

HIGHER EDUCATION ACT NO. 101 OF 1997

[View Regulation]

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

(English text signed by the President)

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as amended by

Higher Education Amendment Act, No. 55 of 1999
Higher Education Amendment Act, No. 54 of 2000
Higher Education Amendment Act, No. 23 of 2001
Higher Education Amendment Act, No. 63 of 2002
Higher Education Amendment Act, No. 38 of 2003
Higher Education Amendment Act, No. 39 of 2008
Higher Education Laws Amendment Act, No. 26 of 2010
Higher Education Laws Amendment Act, No. 21 of 2011
Higher Education and Training Laws Amendment Act, No. 23 of 2012
[Higher Education Amendment Act](#), No. 9 of 2016

pending amendment by

Higher Education Amendment Act, No. 9 of 2016

ACT

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 policy and oversight mechanisms for the public higher education system; to provide for the development of articulation and recognition of prior learning frameworks across the education system; to provide for new institutional types; 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, 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 or private higher education institutions; to provide for transitional arrangements and the repeal of certain laws; and to provide for matters connected therewith.

[Long Title substituted by s. 43 of Act No. 9 of 2016.]

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;

ARRANGEMENT OF SECTIONS

[Arrangement of Sections amended by s. 44 of Act No. 9 of 2016.]

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CHAPTER 1

DEFINITIONS, APPLICATION AND DETERMINATION OF POLICY

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 a person registered in terms of section 37 of the Auditing Professions Act, 2005 (Act No. 26 of 2005);

[Definition of “auditor” substituted by s. 1 (a) of Act No. 9 of 2016.]

“CHE” means the Council on Higher Education established by section 4;

“college”

[Definition of "college" deleted by s. 1 (c) of Act No. 9 of 2016.]

"Constitution" means the Constitution of the Republic of South Africa, 1996;
[Definition of "Constitution" inserted by s. 1 (d) of Act No. 9 of 2016.]

"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);
[Definition of "convert" inserted by s. 1 (d) of Act No. 9 of 2016.]

"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 No. 26 of 2010.]

"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;
[Definition of "directive" inserted by s. 1 (b) of Act No. 9 of 2016.]

"Director-General" means the Director-General of the Department of Higher Education and Training;
[Definition of "Director-General" substituted by s. 1 (b) of Act No. 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 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);

[Definition of "foreign juristic person" inserted by s. 1 (a) of Act No. 54 of 2000 and substituted by s. 1 (e) of Act No. 9 of 2016.]

"grade 12" means the highest grade in which education is provided by a school as defined in the South African Schools Act, 1996 (Act No. 84 of 1996);

"HEQF"

[Definition of "HEQF" inserted by s. 1 (a) of Act No. 39 of 2008 and deleted by s. 1 (f) of Act No. 9 of 2016.]

"HEQSF" means the sub-framework for higher education as contemplated in section 7 (d) of the National Qualifications Framework Act;

[Definition of "HEQSF" inserted by s. 1 (g) of Act No. 9 of 2016.]

"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;

[Definition of "higher education" substituted by s. 1 (b) of Act No. 39 of 2008 and substituted by s. 1 (h) of Act No. 9 of 2016.]

"higher education college" means a higher education 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 under section 69 (d) and—

- (a) established, merged, converted, deemed to have been established or declared as a public higher education college; or
- (b) registered as a private higher education college,

in terms of this Act;

[Definition of "higher education college" inserted by s. 1 (i) of Act No. 9 of 2016.]

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

- (a) converted, merged, established or deemed to be established as a public higher education institution

under this Act; or

[Para. (a) substituted by s. 1 (j) of Act No. 9 of 2016.]

- (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 No. 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 No. 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 No. 63 of 2002.]

"independent assessor" means the person appointed under section 44;

[Definition of "independent assessor" inserted by s. 1 (k) of Act No. 9 of 2016.]

"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, 2008 (Act No. 71 of 2008);

[Definition of "local juristic person" inserted by s. 1 (b) of Act No. 54 of 2000 and substituted by s. 1 (l) of Act No. 9 of 2016.]

"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 No. 63 of 2002.]

"Minister" means the Minister of Higher Education and Training;

[Definition of "Minister" substituted by s. 1 (c) of Act No. 26 of 2010.]

