
G E N E R A L N O T I C E S

NOTICE 1444 OF 2000

DEPARTMENT OF EDUCATION

The Minister of Education hereby publishes the following draft Bills for comment:

- (A) Adult General Education and Training Bill, 2000;
- (B) Education Laws Amendment Bill, 2000;
- (C) General And Further Education And Training Quality Assurance Bill, 2000; and
- (D) Higher Education Amendment Bill, 2000

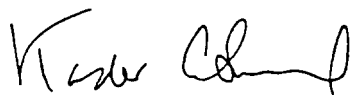
All interested persons and organisations are invited to comment in writing on the draft Bills and to direct the comments to:

The Director-General, Department of Education, Private Bag X895, Pretoria, 0001 for attention Ms M Locke. Fax No.: (012) 326 9128 or e-mail: locke.m@educ.gov.za, telephone number (012) 312 5356.

Kindly provide the name, address, telephone number, fax number and e-mail address of the person or organisation submitting the comments.

The comments should reach the Department not later than 23 April 2000.

Copies of the draft Bills and explanatory memoranda can be obtained from the Department of Education at the above address and the Government Printer in Pretoria.



PROFESSOR KADER ASMAL, MP
MINISTER OF EDUCATION

DATE:

28/3/2000

NOTICE 1505 OF 2000

ADULT GENERAL EDUCATION AND TRAINING BILL, 2000**BILL**

To regulate adult general education and training; to provide for the establishment, governance and funding of public adult learning centres; to provide for the registration of private adult learning centres; to provide for quality assurance and quality promotion in adult general education and training; to provide for transitional arrangements; and to provide for matters connected therewith.

PREAMBLE**WHEREAS IT IS DESIRABLE TO-**

ESTABLISH a national co-ordinated adult general education and training system which promotes co-operative governance and provides for programme-based adult general education and training;

RESTRUCTURE AND TRANSFORM programmed and centres to respond better to the human resources, economic and development needs of the Republic;

REDRESS past discrimination and ensure representivity and equal access;

ENSURE access to adult general education and training and the workplace by persons who have been marginalised in the past, such as women, the disabled and the disadvantaged;

PROVIDE optimal opportunities for adult learning and literacy, the creation of knowledge and development of skills in keeping with international standards of academic and technical quality;

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

ADVANCE strategic priorities determined by national policy objectives at all levels of governance and management within the adult general education and training sector;

RESPECT and encourage democracy and foster a culture which promotes fundamental human rights and creates an appropriate environment for adult teaching and learning;

PURSUE excellence, promote the full realisation of the potential of every learner and member of staff, tolerance of ideas and appreciation of diversity;

RESPOND to the needs of the Republic, the labour market and of the communities served by the centres;

COMPLEMENT the Skills Development Strategy in co-operation with the Department of Labour;

AND WHEREAS IT IS DESIRABLE for adult learning centres to perform specific functions within the context of public accountability and the national need for skills and knowledge and to provide access to work;

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

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CHAPTER 1

DEFINITIONS AND PURPOSE OF THE ACT

Definitions

1. In this Act, unless the context shows that another meaning is intended-

“adult general education and training” means all learning and training programmed for adults leading to qualifications from adult general education and training level 1 to 4 of which level 4 is equivalent to grade 9 in public schools or to National Qualifications Framework level 1 as contemplated in the SAQA Act, 1995 (Act No. 58 of 1995);

“auditor” means any person registered in terms of the Public Accounts’ and Auditors’ Act, 1991(Act No. 80 of 1991);

“centre” means a public or private centre;

“centre manager” means the head of a public centre appointed by the Head of Department in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998);

“constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“**Department**” means the government department responsible for education at national level;

“Director-General” means the Director-General of the Department;

“educator” means any person who teaches, educates or trains a learner, or who provides professional educational services, including professional therapy and education psychological services at a centre;

“**governing body**” means a governing body contemplated in section 8;

“grade” means a grade as defined in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996);

“**Head of Department**” means the head of a provincial department of education;

“learner” means any person receiving education in terms of this Act;

“Member of **the Executive Council**” means the Member of the Executive Council of a province who is responsible for education in that province;

“**Minister**” means the Minister of Education;

“**NABAET**” means the National Advisory Board for Adult General Education and Training, established by regulations in terms of section 11 of the National Education Policy Act, 1996 (Act No. 27 of 1996);

“organ of State” means an organ of State as defined in section 239 of the Constitution;

“**policy**” means-

- (a) policy determined by the Minister in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996); or
- (b) policy determined by the Member of the Executive council in terms of a provincial law;

“**private centre**” means a private adult learning centre registered in terms of section 27 and which offers adult general education and training to learners;

“**province**” means a province established by section 103 of the Constitution;

“**provincial legislature**” means a provincial legislature contemplated in section 104 of the Constitution;

“**public centre**” means a public adult learning centre established in terms of section 3 and which offers adult general education and training to adult learners;

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

“**staff**” means persons employed at public centres

“**this Act**” includes regulations made under this Act.

