarify issues that have arisen, ensure that the Act is coherent and user friendly, and improve the system of classification for and accountability of higher education institutions. Though the Minister does have slightly expanded powers, the Department argued that these powers are necessary and now actually less vague. Members were concerned about the expanded powers for Minister, the system of independent assessors, and the prevention of fraudulent qualifications. Members also wanted to know about the consultation of stakeholders, representation of students on various representative bodies, and efforts to meet transformation goals.

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### Minutes

#### **Introductory Remarks**

The Chairperson welcomed Members to the Committee's first meeting of the year. She announced that the purpose of today's meeting is to hear a presentation from the Department of Higher Education and Training (DHET) on the Higher Education Amendment Bill that seeks to amend the Higher Education Act of 1997. The Bill was tabled on 13 November 2015 and the duty of the committee now is to facilitate public participation in the Bill and make quality inputs on the Bill so as to avoid controversy. She encouraged Members to have constructive engagement on the Bill.

#### **Higher Education Amendment Bill: briefing**

Director General Gwebs Qonde (DHET) introduced Prof Chris de Beer, who was a member of the task team that has worked on these amendments. He called on Dr Parker to give introductory remarks before Adv Boshoff gives the presentation on the Bill.

Dr Diane Parker, DHET Deputy Director General: University Education, said the Higher Education Amendment Bill process started in 2012 with a controversial amendment. [Stakeholders had felt that the 2012 amendment to the Act as contained in the Higher Education Amendment Laws was not properly consulted, the wording was clumsy and gave the Minister too much power over universities and national institutes of Higher Education]. Discussions with both universities and the University Chairs Council followed. These bodies suggested that there needed to be a review of the legislation. A task team was set up in 2014 and spent a year reviewing the Act with reference to the 2014 White Paper on Post-Education and Training. The task team wanted to ensure that the new amendments covered properly and did not include outdated aspects like technikons. The task team had three

members from the University of South Africa (Unisa), three members of the University Chairs Council, and members from the Council on Higher Education (CHE). It went through an in depth consultative stakeholder engagement process including private education institutions and students. This Bill does not create major policy changes, but rather cleans the Act up and ensures coherence.

Adv Eben Boshoff: Chief Director Legal Services (DHET) noted the Bill seeks to amend the Higher Education Act of 1997 to align that Act with the priorities of government and programmes as announced in the President's State of the Nation Address and the National Development Plan. The Higher Education Act is being amended to:

- provide for the substitution of the long title
- amend the arrangement of the act
- provide for the insertion of new definitions
- provide for policy frameworks on the determination of transformation goals for the public higher education system and oversight mechanisms
- provide for policy frameworks on the development of articulation and recognition of prior learning frameworks
- provide for the conversion of public higher education institutions into a different public institutional type
- provide for a restructuring of provisions related to ministerial directives
- provide for indemnification of an Independent Assessor
- provide for the indemnification of and termination of the term of office of an Administrator
- provide for different categories of registration of private higher education institutions and associated rights
- provide for the withdrawal and revocation of qualifications by public higher education institutions
- provide for transitional arrangements.

The Bill extends the power of the Minister to determine policy applicable to higher education institutions, in particular transformation goals and the recognition of prior learning. Amendments provide the Minister with the authority to change the type and scope of a higher education institution in accordance with policy.

The Bill aims to account for new institutional types and removes mention of a technikon as a type. It provides for three types of institution: university, university college, and higher education college. University colleges are introduced as a mechanism to enable the developmental growth of new universities under the supervision of another identified university. Higher education colleges have a more limited range in anticipation of the incorporation of agricultural colleges into higher education.

Clause 9 allows for the institutional forum to provide advice to the Council. The Council must provide reasons if the advice of the institutional forum is not accepted. In the allocation of funds, the Bill now clarifies the procedural processes for the Minister's power to withhold allocations due to specific conditions. This section also clarifies the record-keeping of external audits. Ministerial directives are clustered into a new Chapter with the focus on the balance between institutional powers, functions and public accountability. The Bill hopes to achieve a logical approach to the implementation of the directives, based in administrative justice and to provide guidance to independent assessors. The process and powers of intervention as well as the issue of indemnity is now more flexible and progressive. Administrators appointed by the Minister have their roles and powers better clarified. Issues of indemnification and termination for administrators are also addressed. The goal is for institutions to still be functional after the term of an administrator comes to an end.