"national institute for higher education" means any institute for higher education established as a national institute for higher education in terms of Chapter 6A;

[Definition of "national institute for higher education" inserted by s. 1 (m) of Act No. 9 of 2016.]

"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 No. 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 No. 39 of 2008.]

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

"PAJA" means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);

[Definition of "PAJA" inserted by s. 1 (n) of Act No. 9 of 2016.]

"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;

“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.

[Definition of “provide higher education” inserted by s. 1 (p) of Act No. 9 of 2016.]

“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;

[Definition of “public higher education institution” substituted by s. 1 (o) of Act No. 9 of 2016.]

“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 No. 39 of 2008.]

“registrar” means the registrar referred to in section 50 (1);

[Definition of “registrar” substituted by s. 1 of Act No. 55 of 1999.]

“relative” in relation to any person, means—

- (a) the spouse or partner 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;

[Definition of “relative” inserted by s. 1 (r) of Act No. 9 of 2016.]

“SAQA” means the South African Qualifications Authority established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

“senate” means the body contemplated in section 28, and includes an academic board;

“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 religious rites;

[Definition of “spouse” inserted by s. 1 (s) of Act No. 9 of 2016.]

“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;

“technikon”

[Definition of “technikon” deleted by s. 1 (t) of Act No. 9 of 2016.]

“this Act” includes the regulations made under this Act;

“to provide higher education”

[Definition of “to provide higher education” inserted by s. 1 (c) of Act No. 54 of 2000, amended by s. 1 (f) of Act No. 39 of 2008 and deleted by s. 1 (p) of Act No. 9 of 2016.]

“university” means a higher education 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 as prescribed by the Minister under section 69 (d) and—

- (a) established, merged, converted, deemed to have been established or declared as a public university; or
- (b) registered as a private university, in terms of this Act;

[Definition of “university” substituted by s. 1 (u) of Act No. 9 of 2016.]

“university college” means a higher education 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 under section 69 (d) and—

- (a) established, merged, converted, deemed to have been established or declared as a public university college; or

(b) registered as a private university college,

in terms of this Act;

[Definition of “university college” inserted by s. 1 (v) of Act No. 9 of 2016.]

“**vice-principal**” includes a vice-rector and a deputy vice-chancellor.

2. Application and interpretation.—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.

[S. 2 substituted by s. 2 of Act No. 9 of 2016.]

3. Determination of higher education policy.— (1) The Minister must, taking into consideration the provisions of the Constitution and after consulting the CHE, determine policy on higher education, which policy includes, but is not limited to—

(a) transformation goals and oversight mechanisms for these goals;

(b) articulation and recognition of prior learning frameworks across the education system; and

(c) criteria for recognition as a university, university college, or higher education college.

[Sub-s. (1) substituted by s. 3 of Act No. 9 of 2016.]

(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 No. 54 of 2000.]

CHAPTER 2
COUNCIL ON HIGHER EDUCATION

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 No. 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 No. 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 No. 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 HEQSF.

[Sub-s. (2) substituted by s. 4 of Act No. 9 of 2016.]

(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 No. 23 of 2001 and substituted by s. 3 (1) of Act No. 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 No. 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 No. 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 No. 23 of 2001 and by s. 4 of Act No. 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 No. 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.

[S. 11 amended by s. 3 of Act No. 54 of 2000. Sub-s. (3) added by s. 3 of Act No. 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 No. 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 No. 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

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—

(a) establish a public university, public university college or a public higher education college; or

(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.

[Sub-s. (1) substituted by s. 5 (a) of Act No. 9 of 2016.]

(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.

[Sub-s. (2) deleted by s. 4 (a) of Act No. 23 of 2001 and inserted by s. 5 (b) of Act No. 9 of 2016.]

(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, converted, 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 No. 63 of 2002 and by s. 5 (c) of Act No. 9 of 2016.]

(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.

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

- (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.

[Sub-s. (5A) inserted by s. 5 (d) of Act No. 9 of 2016.]