Purpose of the Act

2. (1) This Act shall provide for adult general education and training which is offered in centres in the Republic of South Africa.

(2) A Member of the Executive Council and Head of Department must exercise any power conferred upon them by or under this Act, after taking full account of the

applicable policy determined in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996).

(3) Nothing in this Act prevents a provincial legislature from enacting legislation for adult general education and training in a province in accordance with the Constitution and this Act.

CHAPTER 2

PUBLIC CENTRES

Establishment of public centres

3. (1) The Member of the Executive Council may, by notice in the Provincial Gazette and from money appropriated for this purpose by the provincial legislature, establish a public centre.

(2) Every public centre is a juristic person, with legal capacity to perform its functions in terms of this Act.

(3) A public centre which occupies immovable property owned by the State has the right, for the duration of the centre's existence, to occupy and use the immovable property for the benefit of the centre for educational purposes at or in connection with the centre.

(4) In this section, immovable property owned by the State includes immovable property held in trust on behalf of a tribe by a trust created by statute.

(5) The right referred to in subsection (4) may only be restricted-

(a) by the Head of Department; and

(b) if the immovable property is not utilised by the centre in the interests of education.

(6) The Head of Department may not act under subsection (5) unless he or she has-

(a) informed the governing body of the centre of his or her intention so to act and the reasons therefore;

(b) granted the governing body of the centre a reasonable opportunity to make representations to him or her in relation to such action; and

(c) duly considered any, such representations received.

(7) The right contemplated in subsection (3) is enforceable against any successor in title to the owner of the immovable property in question.

Provision of facilities

4. (1) The Head of Department must provide facilities for the use of the public centre to perform its functions in terms of this Act.

(2) If no facilities are available to be used by the public centre, the Head of Department must in terms of section 20(1)(k) of the South African Schools Act, 1996, request the governing body of a public school to allow the reasonable use of the facilities of the school by the public centre.

(3) After the request contemplated in subsection (2) has been made, the Head of Department and the school governing body must enter into an agreement providing for-

- (a) the amount of time and the time of day or night the school facilities will be used by the public centre;
- (b) the exact manner in which resources and the attached costs will be shared between the school and the public centre;
- (c) the responsible authority to be liable for payment of the costs referred to in paragraph (b);
- (d) the maintenance and improvement of the school facilities;
- (e) the access of all interested parties to the facility;
- (g) the security of the facility; and
- (g) the relationship between the school governing body and the public centre governing body.

(4) Where practically possible the Head of Department must consult with the relevant public centre governing body and take account of its concerns before entering into the agreement contemplated in subsection (3).

(5) The Minister may, after consultation with the Council of Education Ministers, make regulations regarding the minimum requirements for an agreement contemplated in subsection (3).

The governance and professional management of public centres

5. (1) Subject to this Act, the governance of every public centre is vested in its governing body.

(2) A governing body stands in a position of trust towards the centre.

(3) Subject to this Act and any applicable provincial law, the professional management of a public centre must be undertaken by the centre manager under the authority of the Head of Department.

Merger of public centres

6. (1) Subject to subsection (2), the Member of the Executive Council may, by notice in the Provincial Gazette, merge two or more public centres into a single centre.

(2) Before merging two or more public centres the Member of the Executive Council must-

(a) give written notice to the centres in question of the intention to merge them;

(b) publish a notice giving reasons for the proposed merger in one or more newspapers circulating in the area in which the centres are situated;

(c) give the governing bodies of the centres in question and any other interested persons an opportunity to make representations within at least 90 days from the date of the notice referred to in paragraph (b);

(d) consider such representations; and

(e) be satisfied that the employers of staff at the public centres in question have complied with their obligations in terms of the applicable labour law.

(3) The single centre contemplated in subsection (1) must be regarded as a public centre.

(4) All assets, liabilities, rights and obligations of the centres that are merged, must subject to the conditions of any donation, bequest or trust, vest in the single centre.