As a result of Section 29 of the Constitution, there are requirements for higher educational institutions to meet certain criteria to qualify as a university. Amendments remove the

requirement that a private higher education institution must be registered as a company. However, a person that performs any of the functions to provide higher education must be registered as a private higher education institution under the Act. If a private higher education institution provides a full array of educational services, the amendments allow for certain cases to be called universities. The new framework makes space for foreign institutions to issue degrees in South Africa. Private higher education institutions are given six months to prepare financial statements, which is more time than the previous three months.

Clause 36 provides for instances of fraudulent qualifications. The integrity of qualifications must be protected; the withdrawal and revocation of qualifications is now better in line with the Promotion of Administrative Justice Act (PAJA).

The implications of the amendments are negligible to Departmental organisational structures. Policy frameworks, however, will need to be adjusted. It is important to note that the proposed amendments to the Higher Education Act 1997 constitute adjustments to existing provisions, which are already contained in the system. The amendments ensure that the Bill is coherent, better organised and user friendly.

### ***Discussion***

Mr E Siwela (ANC) asked about the withdrawal of qualifications contained in Clause 36. What if that error is identified after two years; will that person keep the qualification? If the qualification was acquired fraudulently, surely that qualification should be able to be revoked at any time.

Mr Y Cassim (DA) said that he noted that certain structural amendments have been emphasized, and the Bill also increased ministerial powers. Why has there not been any mention of the role of oversight of Parliament over these institutions? How can Parliament's role be expanded and better defined? In Clause 8 amending Section 27, he said that 27(5B) does not provide for the potential for subjectivity and the potential for people being guilty of impropriety or fraud from within a Council? In 27(7C) when we look at the participation of members of Council and qualify participation of Council, it creates issues with conflict of interest. Students will have an automatic conflict of interest with matters such as university fees, which might exclude students who have a crucial interest in these discussions. He requested the rationale for the Clause 18 amendment of Section 44. As for Clause 20, it does not seem to be limited to employees; was thought given to allowing representatives of students as well as trade unions? The Memorandum of Objects in this Bill speaks about the financial implications for the State; what about the financial implications for the institutions?

Dr B Bozzoli (DA) asked to see all public submissions submitted to the Department on the Bill and noted that there was no specific mention of these submissions in the presentation. She felt that the Committee needs to assess for itself how well public opinion has been taken into account. What calls were made for public submissions? Those public submissions are separate from the parliamentary public hearings to come. When were these calls made? How many were received? What is the formal procedure for comments from the Council on Higher Education (CHE)? Does the CHE have a special standing in the system? Having CHE on the task team is not the same as a formal response. Similarly, was there a formal response from Unisa or were its views merely expressed in the task team?

It seems that, actually, the amendments do create a major policy change. The Minister's powers expand in at least five areas. The power seems to shift significantly from institutions to the State. What is intended by the University Colleges? Are they meant to become Universities? Why is the word 'transformation' not included in the definitions? It seems to be a very vague term. The ANC has one meaning for that word, while other people have different meanings. What is the difference between a University College and a Higher

Education College? Allowing the Minister to have authority over language policy is an expansion of ministerial powers. Can administrators be appointed in private institutions? I do not believe that the Basic Education Minister has any power over private schools.

Mr M Mbatha (EFF) commented about what he feels should be captured in the Bill. On foreign institutions, we need to be more aware, due to the growing internationalisation of education, what South Africa is accepting with these foreign institutions. Do we need to regulate such institutions due to, for instance, their historical cultures and what they bring into the country. Should we check to see if institutions have had problems in their country of origin? We should seek to force them in the requirements to contribute to the public good. They should have the same requirements as public institutions, for instance the demand for local language. In the interest of the public good, there should be an upfront payment against potential liquidation, which perhaps could be handled by the Reserve Bank or whatever entity is appropriate. These institutions in some countries go broke and leave citizens destitute by disappearing with their money. Foreign institutions should also aspire to spread all that is good about South Africa in curriculum; as much as the curriculum should be international, it should also intend to serve the South African good and the South African economy. This means that the value of what they present must benefit local people.

The 1997 Act did not push universities to create the capacity for their own internal audit. Universities need to be forced to create this capacity. Good governance should be institutionalised. Many universities have hired external audit firms that only deal with certain issues on an irregular basis. There should be a University Ombudsperson to give a voice to universities and a window into university culture. The drafting on the independent assessor needs to be more exact. The representation of the Student Representative Council (SRC) needs to be expanded; perhaps they could have four seats instead of two. The majority of universities have grown significantly and two is no longer enough. The Council tends to wage a war on students; I believe it is because of the weakening voice of students.