(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 No. 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 No. 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 No. 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 No. 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 No. 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 No. 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, university college or higher education college; or
[Para. (a) substituted by s. 6 (a) of Act No. 9 of 2016.]
- (b) an incorporated subdivision of a university, university college or higher education college.
[Para. (b) substituted by s. 4 (a) of Act No. 63 of 2002 and by s. 6 (a) of Act No. 9 of 2016.]

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

- (a) the date on which the education institution becomes a university, university college or higher education college or a subdivision of a university, university college or higher education college, as the case may be;
[Para. (a) substituted by s. 6 (b) of Act No. 9 of 2016.]
- (b) the name of the university, university college or higher education college; and
[Para. (b) substituted by s. 6 (b) of Act No. 9 of 2016.]
- (c) the physical location and the official address of the university, university college or higher education college.
[Para. (c) substituted by s. 6 (b) of Act No. 9 of 2016.]

(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 No. 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 No. 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 No. 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 No. 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 No. 66 of 1995), prior to the date of the declaration contemplated in subsection (1).

[Sub-s. (6) added by s. 4 (c) of Act No. 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 No. 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) Before making a decision under subsection (1), the Minister must—

- (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;
- (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).

[Sub-s. (2) amended by s. 5 (a) of Act No. 63 of 2002 and substituted by s. 7 of Act No. 9 of 2016.]

(2A) Notwithstanding sections 197 and 197A of the Labour Relations Act, 1995 (Act No. 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 No. 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 No. 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 No. 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 No. 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 No. 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 No. 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 No. 66 of 1995), prior to the date of the merger contemplated in subsection (1).

[Sub-s. (2G) inserted by s. 5 (c) of Act No. 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 No. 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 No. 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 No. 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 No. 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.

[Sub-s. (7) added by s. 6 of Act No. 23 of 2001. Para. (b) substituted by s. 5 (e) of Act No. 63 of 2002.]

(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 No. 23 of 2001 and substituted by s. 5 (f) of Act, No. 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 No. 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 No. 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 No. 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) inserted by s. 5 (g) of Act No. 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) inserted by s. 5 (g) of Act No. 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).

[S. 24 substituted by s. 6 of Act No. 63 of 2002. Sub-s. (3) substituted by s. 2 of Act No. 38 of 2003.]

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

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 No. 55 of 1999 and by s. 7 of Act No. 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).

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 No. 23 of 2001.]

(2) Subject to the policy determined by the Minister as contemplated in section 3, the council, with the concurrence of the senate, must—

- (a) determine the language policy of the public higher education institution concerned;
- (b) publish the policy; and
- (c) make the policy available on request.

[Sub-s. (2) substituted by s. 8 (a) of Act No. 9 of 2016.]

(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.

[Sub-s. (3) substituted by s. 8 (b) of Act No. 9 of 2016.]

(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 No. 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 No. 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 No. 23 of 2012.]

(5B) Any person who has been a member of a council of a public higher education institution—

- (a) under circumstances contemplated in sections 49B (1) (a) and 49E; and
- (b) against whom an independent assessor has made an adverse finding in the report contemplated in section 47 (1) (b), shall not be eligible for appointment, election, re-appointment or re-election as a member of a council of any public higher education institution;

[Sub-s. (5B) inserted by s. 1 of Act No. 23 of 2012 and substituted by s. 8 (c) of Act No. 9 of 2016.]

(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 or a person with delegated functions in terms of section 68 (2)—

- (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 or the committee of the council, or exercise any delegated function in the best interests of the public higher education institution concerned;

[Para. (b) substituted by s. 8 (e) of Act No. 9 of 2016.]

- (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;

[Para. (c) substituted by s. 8 (e) of Act No. 9 of 2016.]

- (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, 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;

[Sub-para. (ii) substituted by s. 8 (f) of Act No. 9 of 2016.]

- (iii) must, before the meeting of the council or the committee concerned and in writing, inform the chairperson of that meeting of the existence of a conflict or possible conflict of interest.

[Sub-s. (7) substituted by s. 1 (a) of Act No. 21 of 2011 and amended by s. 8 (d) of Act No. 9 of 2016. Sub-para.

(iii) substituted by s. 8 (f) of Act No. 9 of 2016.]

(7A) Any person may, in writing, inform the chairperson of a meeting of the council or a committee of the council concerned, before 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.