(5) The governing bodies of the centre that are merged must have a meeting before the merger to constitute a single interim governing body comprising of all the members of the governing bodies concerned.

(6) The interim governing body must decide on the budget and differences in the code of conduct and fees, as well as any issue that is relevant to the merger or which is prescribed, until a new governing body is constituted in terms of section 8.

(7) The governing body of a public centre to be merged, may appeal to the Minister against the decision as contemplated in subsection (1).

Closure of public centres

7. (1) The Member of the Executive Council may, by notice in the Provincial Gazette, close a public centre.

(2) The Member of the Executive Council may not act under subsection (1) unless he or she has-

- (a) informed the governing body of the centre of his or her intention so to act and his or her reasons therefore;
- (b) granted the governing body of the centre a reasonable opportunity to make representations to him or her in relation to such action;
- (c) conducted a public hearing on reasonable notice, to enable the community to make representations to him or her in relation to such actions; and
- (d) given due consideration to any such representations received.

(3) If a public centre is closed down in terms of subsection (1) all assets and liabilities of such centre must, subject to the conditions of any donation, bequest or trust devolved on the State unless otherwise agreed between the Member of the Executive Council and the governing body of the centre.

CHAPTER 3

GOVERNANCE OF PUBLIC CENTRES

The governing body of a public centre

8. (1) Every public centre must establish a governing body except a public centre provided in terms of section 21(1)(dA) of the South African Schools Act 1996 (Act No. 84 of 1996) and this chapter is not applicable to such a centre.

(2) Subject to this Act, the membership of the governing body of a public centre consist of-

- (a) elected members;
- (b) the centre manager in his or her official capacity;
- (c) co-opted members;
- (d) representatives of sponsoring bodies, if applicable;
- (e) representatives of organisations of disabled persons, if applicable; and
- (f) experts in the fields of adult general education and training, if applicable.

(3) Elected members of the governing body consist of a member or members of each of the following categories:

- (a) educators at the centre;
- (b) members of staff who are not educators; and
- (c) learners at the centre;

(4) Subject to this Act or any applicable provincial law-

- (a) a member or members of the governing body contemplated in subsection (3)(a) must be elected by educators at the centre;
- (b) the member or members of the governing body contemplated in subsection (3)(b) must be elected by members of the staff who are not educators at the centre; and
- (c) the member or members of the governing body contemplated in subsection (3)(c) must be elected by the learners at the centre.

(5) Subject to this Act or any applicable provincial law, the governing body must co-opt members from the community which the centre serves and such co-opted members having voting rights.

(6) The chairperson of the governing body and the principal of the public school where the centre operates, if applicable, may be co-opted by the governing body of the centre but do not have voting rights on the governing body.

(7) Subject to this Act and any applicable provincial law, the governing body of a public centre must function in terms of a constitution which complies with minimum requirements determined by the Member of the Executive Council by notice in the Provincial Gazette.

(8) A constitution contemplated in subsection (7) must provide for-

- (a) a meeting of the governing body at least four times a year and the procedures at such meetings;

- (b) recording and keeping minutes of governing body meetings; and
- (c) making available such minutes for inspection by the Head of Department.

(9) The governing body must submit a copy of its constitution to the Head of Department within 90 days of its election.

(1 O) If a new public centre is established in terms of section 3, the governance of that centre vests in the Head of Department until a governing body has been constituted in terms of this Act.

Election of members of and co-option of members to the governing body

9. Subject to this Act and any applicable provincial law, the Member of the Executive Council must, by notice in the Provincial Gazette, determine-

- (a) the term of office of members and office-bearers of a governing body;
- (b) the designation of an officer to conduct the process for the nomination and election of members of the governing body;
- (c) the procedure for the disqualification or removal of a member of the governing body or the dissolution of a governing body, for sufficient reason in each case;
- (d) the procedure for the filling of a vacancy on the governing body;
- (e) guidelines for the achievement of the highest practicable level of representativity of members of the governing body;
- (f) a formula for the calculation of the number of members of the governing body to be elected in each of the categories referred to in section 8(3) or co-opted to the governing body as contemplated in section 8(5), but such formula must provide reasonable representation for each category and must be capable of application to the different sizes and circumstances of public centres; and
- (g) any other matters necessary for the election, appointment or assumption of office of members of the governing body.