Ms J Kilian (ANC) asked to be reminded of the different types of institutions. It is complex to prepare for this meeting when cross-referencing the Act and the Amendment Bill. If we look at the role of the Department over private institutions, as per the Constitution in Section 29(3)(c), is it not incumbent on the Department to ensure that the qualifications given by private institutions should be under scrutiny as well as public institutions? Would it be constitutional to do so? This is about South Africa and our perception abroad. If there is a panel of independent assessors and an impropriety is found, why is it necessary for there to be a power to override these findings? Is that not intervening excessively? If we expand the role of the Executive to accept responsibility and accountability for higher education, we must ensure that those powers are curtailed. The Promotion of Administrative Justice Act (PAJA) is written in throughout the Bill, which is good. I would like to signal the powers of the independent assessor as an issue. As for Mr Cassim's call for mention in the Bill of parliamentary oversight, I would say that Parliament derives its power directly from the Constitution and thus nothing can stop us from keeping the Executive accountable.

Mr C Kekana (ANC) pointed to the Act's reference to types of institutions. Can we have more clarity on these new types? Only 40% of South Africans go to university. More people in our society are trained in technical and vocational skills. Is the Act able to regulate that type of training? This training is very important. Out of 750 universities, most teach vocational skills. Is this reality captured in the Act? As for ministerial powers, the fact is that when things go wrong with education, the first entity to take flak is the governing party. Therefore, the government must assume responsibility whether we like it or not. Legislation should respect academic freedom, but the oversight role should be played more by government.

The Chairperson called for a response from the Department.

Mr Qonde thanked the Members for their questions and found their questions encouraging. We need to work out what will work better for the system in its reconfigured form. As a parent, what would you like your child to come out of any of our institutions looking like? In that context, you would ideally as a parent be able to derive satisfaction from the system. We have to apply our minds to find what will work better for generations to come. The DG emphasised that Council has an important role. How do we strengthen Council to do its work better? What will be the proper checks and balances across the system? We all know what these institutions should be able to produce, both individually and collectively. He asked Prof de Beer to start the responses as he has experience from the task team. Adv Boshoff and Dr Parker would follow.

Prof Chris de Beer from the University of Pretoria started with the two-year withdrawal limit on degrees incorrectly awarded due to material error rather than fraud. The text in question is in reference specifically to an institution's administrative error, so the two-year limit wants to not punish an individual for something that was the institution's fault. Fraud on the part of an individual can be addressed at any time with no time limit. When an independent assessor makes a finding against an individual, according to the Act, if an adverse finding is given then that individual can never serve on the Council. We have found this to be overly harsh in certain situations, such as against students who participated in a protest during which something was broken. That young student should not be forever banned from university council. The procedure has been since improved for independent assessors, and now the individual can put forward their case again in the future. The task team deliberated over how the individual should appeal, and decided that it should be an administrative rather than legal process due to the burden of legal fees. The Minister can decide on the seriousness of the contravention; I think that this is a better response to a very difficult situation.

In response to the question about types of institutions, on page 29 of the White Paper it states that the Department will not tamper with the three traditional types of universities, that are traditional, comprehensive, and technical universities. But the paragraph provides for a differentiation between undergraduate only universities and those with a broader spectrum. Especially with University Colleges, we have learned that there are quality and capacity issues.

Adv Boshoff noted that questions about consultation had been raised. This Bill addresses very specific concerns about the legislation and does not create major policy shifts. This is the reason a task team was established: to have focused discussion instead of broad submissions with little engagement. We have received criticism for the public submission process in the past; with the task team, we have taken minutes and have made concrete progress. We did not want an open-ended review, but rather a clarification of the Act.

Adv Boshoff said that the Council on Higher Education (CHE) has a specific role to review policy amendments, not legislative amendments. The CHE was involved in the task team, but there has been no need to seek legal advice from them. Legislation comes from Parliament, thus this Committee will need assistance rather than the Minister. This Committee can hold public hearings.

Adv Boshoff commented that Prof de Beer touched upon the two-year time frame which is only for a very specific situation where an institution has made a mistake. In many cases, a qualification holder may continue unknowingly with, for example, an honours degree in error but then earn it justly. The two-year time frame allows for this. On whether technical colleges are being morphed into universities. This legislation does not address Further Education and Training; those institutional types are different to universities. The term 'college' used to be vague. These amendments attempt to create a specific niche for a framework for higher education institutions awarding qualifications. The legislation also has the goal to address

fraudulent qualifications in all instances; we do not want a piecemeal system. Fraud is a very specific charge; oftentimes, alleged fraud was actually an innocent mistake of the university and this issue is very complicated. If the approach is too wide, implementation is impossible.