[Sub-s. (7A) inserted by s. 1 (b) of Act No. 21 of 2011 and substituted by s. 8 (g) of Act No. 9 of 2016.]

(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 No. 21 of 2011.]

(7C) 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 the matter but must refer the matter for decision by council, having noted the member's or the employee's interest in the matter.

[Sub-s. (7C) inserted by s. 1 (b) of Act No. 21 of 2011 and substituted by s. 8 (h) of Act No. 9 of 2016.]

(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 No. 21 of 2011.]

(7E) The council must—

- (a) having regard to the provisions of 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;

[Sub-para. (a) substituted by s. 8 (i) of Act No. 9 of 2016.]

(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 No. 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 No. 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 concerned by the administrator appointed in accordance with section 49G within a period of six months following the administrator's appointment.

[Sub-s. (9) added by s. 8 (b) of Act No. 23 of 2001 and substituted by s. 8 (j) of Act No. 9 of 2016.]

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 No. 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 No. 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.

(1A) The council must—

- (a) consider the advice given by the institutional forum; and
- (b) provide written reasons if the advice is not accepted.

[Sub-s. (1A) inserted by s. 9 of Act No. 9 of 2016.]

(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 No. 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 No. 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 No. 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 No. 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 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.

[Sub-s. (2) substituted by s. 10 (a) of Act No. 9 of 2016.]

(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) (i) before he or she assumes office; and

(ii) whenever a new interest 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

[Para. (a) substituted by s. 10 (b) of Act No. 9 of 2016.]

(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 No. 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, and takes a decision, 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 No. 21 of 2011 and amended by s. 10 (c) of Act No. 9 of 2016.]

(6) An employee may not on behalf of the public higher education institution concerned contract with himself or herself or his or her relative or any entity in which the employee or any relative has a direct or indirect financial, personal, fiduciary or other interest.

[Sub-s. (6) added by s. 2 of Act No. 21 of 2011 and substituted by s. 10 (d) of Act No. 9 of 2016.]

(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).

[Sub-s. (7) added by s. 2 of Act No. 21 of 2011 and substituted by s. 10 (d) of Act No. 9 of 2016.]

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 No. 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 No. 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 re-admission to study at the public higher education institution concerned; and
- (d) refuse re-admission to a student who fails to satisfy such minimum requirements for re-admission.

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.

[S. 38A inserted by s. 3 of Act No. 38 of 2003, substituted by s. 2 of Act No. 23 of 2012 and repealed by s. 11 of Act No. 9 of 2016.]

38B.

[S. 38B inserted by s. 3 of Act No. 38 of 2003, substituted by s. 3 of Act No. 23 of 2012 and repealed by s. 11 of Act No. 9 of 2016.]

38C.

[S. 38C inserted by s. 3 of Act No. 38 of 2003 amended by s. 4 of Act No. 23 of 2012 and repealed by s. 11 of Act No. 9 of 2016.]

38D.

[S. 38D inserted by s. 3 of Act No. 38 of 2003 and repealed by s. 11 of Act No. 9 of 2016.]

38E.

[S. 38E inserted by s. 3 of Act No. 38 of 2003 and repealed by s. 11 of Act No. 9 of 2016.]

38F.

[S. 38F inserted by s. 3 of Act No. 38 of 2003 and repealed by s. 11 of Act No. 9 of 2016.]

38G.

[S. 38G inserted by s. 3 of Act No. 38 of 2003 and repealed by s. 11 of Act No. 9 of 2016.]

38H.

[S. 38H inserted by s. 3 of Act No. 38 of 2003, substituted by s. 5 of Act No. 23 of 2012 and repealed by s. 11 of Act No. 9 of 2016.]

38I.

[S. 38I inserted by s. 3 of Act No. 38 of 2003, substituted by s. 6 of Act No. 23 of 2012 and repealed by s. 11 of Act No. 9 of 2016.]

38J.

[S. 38J inserted by s. 7 of Act No. 23 of 2012 and repealed by s. 11 of Act No. 9 of 2016.]

38K.

[S. 38K inserted by s. 7 of Act No. 23 of 2012 and repealed by s. 11 of Act No. 9 of 2016.]

38L.