Single governing body for two or more public centres

10. (1) The Member of the Executive Council may determine that the governance of two or more public centres must vest in a single governing body if-

- (a) it is in the best interest of education and the centres;
- (b) it is in the public interest; or
- (c) he or she was so requested by the governing bodies of such centres, if such governing bodies exist.

(2) The Member of the Executive Council may not act in terms of subsection (1) unless he or she has-

- (a) given notice in the Provincial Gazette of his or her intention so to act;
- (b) given interested parties an opportunity to make written submissions within a period of not less than 30 days; and
- (c) considered all such submissions.

(3) The Member of the Executive Council must, by notice in the Provincial Gazette, determine the composition of the single governing body in a manner that ensures that each centre is equitably represented.

(4) Any governing body which is the subject of a notice in terms of subsection (2) continues to exist until the first meeting of the governing body constituted in terms of this section.

Functions of governing bodies

11. (1) Subject to this Act and any applicable provincial law, the governing body of a public centre must perform the following functions-

- (a) to promote the best interest of the public centre and strive to ensure its development through the provision of quality education for all learners at the public centre;
- (b) to develop a business plan for the public centre;
- (c) to provide any information pertaining to the public centre and its activities at the request of the Head of Department;
- (d) to be responsible for the budgeting and financial management systems of the public centre;
- (e) to promote the activities and the programmed of the public centre;
- (g) to supplement the procurement of the learning support material for the public centre;
- (g) to ensure that a conducive learning environment exists for learners;
- (h) to elicit public support for the public centre;

- (i) to keep proper records of all governing body meetings;
- (j) to develop the vision and mission statement of the public centre;
- (k) subject to policy, to determine the language policy of the public centre;
- (l) to recommend the appointment of educators of the public centre in terms of the Employment of Educators Act, 1998 (Act No. 98 of 1998);
- (m) to establish and administer a public centre fund from voluntary contributions;
- (n) to adopt a constitution;
- (o) to adopt a code of conduct for learners at the public centre;
- (p) to discharge all other functions imposed upon a governing body by or under this Act; and
- (q) to discharge all other functions consistent with the Act as determined by the Minister by notice in the Government Gazette, or by the Member of the Executive Council by notice in the provincial gazette.

(2) Subject to this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995) and any other applicable law, a public centre may establish posts for educators and employ educators additional to the establishment determined by the Member of the Executive Council in terms of section 5 of the Employment of Educators Act, 1998 (Act No 76 of 1998).

(3) Subject to this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a public centre may establish posts for non-educators and employ non-educator staff additional to the establishment determined in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(4) An educator and a non-educator employed in a post established in terms of subsection (2) or (3) must comply with the requirements set for employment in a public centre in terms of this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995) and any other applicable law.

(5) A public centre may only employ an educator in a post referred to in subsection (2) if such educator is registered as an educator with the South African Council for Educators.

(6) The staff contemplated in subsection (2) and (3) must be employed in compliance with the basic values and principles referred to in section 195 of the Constitution, and the factors to be taken into account when making appointments include, but are not limited to-

- (a) the ability of the candidate;
- (b) the principle of equity;
- (c) the need to redress past injustices; and
- (d) the need for representivity.

(7) When presenting the annual budget contemplated in section 24 the governing body of a public centre must provide sufficient details of any posts envisaged in terms of subsections (2) and (3), including the estimated costs relating to the employment of staff in such posts and the manner in which it is proposed that such costs will be met.

(8) The State is not liable for any actor omission by the public centre relating to its contractual responsibility as the employer in respect of staff employed in terms of subsections (2) and (3).

(9) After consultation as contemplated in section 5 of the National Education Policy Act, 1996 (Act No. 27 of 1996), the Minister may determine norms and standards by notice in the Gazette regarding the funds used for the employment of staff referred to in subsections (2) and (3), but such norms and standards may not be interpreted so as to make the State a joint employer of such staff.

Staff employed by the State at public centres

12 (1) The educator establishment of a public centre is determined by the allocation of posts by the Head of Department from the provincial educator post establishment created by the Member of the Executive Council in terms of section 5 of the Employment of Educators Act, 1998 and educators appointed in such posts are employed in terms of that Act.

(2) The non-educator establishment of a centre is determined in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994)

Enhancement of capacity of governing bodies

13. (1) Out of funds appropriated for this purpose by the provincial legislature, the Head of Department must establish a programme to-

- (a) provide introductory training for newly elected governing bodies to enable them to perform their functions; and

(b) provide continuing training to governing bodies to promote the effective performance of their functions or to enable them to assume additional functions.