Dr Parker said that all qualifications from any institution must be approved and regulated by the Council, including foreign institutions. As for curriculum, that is part of the CHE accreditation process. The system in 1997 called for merging institutions and not creating new ones. Now, that thinking is not helpful. Institutions need to grow and develop over time, and new categories like University Colleges are necessary.

Mr Qonde said that we have to dispel the notion that building an institution is like instant coffee; it is not an easy thing. The system must be grounded properly in order to allow for institutions to grow and develop.

Prof de Beer addressed the question about conflict of interest. He said that such conflicts are rife; the Act is not trying to prevent such conflicts. The Act deals with interests over and above such unavoidable occurrences. As for increasing the number of students on Council, we must remember that for every additional internal member, two additional external members must be appointed. The culture of the Council hampers the voice of students rather than the number of students present. The Minister can only directly appoint an independent assessor under specific circumstances prescribed in the Act where there is clear financial irregularity. This is not a carte blanche power; instances are specifically listed in the Act. In the representation before an independent assessor, I think it may have been an oversight not to say that a student could be represented in some way due to prohibitive cost of legal services. As far as the CHE is concerned, as a member of CHE, he could state that the CHE will respond to the amendments during public hearings. The CHE discussed this Bill twice and decided not to respond until the public hearings. UNISA participated in the process through their legal committee. Their proposals came directly from the board; they signed off 85% of what is here. We had a long and intense debate on drafting and how this legislation should not impact universities. I do not believe that the Minister's powers have been expanded. In fact, the Minister must now do more than previously required to act in terms of the Act. PAJA is strongly woven into this Bill. As for private institutions, they participated actively in the task team process through documentation and attending meetings. They were willing to subscribe to the fundamental aspects of the Act. We believe that registration prescripts should govern over private institutions. We cannot tell private institutions how their governance should be set up; prescripts are a much better way to interact with private institutions.

Mr Qonde said that internal interest groups most commonly paralyse higher education institutions. We need to look at this matter cautiously and without idealisation because it creates large costs and impacts education. We need to research this.

Mr Cassim asked again whether or not the task team fully considered the expansion and definition of parliamentary oversight. The DG says that we must think about the function of and the environment for these institutions; surely we want an environment of accountability. We can strengthen and define the checks and balances. As for the financial implications on institutions, there would be situations in which institutions will have to add something at a cost to them. Has this been considered? As for adverse findings by an independent assessor being appealed, surely there could be a better way for recourse than merely allowing the Minister to decide. This opens the door for implicated and politically connected members to potentially be handled unjustly. There should be a more accountable manner that is not open to ministerial abuse. When it comes to conflict of interest, he appreciated the answer but he would prefer that this was said explicitly rather than implied. As a former student on a university council, he knew how certain legislation can be used to stymie and intimidate student participation. We need to better define what is an acceptable conflict of



interest to avoid inconsistent use of that legislation.

Mr Mbatha noted that the original Act aimed to both transform universities and ground themselves in accountability. One had hoped that universities would transform and democratise internally. More recently, however, it is a struggle to find any such lessons in university culture. This is why he raised having a university ombudsperson earlier. The majority of university senates are composed mostly of traditional, conservative individuals. Over the past 18 years, the war to make universities progressive culturally has been difficult. What are the new generational ideas around institutional autonomy?

Ms S Mchunu (ANC) said that the amendment Bill is long overdue if we want to see higher education transformed. Does the Bill clarify who becomes responsible, in a situation where a university is not transforming? It seems as though it would be the government. We have situations where universities are not complying; we need to clarify this issue.

Prof De Beer replied that, for example when the Minister appoints an assessor, the Minister must gazette his appointment of independent assessors. The oversight is built into the Bill indirectly. Annual reports from the CHE are public if he is not mistaken. In the statute of a university, there should be a full exposition on how the Council should function. Councils should also have a code of conduct and a charter. If the Council is not functioning properly, it will be the Achilles' heel of the University.