[S. 38L inserted by s. 7 of Act No. 23 of 2012 and repealed by s. 11 of Act No. 9 of 2016.]

38M.

[S. 38M inserted by s. 7 of Act No. 23 of 2012 and repealed by s. 11 of Act No. 9 of 2016.]

38N.

[S. 38N inserted by s. 7 of Act No. 23 of 2012 and repealed by s. 11 of Act No. 9 of 2016.]

38O.

[S. 38O inserted by s. 7 of Act No. 23 of 2012 and repealed by s. 11 of Act No. 9 of 2016.]

CHAPTER 5
FUNDING OF PUBLIC HIGHER EDUCATION

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.

(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
- (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.

[Sub-s. (3A) inserted by s. 12 of Act No. 9 of 2016.]

(3B) If such council thereafter fails to comply with the provision or condition within the specified period as contemplated in subsection (3A), the Minister—

- (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.

[Sub-s. (3B) inserted by s. 12 of Act No. 9 of 2016.]

(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.

[Sub-s. (3C) inserted by s. 12 of Act No. 9 of 2016.]

(3D) The Minister must table a report in Parliament, regarding any action taken under subsection (3B), within a period of 30 days of the action.

[Sub-s. (3D) inserted by s. 12 of Act No. 9 of 2016.]

(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 No. 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 No. 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 No. 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.

[Sub-s. (2) added by s. 4 (b) of Act No. 54 of 2000. Para. (b) substituted by s. 9 of Act No. 63 of 2002.]

(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.

[S. 40 amended by s. 4 (b) of Act No. 54 of 2000. Sub-s. (3) added by s. 4 (b) of Act No. 54 of 2000.]

41. Records to be kept, external audit 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) 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;

[Sub-para (b) substituted by s. 13 (b) of Act No. 9 of 2016.]

(2) The council of a public higher education institution must by a date and in the manner prescribed by the Minister, provide the Minister with such information, in such format, as the Minister may prescribe.

[S. 41 amended by s. 5 of Act No. 54 of 2000, substituted by s. 10 of Act No. 63 of 2002 and amended by s. 13 (a) of Act No. 9 of 2016. Sub-s. (2) substituted by s. 13 (c) of Act No. 9 of 2016.]

CHAPTER 6 MINISTERIAL INTERVENTIONS IN HIGHER EDUCATION INSTITUTIONS

[Chapter 6, Heading inserted by s. 14 of Act No. 9 of 2016.]

41A.

[S. 41A inserted by s. 6 of Act No. 55 of 1999, amended by s. 15 of Act No. 23 of 2001, by s. 11 of Act No. 63 of 2002, by s. 8 of Act No. 23 of 2012 and repealed by s. 15 of Act No. 9 of 2016.]

42. Ministerial directive.—(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.

(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;
- (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.

(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
- (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—

- (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.

[S. 42 substituted by s. 16 of Act No. 9 of 2016.]

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 re-appointed.

44. Appointment of independent assessor.—(1) 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—

- (a) in the cases referred to in section 45; and
- (b) after consulting the council of the public higher education institution concerned, if practicable.

[Sub-s (1) amended by s. 18 (a) of Act No. 9 of 2016.]

(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.

[Sub-s (1A) inserted by s. 18 (b) of Act No. 9 of 2016.]

(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 accordance with section 47.

[Sub-s (2) substituted by s. 18 (c) of Act No. 9 of 2016.]

45. Cases where independent assessor may be appointed.—The Minister may appoint an independent assessor under section 44 if—

- (a) the council of a public higher education institution requests such appointment in writing;
- (b) (i) circumstances arise at a public higher education institution that—
 - (aa) involve financial or other maladministration of a serious nature; or
 - (bb) seriously undermine the effective functioning of the public higher education institution; and(ii) the council of the public higher education institution has failed to resolve such circumstances;
- (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.

[S. 45 substituted by s. 19 of Act No. 9 of 2016.]

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 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
- (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 must be determined by the independent assessor with due regard to the PAJA, substantive fairness and the circumstances of the case.

(c) The independent assessor may direct that any category of persons or all persons whose presence is not desirable 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 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. shall not be present at any proceedings pertaining to any investigation or part thereof.