(2) The Head of Department must ensure that centre manager and other officers of the education department render all necessary assistance to governing bodies in the performance of their functions in terms of this Act.

Failure by governing body to perform functions

14. (1) If a governing body has ceased or failed to perform its functions, the Head of Department must appoint one or more persons to perform those functions for a period not exceeding three months.

(2) The Head of Department may extend the period referred to in subsection (1), by further periods not exceeding three months each, but the total period may not exceed one year.

(3) The Head of Department must ensure that a governing body is elected in terms of this Act within a year after the appointment of persons contemplated in subsection (1).

Recusal by members of governing body

15. A member of a governing body must withdraw from a meeting of the governing body for the duration of the discussion and decision-making on any issue in which the member has a personal interest.

Reimbursement of members of governing body

16. (1) Necessary expenses incurred by a member of a governing body in the performance of his or her duties may be reimbursed by the governing body.

(2) No member of a governing body may be remunerated in any way for the performance of his or her duties.

Committees of governing body

17. (1) A **governing** body may-

- (a) establish committees, including an executive committee; and
- (b) appoint persons who are not members of the governing body to such committees on grounds of expertise, but a member of the governing body must chair each committee.

(2) A governing body of a public centre which provides education to learners with special education needs must establish a committee on special education needs.

Admission to public centre

18. (1) A public centre must admit learners and serve their educational requirements without unfairly discriminating in any way.

(2) An application for admission to a public centre must be made to the **Head of** Department in a manner determined by him or her.

(3) If an application referred to in subsection 2 is refused, the Head of Department must inform the learner in writing of such refusal and the reasons therefor.

(4) Any learner who has been refused admission to a public centre may appeal against the decision of the Head of Department to the Member of the Executive Council.

Representative Council of learners

19, (1) A representative council of learners at the centre must be established at every public centre.

(2) A Member of the Executive Council may by notice in the Provincial Gazette, determine guidelines for the establishment, election and functions of representative councils of learners.

Disciplinary measures

20. (1) Every learner at a public centre is subject to a code of conduct, disciplinary measures and procedures as may be determined by the governing body subject to provincial policy.

(2) The policy contemplated in subsection (1) must in particular deal with measures to curb racism, sexual violence and sexual harassment.

(3) A code of conduct must contain provisions of due process safeguarding the interest of the learner in disciplinary procedures.

CHAPTER 4

FUNDING OF PUBLIC CENTRES

Responsibility of the State

21. (1) The Member of the Executive Council must from money appropriated for this purpose by the provincial legislature fund public adult general education and training on a fair, equitable and transparent basis.

(2) The Member of the Executive Council may, subject to the norms and standards determined in terms of section 22, impose-

(a) any reasonable condition in respect of an allocation of funding contemplated in subsection (1); and

(b) different conditions in respect of different centres, different adult general education and training programmed or different allocations, if there is a reasonable basis for such differentiation.

(3) The Member of the Executive Council must, on an annual basis, provide sufficient information to public centres regarding the funding referred to in subsection (1) to enable the public centre to prepare its budget for the next financial year.

Norms and Standards for funding public centres

22. (1) Subject to the Constitution and this Act, the Minister must, in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996), determine norms and standards for funding of public centres, after consultation with the council of Education Ministers, the Financial and Fiscal Commission, the Minister of Finance and the NABAET.

Funds of public centres

23. The funds of a public centre consist of-

- (a) funds allocated by the State;
- (b) any donations or contributions received by the centre;
- (c) money raised by the centre;
- (d) money payable by learners for adult general education and training provided by the centre; and
- (e) other funds from any other source.

Financial records and statements of public centres

24. (1) The governing body of a public centre must, in the manner determined by the Member of the Executive Council-

- (a) keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions of the public centre **as a whole**, of its substructures and of other bodies operating under its authority;
- (b) must in each financial year, at such time and in such manner as the Member of the Executive Council may determine, submit a statement of its estimated income and expenditure for the ensuing financial year to the Member of the Executive Council for his or her approval granted with the concurrence of the Member of the Executive Council for Finance in the province;
- (c) may in any financial year submit adjusted statements of its estimated income and expenditure to the Member of the Executive Council for his or

her approval, granted with the concurrence of the Member of the Executive Council for Finance in the province; and

(d) may not incur any expenditure which exceeds the total amount approved in terms of paragraphs (b) and (c).