As for institutional forums and ombudsmen, there are a number of issues. The Act only refers to the statute of the university, and there is no rule requiring that statute to explicitly define how institutional forums should function. Sometimes, the constitution of the forum is in the statute, which is problematic if that constitution conflicts or is otherwise problematic. We are trying to compel Council to receive and consider advice from forums. If the Council does not take the advisory body's advice, the Council must now provide a reason. Institutional forums have all stakeholders sitting around the table, so they are an important advisory body, but this opportunity could be used more effectively. Regulations on hiring senior staff should be advised by the institutional forum and are not always at the current time. This Bill aims to make absolutely clear when the Minister can interfere with institutional autonomy. The Council can make counter-proposals to the Minister on how to solve issues, but the Minister needs the power to ensure that the Council does follow up and solve the issue. Placing universities under administration is not always the best solution. However, in situations of corruption or mismanagement, the Minister must act in the interest of the public.

It is fair comment that we need to understand transformation better; we should consider whether a definition is necessary. What is here is that the Minister can now set transformation targets for the sector as well as a framework for recognising prior learning. The Minister, however, cannot set enrollment numbers for every program at every university. These matters are instead discussed along with broader matters between the Minister and institutions; institutions are being held to these goals with subsidy allocations. There should not be a separate process for this; the approach should be systematic else we have frustration occurring as we have seen in the past couple of months.

Adv Boshoff replied on the financial implications. The specific language in question deals with an individual's trade and occupational qualifications. There are no new financial implications as a result of this language. Declaring a conflict of interest is not the end of the world; it intends to provide decision makers with all the necessary information. Not all conflicts of interest, such as a student having an interest in fees, will skew or unduly influence the decision maker because the decision maker knows these interests are there. The goal is to expose conflicts of interest that are dishonest and/or unknown to the decision maker.

Dr Parker added that the system allows for a process for financing any requests from the Minister. It would never be that it is demanded that an institution something where there is a huge financial implication that is not taken into account. We are looking into teaching and research development grants, though this does not require mention in this Act. This Act, after review, is not seen to have major financial implications. We debated Mr Cassim's issue with the review of adverse findings at length, and decided that the Minister is the Executive in terms of Higher Education and that therefore the decision falls to the Minister. Parliament could challenge the Minister if actions were alleged to be unjust. We should not write something into the Act assuming that the Minister will be untrustworthy; that oversight falls to Parliament.

The Chairperson thanked the Department for its observations. She called for closing remarks from the DG.

Mr Qonde said that the Department is delighted by developments thus far and it looks forward to full engagement with the wise members. He wished them fruitful deliberations going forward.

The Chairperson said that, as the process unfolds, engagement will be more vigorous. This is necessary so that the end product can be sustainable. We had to engage here today to take the DHET forward. Clarity was provided where it was sought. The objectives of the Bill were clearly explained. The sequence of events will now be the advertisement of the hearing on the Bill in national and provincial newspapers to allow for citizens to make written submissions. Oral submissions to the Committee will follow during public hearings. The Department will be part of the public hearings. There will then be a meeting to hear responses from the DHET, followed by a meeting to consider the Bill clause by clause. The Committee will finally meet to review all issues and eventually submit a report; a vigorous debate in the House will follow. After the debate, the Speaker will refer the Bill to the NCOP; if the Bill is passed, it will be tabled to the President who can choose to assent to the Bill and complete the lawmaking process. Stakeholders must engage actively and within time limits. Quality preparation and input is necessary to propel the work of the Department to greater heights. Thanks to Members for their relevant interventions, thanks to Mr Qonde and Prof de Beer and the Department for the briefing.

### **Committee Programme**

The Committee considered its draft schedule.

The Chairperson announced that the oversight visit, due to scheduling conflicts, has been postponed indefinitely.

Mr Cassim asked about the logistics of this trip.

The Chairperson explained that the Committee cannot be in Parliament for its meetings and in KZN and the Eastern Cape all in one week, so the trip has been postponed.

Mr Cassim asked to when the oversight trip would be postponed. He hoped that it would happen as soon as possible.

The Chairperson noted that the Committee agreed with this.

Mr Mbatha asked for interaction with the National Student Financial Aid Scheme (NSFAS) to happen sooner than 10 February. By the 10th, most universities will be operational. This presentation should rather be held next Wednesday on 3 February.

Mr Cassim agreed with the proposal, but the NSFAS and the Department must be properly prepared.

Ms Kilian said that NSFAS will be better prepared a week later and that members will not all be able to attend next Wednesday. She said that the meeting should not be moved.

The Chairperson noted that a vote of members supported Ms Kilian's counter proposal to not change the agenda.

Mr Mbatha thought that Ms Kilian's explanation was not sufficient to justify skipping the important work of the Committee.