[Sub-s. (1) substituted by s. 20 (a) of Act No. 9 of 2016.]

(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 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 representative, in the event that the rights, interests or potential interests of that person may be affected by such document or evidence.

[Sub-s. (2) substituted by s. 20 (a) of Act No. 9 of 2016.]

(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 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
- (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 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.

[Sub-s. (4) substituted by s. 20 (b) of Act No. 9 of 2016.]

(5) A 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 must be signed by the independent assessor and served on the person either by—

- (a) registered mail; or
- (b) 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.

[Sub-s. (5) substituted by s. 20 (b) of Act No. 9 of 2016.]

(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—

- (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 person contemplated in subsection (6).

[Sub-s. (7) substituted by s. 20 (c) of Act No. 9 of 2016.]

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

- (i) such implication may be to the detriment of that person; or
- (ii) 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 the opportunity to respond in connection therewith, in a manner that 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 the opportunity to be heard in connection therewith by way of giving evidence.

[Sub-s. (8) substituted by s. 20 (c) of Act No. 9 of 2016.]

(9) The independent assessor 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).

[S. 45A inserted by s. 9 of Act No. 23 of 2012 and substituted by s. 20 (c) of Act No. 9 of 2016.]

45B. Entering upon premises by independent assessor.—The independent assessor 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.

[S. 45B inserted by s. 9 of Act No. 23 of 2012 and substituted by s. 21 of Act No. 9 of 2016.]

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 No. 23 of 2012.]

- (c) suggest in the report appropriate measures and provide the reasons why the measures are needed.

[Sub-s. (1) amended by s. 3 of Act No. 21 of 2011. Para. (c) substituted by s. 10 of Act No. 23 of 2012 and by s. 22 (a) of Act No. 9 of 2016.]

(1A) The Minister may, on good cause shown, at the request of the independent assessor extend the period in subsection (1).

[Sub-s. (1A) inserted by s. 22 (b) of Act No. 9 of 2016.]

(2) The Minister must within 90 days of receiving the report referred to in subsection (1), provide a copy of the report to the council concerned, table the report before the National Assembly and publish such report in the *Gazette*.

[Sub-s. (2) substituted by s. 22 (c) of Act No. 9 of 2016.]

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 of independent assessor.—The Minister, with the 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.

[S. 49 substituted by s. 23 of Act No. 9 of 2016.]

49A. Indemnification of independent assessor.—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.

[S. 49A inserted by s. 11 of Act No. 23 of 2012 and substituted by s. 24 of Act No. 9 of 2016.]

49B. Appointment of administrator.— (1) Notwithstanding any other provision of this Act, the Minister may appoint a person as administrator, if any of the following circumstances occur:

- (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;
- (b) the circumstances contemplated in section 42 (4) arise;
- (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).

[Sub-s. (1) substituted by s. 25 (a) of Act No. 9 of 2016.]

(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;
- (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
- (d) consider the representations contemplated in paragraph (c);

[Sub-s. (1A) inserted by s. 25 (b) of Act No. 9 of 2016.]

(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.

[Sub-s. (2) substituted by s. 25 (c) of Act No. 9 of 2016.]

(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 inserted by s. 11 of Act No. 23 of 2012.]

49BA. Publication of appointment of administrator.—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;
- (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.

[S. 49BA inserted by s. 26 of Act No. 9 of 2016.]

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 inserted by s. 11 of Act No. 23 of 2012.]

49D. Remuneration and allowances of administrator.—(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.

[S. 49D inserted by s. 11 of Act No. 23 of 2012 and substituted by s. 27 of Act No. 9 of 2016.]

49E. Dissolution of council.—The council is dissolved from the date the Minister appoints the administrator in terms of section 49B.

[S. 49E inserted by s. 11 of Act No. 23 of 2012.]

49F. Role, powers, functions and duties of administrator.—(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.

[S. 49F inserted by s. 28 of Act No. 9 of 2016.]

49G. Appointment of administrator on resignation of council.—(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.

[S. 49G inserted by s. 28 of Act No. 9 of 2016.]

49H. Termination of term of office of administrator.—(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).

[S. 49H inserted by s. 28 of Act No. 9 of 2016.]