(2) If the Member of the Executive Council does not approve the governing body's statement of its estimated income and expenditure, the Member of the Executive Council must require the governing body to provide a revised statement to him or her within a specified period.

(3) The governing body of a public centre must, in respect of the preceding financial year and by a date or dates and in the manner determined by the Member of the Executive Council provide the Member of the Executive Council with-

- (a) a report on the overall governance of the centre;
- (b) a duly audited or examined statement of income and expenditure; and
- (c) a balance sheet and cash flow statement.

(4) The governing body of a public centre must provide the Member of the Executive Council with such additional information as the Member of the Executive Council may reasonably require.

(5) The governing body of a public centre must appoint a person registered as an accountant and auditor in terms of the Public Accountants and Auditors Act, 1991 (Act 80 of 1991), to audit the records and financial statements referred to in section 24.

(6) If the audit referred to in subsection (5) is not reasonably practicable, the governing body of a public centre must appoint a person to examine and report on the records and financial statements referred to in section 24, who-

- (a) is qualified to perform the duties of an accounting officer in terms of section 60 of the Close Corporations Act, 1984 (Act 69 of 1984); or
- (b) is approved by the Member of the Executive Council for this purpose.

(7) No person who has a financial interest in the affairs of the public centre may be appointed under this section,

(8) If the Member of the Executive Council deems it necessary, he or she may request the Auditor-General to undertake an audit of the records and financial statements of a public centre.

Action on failure of governing body to comply with Act or certain conditions

25. **(1)** If the governing body of a centre fails to comply with any provision of this Act under which allocation from money appropriated by the provincial legislature is paid to the public centre, or with any condition subject to which any allocation is paid to the public centre, the Member of the Executive Council may call upon the governing body to comply with the provision or condition within a specified period.

(2) If the **governing** body thereafter fails to comply with the provision or condition timeously, the Member of the Executive Council may withhold payment of any portion of any allocation appropriated by the provincial legislature in respect of the public centre concerned.

(3) Before taking action under subsection (2), the Member of the Executive Council must-

- (a) give notice to the governing body of the public centre concerned of the intention so to act;
- (b) give such council a reasonable opportunity to make representations; and
- (c) consider such representations.

(4) If the Member of the Executive Council acts under subsection (2), a report regarding the action must be tabled in the provincial legislature by the Member of the Executive Council or as soon as reasonably practical after the action.

CHAPTER 5**PRIVATE CENTRES****Establishment of a private centre**

26. **(1)** Subject to this Act and any applicable provincial law, any person may, at his or her own cost, establish and maintain a private centre.

Registration of a private centre

27. **(1)** No person may establish or maintain a private centre unless it is registered by the Head of Department.

(2) The Member of the Executive Council must, by notice in the Provincial Gazette, determine the grounds on which the registration of a private centre may be granted or withdrawn by the Head of Department.

(3) A Head of Department must register a private centre if he or she is satisfied that-

- (a) the standards to be maintained by such a private centre will not be inferior to the standard maintained in comparable public centres;
- (b) the admission policy of the private centre does not discriminate on the grounds of race; and
- (c) the private centre complies with the grounds for registration contemplated in subsection (2).

Withdrawal of registration of a private centre

28. (1) No withdrawal of the registration of private centre is valid unless-

- (a) the owner of such a private centre has been furnished by the Head of Department with a notice of intention to withdraw the registration, stating the reasons why such withdrawal is contemplated;
- (b) the owner of such private centre has been granted an opportunity to make written representations to the Head of Department as to why the registration of the private centre should not be withdrawn; and
- (c) any such representations received have been duly considered.

(2) The owner of the private centre may appeal to the Member of the Executive Council against the withdrawal of the registration of such a private centre.

Subsidies to registered private centre

29. (1) The Minister may, by notice in the Government Gazette, determine norms and standards for the granting of subsidies to private centres after consultation with the Council of Education Ministers and the Financial and Fiscal Commission and with the concurrence of the Minister of Finance.

(2) The Member of the Executive Council may, out of funds appropriated by the provincial legislature for that purpose, grant a subsidy to a private centre.

(3) If a condition subject to which a subsidy was granted has not been complied with, the Head of Department may terminate or reduce the subsidy from a date determined by him or her.

(4) The Head of Department may not terminate or reduce a subsidy under subsection (3) unless-

- (a) the owner of such private centre has been furnished with a notice of intention to terminate or reduce the subsidy and the reasons therefor;
- (b) such owner has been granted an opportunity to make written representations as to why the subsidy should not be terminated or reduced; and
- (c) any such representations received have been duly considered.