The Chairperson noted Mr Mbatha's concern but held the Committee's consensus.

Ms Kilian asked if the Committee could appeal for a better venue for the public hearings on the 17 February.

Dr Bozzoli pointed out that the State of the Nation (SONA) conflicts with these public hearings and that it will be very difficult for the public to get into Parliament during the heightened security of SONA.

The Chairperson clarified that the SONA debate takes place over three days.

Mr Cassim agreed that he hopes not to miss any sittings of the House. He proposed having a public hearing at a higher education institution. He thought that this would broaden access to the process.

Mr Mbatha supported Mr Cassim's proposal. There are five or six potential universities here in Cape Town that may have a better venue. This could be a courtesy call to them.

Ms Mchunu said that the hearings should end before the SONA debates and that this proposal to go to a university is too short notice, though it is a good idea, perhaps for next time.

Ms Kilian was concerned that the SONA debate would chip away at the time to consider legislation, which is an extremely important function of Parliament. As for a new venue, time constraints and co-ordination are too difficult to overcome for now.

Dr Bozzoli expressed concern that the Department did not call for written submissions at the draft Bill stage. Is there time at this stage? Was the Department's procedure legal? There is also limited time now to prepare oral submissions; it does not seem procedurally correct.

Mr Kekana asked that the Chair cast her eyes around to all members and make eye contact with any member who raises a hand. When the Chair does not see us, it makes it seem as though we are not participating. Secondly, he did not think they can make the decision on a venue now. They need time to caucus to consider all the arguments. They could break now for a short caucus. The principle is good, but we need to consider practicalities.

Mr Cassim found it in bad taste for the ANC Whip to call for a caucus. In the past, the Chair has rightfully admonished members for calling for a caucus. Next, if there is a will, there is a way. In the spirit of public participation, Parliament could take the lead and do this. This should be a principled decision, not a political one.

The Committee Secretary said that the advert for hearings on the Bill would go out this

weekend. There is a period of two weeks for submissions before the public hearings. During that week there will be a debate in the House; so the only available day would be Friday.

Mr Mbatha pointed out that, if published this weekend, the public will barely have fourteen days. He suggested using the Friday 19 February. This is the most important process this Committee will undergo during this term. Giving the public more days is a show of the Committee's dedication to this Bill. There will be much participation if we do this. The venue, no matter where it is, must be open and accessible and respectful for both members and the public.

The Chairperson noted that the venue issue is not about respect but rather availability. She called for the Committee to rise above party lines on the issue of education.

Mr Kekana agreed that politicising this matter is not helpful.

The Chairperson noted that the venue must be wheelchair accessible.

Mr Cassim asked if there is a decision on whether Friday 19 February should be used for public hearings, perhaps at a university.

Ms Kilian held that there is not enough time to organise a trip outside Parliament. However, the Committee can meet on the Friday at an appropriate and accessible venue in Parliament.

Mr Cassim pointed out that the Friday will not conflict with SONA. Perhaps the Secretary can check and see if a trip is possible.

Mr Kekana said that the Committee has heard on many occasions the voices of students. He did not understand Mr Cassim's desperation to go to a university. Students can come to Parliament and we can avoid the issues that will arise from trying to plan an outside event like this. If we go to an institution, other institutions will complain that we did not go to them.

Mr Siwela proposed that the Secretary should research what is and is not possible for better venues.

The Chairperson noted agreement from Members that the Secretary will further research the matter.

Mr Mbatha observed that, if the Committee does not go on oversight before the end of March, it would have been over a year without oversight in the Eastern Cape and KZN. He proposed that that oversight should happen this financial year.

The Chairperson agreed that this should be a priority.

The Committee approved its programme for the first term.

### **Committee Minutes**

The Committee approved the minutes of the 21 and 28 October, 28 October, 3 and 18 November committee meetings. Also considered and approved were the minutes of the Standing Committee on Appropriations of 4 November.

### **Committee Announcements**

The Chairperson noted the importance of the Higher Education Amendment Bill and its principal Act, the Higher Education Act of 1997.

Mr Mbatha asked to be provided a copy of the Act. He asked the Secretary to email members the advert for the hearings on the Bill.

The Chairperson agreed. The advert should be distributed as widely as possible, including provincial newspapers and public higher education institutions. The Committee's Media Liaison Officer will also assist in this. The Secretary will send all members the advert.

The Chairperson announced that the Committee has been invited to a joint meeting with Science and Technology tomorrow in order to exchange information with a Norwegian parliamentary delegation.

The meeting was adjourned.