49I. Directive to council appointed by administrator.—(1) The Minister, after taking into account the report of the administrator, 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).

[S. 49I inserted by s. 28 of Act No. 9 of 2016.]

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

[S. 49J inserted by s. 28 of Act No. 9 of 2016.]

CHAPTER 6A
NATIONAL INSTITUTES FOR HIGHER EDUCATION
[Chapter 6A inserted by s. 29 of Act No. 9 of 2016.]

49K. Establishment of national institute for higher education.—(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*.

[S. 49K inserted by s. 29 of Act No. 9 of 2016.]

49L. Functions of national institute for higher education.—(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*.

[S. 49L inserted by s. 29 of Act No. 9 of 2016.]

49M. Governance, composition of board and committees.—(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.

[S. 49M inserted by s. 29 of Act No. 9 of 2016.]

49N. Term of office of chairperson and members.—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.

[S. 49N inserted by s. 29 of Act No. 9 of 2016.]

49O. Vacation of office.—(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 section 49K (2) 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.

[S. 49O inserted by s. 29 of Act No. 9 of 2016.]

49P. Filling of vacancies.—(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.

[S. 49P inserted by s. 29 of Act No. 9 of 2016.]

49Q. Delegations.—(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.

[S. 49Q inserted by s. 29 of Act No. 9 of 2016.]

49R. Staff and conditions of service.—(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.

[S. 49R inserted by s. 29 of Act No. 9 of 2016.]

49S. Funds of national institute for higher education.—(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.

[S. 49S inserted by s. 29 of Act No. 9 of 2016.]

49T. Annual audit.—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.

49U. 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 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.

[S. 49U inserted by s. 29 of Act No. 9 of 2016.]

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

[S. 49V inserted by s. 29 of Act No. 9 of 2016.]

49W. Disestablishment of national institute for higher education.—(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.

[S. 49W inserted by s. 29 of Act No. 9 of 2016.]

CHAPTER 7 PRIVATE HIGHER EDUCATION INSTITUTIONS

50. Designation of registrar.—(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.

[Sub-s. (1) substituted by s. 7 of Act No. 55 of 1999 and by s. 30 of Act No. 9 of 2016.]

(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 No. 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. Authority to provide higher education.—(1) No local juristic person or foreign juristic 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, 2008 (Act No. 17 of 2008), before such person is registered or conditionally registered in accordance with paragraph (a).

[Sub-s. (1) substituted by s. 31 (b) of Act No. 9 of 2016.]

(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-frameworks for higher education and trades and occupations on the National Qualifications Framework contemplated in section 7 (b) and (c) read with section 13 (1) (h) of the National Qualifications Framework Act.

[S. 51 substituted by s. 6 of Act No. 54 of 2000, by s. 2 of Act No. 26 of 2010 and amended by s. 31 (a) of Act No. 9 of 2016. Sub-s. (2) substituted by s. 31 (c) of Act No. 9 of 2016.]

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 of private higher education institutions.—(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) 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.

[Para. (b) amended by s. 8 of Act No. 55 of 1999, by s. 7 (b) of Act No. 54 of 2000 and substituted by s. 32 (b) of Act No. 9 of 2016.]

- (c) complies with any other reasonable requirement prescribed by the Minister.

[Sub-s. (1) amended by s. 7 (a) of Act No. 54 of 2000. Para. (c) added by s. 7 (c) of Act No. 54 of 2000 and substituted by s. 16 of Act No. 23 of 2001.]

(2) The registrar may require further information, particulars and documents in support of any application for registration.

[S. 53 amended by s. 32 (a) of Act No. 9 of 2016.]

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 No. 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 No. 54 of 2000 and by s. 17 (a) of Act No. 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 No. 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 No. 23 of 2001.]

(7) No independent school as defined in the South African Schools Act, 1996 (Act No. 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 No. 54 of 2000.]

(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 colleges, as the case may be.

(Pending amendment: Sub-s. (7) to be substituted by s. 33 (a) of Act No. 9 of 2016 and comes into operation on a date to be determined by the Minister by notice in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

(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.

(Pending amendment: Sub-s. (8) to be added by s. 33 (b) of Act No. 9 of 2016 and comes into operation on a date to be determined by the Minister by notice in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

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 No. 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 six months of the end of the financial 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.