(5) The owner of a private centre may appeal to the Member of the Executive Council against the termination or reduction of a subsidy to such centre.

Declaration of a private centre as a public centre

30. (1) The Member of the Executive Council may, with the concurrence of the Member of the Executive Council responsible for finance, enter into an agreement with the owner of a private centre in terms whereof such a centre is declared to be a public centre.

(2) Notice of the change of status contemplated in subsection (1) must be published in the Provincial Gazette.

Duties of Member of Executive Council relating to private centres

31. (1) The Member of the Executive Council may, by notice in the Provincial Gazette, determine requirements for-

- (a) the admission of learners of a private centre to examinations conducted by or under the supervision of the education department;
- (b) the keeping of registers and other documents by such a private centre;
- (c) criteria of eligibility, conditions and manner of payment of any subsidy to such a centre; and
- (d) any other matter relating to such a centre which must or may be prescribed in terms of this Act.

(2) Different requirements may be made under subsection (1) in respect of different centres.

(3) The Member of the Executive Council must allow the affected parties a reasonable period to comment on any requirement he or she intends to determine under subsection (1).

CHAPTER 6

QUALITY ASSURANCE AND PROMOTION

Quality assurance and promotion in adult general education and training

32. Quality assurance and promotion in adult general education and training must be conducted in terms of the provisions of the General and Further Education and Training Quality Assurance Act, 2000

Advice by NABAET

33. (1) The NABAET must advise the Minister on quality promotion and assurance.

(2) The Minister must-

- (a) consider any advice given by the NABAET; and
- (b) provide reasons in writing to the NABAET if the Minister does not accept the advice.

(3) The Minister may act without the advice of the NABAET if-

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

(4) If the Minister acts as contemplated in subsection (3) the Minister must-

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

Report on quality assurance

34. (1) An annual report on the quality of adult general education and training must be made within a reasonable time after the end of the academic year -

- (a) in respect of the country as a whole by the NABAET; and
- (b) in respect of a province, by the Head of Department.

CHAPTER 7

GENERAL

Duty of centres to provide information

35. (1) A centre must make information available for inspection by any person, in so far as such information is required for the exercise and protection of such person's rights.

(2) Every centre must provide such information about the centre as is reasonably required by the Head of Department or the Director-General in consultation with the Head of Department.

(3) The Head of Department, Director-General, and any centre which offers adult general education and training must provide such information about the centre or quality of adult general education and training as is reasonably required by NABAET.

Investigation at a public centre

36. (1) The Member of the Executive Council may appoint a person to conduct an investigation at a public centre if-

- (a) the governing body of the public centre requests the appointment of such a person; or
- (b) circumstances arise at the public centre that-
 - (i) involve financial or other maladministration of a serious nature; or
 - (ii) seriously undermine the effective functioning of the public centre; and
- (c) the governing body of the public centre has failed to resolve such circumstances; and
- (d) the appointment is in the interest of adult **general education and training in an open democratic society.**

(2) The person appointed in terms of subsection (1) must, within 30 days after appointment and on the terms of reference specified by the Member of the Executive Council-

- (a) conduct an investigation at the public centre concerned;
- (b) report in writing to the Member of the Executive Council on the findings of his or her investigation; and
- (c) suggest appropriate measures to resolve the matter.

(3) The Member of the Executive Council must as soon as practicable furnish a copy of the report referred to in subsection (2) to the governing body concerned.

Name change of a public centre

37. (1) The governing body of a public centre may, with the approval of the Member of the Executive Council and by notice in the Provincial Gazette, change the name of such public centre.

Offences

38. (1) Any person other than a centre, or an organ of state, who without the authority of an adult general education and training centre-

- (a) offers or pretends to offer any adult general education and training programme or part thereof;
- (b) confers a qualification which purports to have been granted by centre, or in collaboration with a centre; or
- (c) purports to perform an act on behalf of centre,

is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.

(2) Any person who pretends that a qualification has been awarded to him or her by a centre, whereas in fact no such qualification has been so awarded, is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.

(3) Any person who contravenes section 27(1), is guilty of an offence and is liable on conviction to a fine or imprisonment not exceeding five years or to both such fine and imprisonment.

Limitation of liability

39. (1) Neither the State, the NABAET nor any person appointed in terms of this Act is 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 for which that person was appointed in terms of this Act.

