

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

Regulations under this Act

**COMMITTEE OF PRINCIPALS: REQUIREMENTS AND CONDITIONS FOR
MATRICULATION ENDORSEMENT AND THE ISSUING OF CERTIFICATES OF
EXEMPTION**

**REGULATIONS FOR THE REGISTRATION OF PRIVATE HIGHER EDUCATION
INSTITUTIONS**

**REGULATIONS RELATING TO FEES PAYABLE IN RESPECT OF THE REGISTRATION
AND AMENDMENT OF REGISTRATION OF PRIVATE HIGHER EDUCATION
INSTITUTIONS, AND IN RESPECT OF THE PROVISION OF CERTIFIED COPIES OF, OR
EXTRACTS FROM, CERTAIN DOCUMENTS
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:-

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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 Government department responsible for education at national level;

'Director-General' means the Director-General of the Department of Education;

'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);

'higher education' means all learning programmes leading to qualifications higher than grade 12 or its equivalent in terms of the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act 58 of 1995), and includes tertiary education as contemplated in Schedule 4 of the Constitution;

'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 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 Education;

'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;

'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-
 - (i) complete qualifications at or above level 5 of the National Qualification Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act 58 of 1995); or
 - (ii) such part of a qualification which meets the requirements of a unit standard as recognised by the South African Qualifications Authority at or above the level referred to in subparagraph (i);
- (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.

2 Application

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

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 an annual report on the state of higher education, on a regular basis;
- (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;
 - (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) quality promotion and quality assurance;
- (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 Quality promotion and quality assurance functions of CHE

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

(1A) The Higher Education Quality Committee is deemed to be accredited by SAQA as an Education and Training Quality Assurance body primarily responsible for higher education.

[Sub-s. (1A) inserted by s. 1 of Act 23 of 2001.]

(2) The CHE and the Higher Education Quality Committee must comply with the policies and criteria formulated by SAQA in terms of section 5 (1) (a) (ii) of the South African Qualifications Authority Act, 1995 (Act 58 of 1995).

(3) The Higher Education Quality Committee may, with the concurrence of the CHE, delegate any quality promotion and quality assurance functions to other appropriate bodies capable of performing such functions.

(4) The delegation under subsection (3)-

- (a) must be in writing and published by notice in the Gazette;
- (b) is subject to such conditions as the Higher Education Quality Committee may determine; and

- (c) does not prevent the performance of such functions by the Higher Education Quality Committee.

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

(6) The Minister must make regulations to give effect to quality promotion and quality assurance in terms of this Act.

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 six non-voting members of the CHE nominated respectively by the Director-General, the Provincial Heads of Education, the Director-General of the Department of Arts, Culture, 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 SAQA.

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

(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,

[Para. (b) substituted by s. 3 of Act 23 of 2001.]

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.

[Sub-s. (1) substituted by s. 2 of Act 55 of 1999.]

(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), with the changes required by the context, apply to an incorporation referred to in subsection (1).

[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 26-38)

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.]

(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) The members of a council-

- (a) must be persons with knowledge and experience relevant to the objects and governance of the public higher education institution concerned; and
- (b) must participate in the deliberations of the council in the best interests of the public higher education institution concerned.

(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, 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.

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.

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.

[Sub-s. (3) substituted by s. 5 of Act 54 of 2000.]

[S. 41 substituted by s. 10 of Act 63 of 2002.]

41A Appointment of administrator

(1) If an audit of the financial records of a public higher education institution, or an investigation by an independent assessor as contemplated in section 47, reveals financial or other maladministration of a serious nature at a public higher education institution or the serious undermining of the effective functioning of a public higher education institution, the Minister may, after consultation with the council of the public higher education institution concerned, if practicable, and notwithstanding any other provision of this Act, appoint a person as administrator to take over the authority of the council or the management of the institution and perform the functions relating to governance or management on behalf of the institution for a period determined by the Minister, and such period may not exceed two years.

[Sub-s. (1) substituted by s. 15 of Act 23 of 2001.]

(2) The Minister may extend the period referred to in subsection (1) once for a further period not exceeding six months.

(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 43-49)

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.

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 30 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 on the findings of his or her investigation; and
- (c) suggest appropriate measures.

(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.

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

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 as contemplated in paragraph (a).

[S. 51 substituted by s. 6 of Act 54 of 2000.]

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 appropriate quality assurance body accredited by SAQA in terms of the South African Qualifications Authority Act, 1995 (Act 58 of 1995); and
 - (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 fulfil 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 therefore;

- (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 8b 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.]

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.]

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; and
- (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.

b[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.