[Para. (b) amended by s. 34 of Act No. 9 of 2016.]

(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 No. 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 No. 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 No. 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 No. 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 No. 23 of 2001.]

CHAPTER 8 GENERAL

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 No. 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 No. 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 No. 23 of 2001.]

65AB. Change of type and scope of higher education institution.—(1) The Minister may, at the request of the council of the institution concerned, after consultation with the CHE, 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 (1) and 20 (4).

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

(3) The provisions of subsections (1) and (2) shall apply to registered private higher education institutions, subject to the necessary changes required by the context.

[S. 65AB inserted by s. 35 of Act No. 9 of 2016.]

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 No. 23 of 2001.]

(3) The provisions of subsections (1) and (2) shall apply to registered private higher education institutions, subject to the necessary changes required by the context.

[Sub-s. (3) added by s. 36 of Act No. 9 of 2016.]

65BA. Withdrawal and revocation of degree, diploma, certificate or other qualification.—(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—

- (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.

(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;
- (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
- (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).

(3) The provisions of subsections (1) and (2) shall apply to registered private higher education institutions, subject to the necessary changes required by the context.

(4) In the event that any degree, diploma, certificate or other qualification that was awarded, is withdrawn or revoked, the relevant Quality Council responsible for the qualification or part-qualification and SAQA must be informed so as to amend the National Learner Record Database, if necessary.

[S. 65BA inserted by s. 37 of Act No. 9 of 2016.]

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 practise any profession.

[S. 65C inserted by s. 24 of Act No. 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 HEQSF 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.

[Sub-s (1) substituted by s. 38 (a) of Act No. 9 of 2016.]

(2) Any public higher education institution identified by the Minister in accordance with policy determined under section 3, must offer an education programme 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.

[S. 65D inserted by s. 3 of Act No. 26 of 2010. Sub-s (2) substituted by s. 38 (b) of Act No. 9 of 2016]

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.

(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.

[Sub-s (1A) inserted by s. 39 of Act No. 9 of 2016.]

(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 No. 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) the board of a national institute for higher education;

[Para. (c) substituted by s. 40 (a) of Act No. 9 of 2016.]

- (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 No. 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 No. 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 No. 55 of 1999.]

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

[Sub-s. (5) added by s. 40 (b) of Act No. 9 of 2016.]

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 planning and reporting framework for public higher education institutions;

[Para. (c) substituted by s. 41 of Act No. 9 of 2016.]

- (d) any policy matter as contemplated in section 3;

[Para. (d) amended by s. 6 of Act No. 39 of 2008.]

- (dA) the composition, procedures and duration of any committee of the CHE;

[Para. (dA) inserted by s. 6 of Act No. 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 No. 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 No. 63 of 2002.]

70.

[S. 70 repealed by s. 42 of Act No. 9 of 2016.]

CHAPTER 9
TRANSITIONAL AND OTHER ARRANGEMENTS

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 No. 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 No. 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 No. 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 No. 61 of 1955), and the Technikons Act, 1993 (Act No. 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 No. 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 No. 61 of 1955), and the Technikons Act, 1993 (Act No. 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 No. 99 of 1983), is hereby repealed in its entirety.

(2) The Universities Act, 1955 (Act No. 61 of 1955), is hereby repealed in its entirety.

(3) The Technikons Act, 1993 (Act No. 125 of 1993), is hereby repealed in its entirety.

(4) The Tertiary Education Act, 1988 (Act No. 66 of 1988), is hereby repealed in its entirety.

(5) The Technikons Amendment Act, 1995 (Act No. 27 of 1995), is hereby repealed in its entirety.
[Sub-s. (5) added by s. 10 of Act No. 55 of 1999.]

(6) The Education Policy Act, 1967 (Act No. 39 of 1967), is hereby repealed in its entirety.
[Sub-s. (6) added by s. 10 of Act No. 55 of 1999.]

(7) The University Staff (Education and Training) Act, 1984 (Act No. 91 of 1984), is hereby repealed in its entirety.

[Sub-s. (7) added by s. 12 of Act No. 54 of 2000.]

77. Short title.—This Act is called the Higher Education Act, 1997.