Delegation of powers

40. (1) The Minister may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under this Act, except the power to make regulations, and the performance of any of his or her duties in terms of this Act to-

- (a) the NABAET;
- (b) any employee of the Department; or
- (c) any organ of State.

(2) The Member of the Executive council may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under this Act and the performance of his or her duties in terms of this Act to-

- (a) any employee in a provincial department responsible for education and training; or
- (b) any organ of State.

(3) The Director-General may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under this Act and the performance of any of his or her duties in terms of this Act to any employee in the Department.

(4) The Head of Department may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under this Act and the performance of any of his or her duties in terms of this Act to any employee in the provincial department of education.

(5) The governing body of a centre may, on such conditions as it may determine, delegate the exercise of any of its powers under this Act and the performance of any of its duties in terms of this Act, to other internal structures, or members of staff of such centre.

Short title

44. This Act is the Adult General Education and Training Act, 2000.

EXPLANATORY MEMORANDUM TO THE ADULT GENERAL EDUCATION AND TRAINING BILL, 2000

1. INTRODUCTION

This Bill was drafted to regulate adult general education and training (AGET) at an institution separate from other institutions, namely schools and further education and training institutions. Its main focus is to provide for viable adult learning centres.

2. BACKGROUND

2.1 The need to establish adult learning centres is based on the Green Paper, which is the product of an intensive process of research and consultation. In essence the Green Paper is the result of policies initiated by the Minister, including the Interim Guidelines for ABET (AGET) Provisioning, 1995, The Adult Basic Education and Training Policy, 1997, and the Multi-Year Implementation Plan for Adult Education and Training, 1997.

2.2 It is also based on the practical experiences of implementation of these policies through campaigns and pilots such as the Ithutheng Campaign from 1995 onwards, and the execution of the Multi-Year Implementation Plan for Adult General Education and Training that began in 1998.

2.3 The Green Paper addresses the following most important matters:

Proposals for a new AGET system

Proposals for a new AGET qualification within the NQF, a new curriculum, a new quality assurance framework and a new quality assurance mechanism

Proposals for a new approach to AGET funding

Proposals for a new governance framework for the AGET system

3. REASONS FOR AND SUBSTANCE OF BILL

- 3.1 This Bill was drafted to serve as a legal framework, which is intended to give expression to section 29(l)(a) of the Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996). In terms of this section, every person has the right to a basic education, which includes adult basic education.
- 3.2 1996 census figures released by Statistics South Africa reveal that there are 23 699 930 adults between the ages of 16 and 65 in South Africa. Of these, 3 283 290 have not accessed any schooling and 9 439 244 have not completed Grade 9. Accordingly, 12 722 534 adults (54 % of the total adult population) have not completed a general level of education.
- 3.3 The best way to break the back of illiteracy amongst adults is to regulate it by legislation. Currently, there is no legislation to control adult general education and training. Hence, it was necessary to draft the above-mentioned Bill.
- 3.4 The Bill will place an obligation on the Head of Department to provide facilities for the use of a public centre to perform its functions. If no facilities are available, the Head of Department, in terms of section 20(l)(k) of the South African Schools Act, 1996 (Act No. 84 of 1996), should request the governing body of a public school to allow the reasonable use of the facilities of the school by the public centre.
- 3.5 In terms of the Bill, all possible stakeholders shall be eligible governing body members. This is for the purpose of gaining support for the public centre. According to the Bill, the governing body will consist of elected members, the centre manager in his or her official capacity, co-opted members, representatives of sponsoring bodies if applicable, representatives of organisations of disabled persons if applicable and experts in the fields of adult general education and training if applicable,

- 3.6 In cases where the public centre uses school facilities to perform its functions, the chairperson of the governing body and the principal of the school in question may be co-opted by the governing body of the public centre, but without voting rights,
- 3.7 The Bill provides for a public centre to have its own educators, employed by the Head of Department in terms of section 5 of the Employment of Educators Act, 1998 (Act No. 76 of 1998)
- 3.8 The Bill also makes provision for the funding of adult general education and training. The Member of the Executive Council must fund public adult general education and training, subject to the norms and standards for funding determined by the Minister in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996) from money appropriated for this purpose by the provincial legislature,
- 3.9 In order to control and regulate private adult learning centres, the Head of Department must register these centres and no person may establish or maintain such centres unless they are registered by the Head of Department.

4. PARLIAMENTARY PROCEDURE

The Department is of the opinion that this Bill must be dealt with in terms of sections 73 and 76 of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996).
