

**NOTICE 713 OF 1997**

**MINISTRY OF EDUCATION**

**DRAFT HIGHER EDUCATION BILL, 1997**

1. The draft *Higher Education Bill*, 1997 is hereby published for information and comment.
2. All persons concerned are invited to comment in writing on the draft Bill and to send the comment to:

**Director-General  
Attention: Mrs S Boshoff  
Department of Education  
Private Bag X895  
PRETORIA  
0001**

3. The comment may also be faxed to Fax Number (012) 323-7532 at the above address.
4. The comment must reach the Department of Education not later than **23 May 1997**.
5. Please also provide the name, address, telephone number and fax number of a person whom the Department of Education could contact concerning the comment.

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Government Gazette, 18 April 1997 - No. 17944

**DRAFT: FOR DISCUSSION**

**REPUBLIC OF SOUTH AFRICA**

**HIGHER EDUCATION BILL**

**(as introduced)**

**(MINISTER OF EDUCATION)**

**16 APRIL 1997**

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**DRAFT HIGHER EDUCATION BILL, 1997**

To change the law governing higher education and, for that purpose, to provide for the establishment, composition and functions of a Council on Higher Education; to provide for the establishment of a single, co-ordinated system of higher education while encouraging diversity within such system; to provide for funding of the higher education system; to provide for the effective, efficient and optimal utilisation of resources in the higher education system; to provide for programme-based higher education; to provide for the registration of private and foreign institutions of higher education; to provide for quality assurance, promotion and certification in higher education; to provide for regional co-operation in higher education; to provide for the appointment of an independent assessor; to amend or repeal existing legislation affecting the higher education system; and to provide for matters incidental thereto

## **PREAMBLE**

WHEREAS IT IS DESIRABLE that institutions providing higher education -

PROMOTE the redress of past discrimination and ensure representivity;

PROVIDE optimal opportunities for learning and the generation of knowledge;

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

RESPECT freedom of religion, belief and opinion;

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

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

RESPOND to the developmental needs of the Republic and of the communities served by them;

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;

AND accordingly, it is desirable to establish a single co-ordinated higher education system and restructure programmes and institutions to better respond to the human resource and economic needs of the Republic of South Africa

NOW THEREFORE, the Parliament of the Republic of South Africa provides as follows:

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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 a person appointed to a teaching or research post at an institution of higher education 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 6;

"**college**" means a higher education institution -

- (a) established in terms of section 20; or
- (b) declared to be a college by the Minister in terms of section 21;

"**CHE**" means the Council on Higher Education established under section 4 of this Act;

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

"**Department of Education**" means the government department responsible for education at national level;

"**Director-General**" means the Director-General of the Department of Education;

"**Financial year**" means a year commencing on the first day of January of every year and ending on the thirty first day of December of the same year;

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

"**higher education**" means any learning programme of a level higher than Grade 12 or its equivalent;

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

- (a) established in terms of section 20;
- (b) deemed to be established in terms of section 69;
- (c) declared to be a higher education institution in terms of section 21;
- (d) registered as a private higher education institution in terms of Chapter 6;

"**institutional statutes**" means any statutes made by a council of a public higher education institution in terms of section 31;

"**Minister**" means the Minister of Education;

"**organ of state**" means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"**person**" means a natural person or legal person;

"**prescribed**" means prescribed by regulation;

"**principal**" means the chief executive officer of a public higher education institution;

"**private higher education institution**" means any higher education institution which is registered or provisionally registered in terms of Chapter 6 and includes an institution of higher education which provides programmes of higher education to students within the Republic which

(a) has its main seat or campus outside the Republic;

(b) has its structure of governance outside the Republic; and

(c) is controlled financially and administratively from outside the Republic;

"**public higher education institution**" means any higher education institution that is established, deemed to be established or declared as a public higher education institution in terms of this Act;

"**registrar**" means an employee of the Department of Education designated by the Minister to perform the functions of registrar in terms of Chapter 6;

"**SAQA**" means the South African Qualifications Authority established under section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

"**senate**" means the body contemplated in section 28;

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

"**technikon**" means any technikon established or deemed to be established by this Act;

"**this Act**" includes any regulation made under section 78 of this Act;

"**university**" means any university established by this Act or any other Act of Parliament.

## **2. Application**

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

## **3. determination of higher education policy**

(1) The Minister determines policy on higher education after consulting the CHE in terms of section 5 of this Act.

(2) The Minister must

(a) publish such policy by notice in the *Government Gazette*; and

(b) table such policy in Parliament.

## CHAPTER 2

### COUNCIL ON HIGHER EDUCATION

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

(1) The Council on Higher Education is hereby established.

(2) The CHE is a legal person with capacity to perform its functions under this Act.

#### 5. Functions of CHE

(1) The CHE must

a. advise the Minister on higher education

- i. on its own initiative; or
- ii. at the request of the Minister;

c. arrange and co-ordinate conferences and publish an annual report on the state of higher education;

d. 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 on a regular basis;

e. promote the access of students to higher education institutions;

f. perform any other function

- i. assigned to it in terms of this Act;

- ii. delegated or assigned to it by the Minister by notice in the *Government Gazette*.

(2) The advice contemplated in subsection (1)(a) includes advice on (a) quality promotion and assurance; (b) research; (c) the structure of the higher education system; (d) a mechanism for the allocation of public funds; and (e) governance of individual institutions and the higher education system.

(3) The Minister must (a) consider the advice of the CHE; and (b) if the Minister does not accept the advice, provide reasons in writing therefore.

(4) The Minister may act without the advice referred to in this section (a) in cases of urgency; or (b) if the CHE has failed to provide the advice within a reasonable time



## 6. Information provided to CHE

The Department of Education, every publicly funded research council and every institution of higher education must provide the CHE with such information as the CHE may reasonably require for the performance of its functions in terms of this Act.

## 7. Quality promotion and assurance functions of CHE

(1) The CHE must

- a. establish the Higher Education Quality Committee as a permanent committee in terms of section 14, to perform the quality promotion and assurance functions of the CHE in terms of this Act; and
- b. comply with the policies and criteria formulated by SAQA in terms of section 5(1)(a)(ii) of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).

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

(3) The delegation under subsection (2)

- a. must be in writing and published by notice in the *Government Gazette*;
- b. is subject to such conditions as the Higher Education Quality Committee may determine; and
- c. does not prevent the performance of such functions by the Higher Education Quality Committee.

(4) Despite the provisions of any other law, a statutory body empowered with quality assurance or quality promotion functions in higher education, must perform those functions within the framework determined by the Higher Education Quality Committee.

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

(6) The CHE may request the Minister to publish regulations prepared by the Higher Education Quality Committee relating to any matter that the Higher Education Quality Committee believes is necessary to give effect to quality promotion and assurance in terms of this Act.

## 8. Membership of CHE

(1) The CHE consists of

- a. a chairperson appointed by the Minister;
- b. 3 students appointed by the Minister from nominations by national organisations representing students;
- c. 3 academic employees appointed by the Minister from nominations by national organisations representing academic employees;
- d. 1 non-academic employee appointed by the Minister from nominations by national organisations representing non-academic employees;
- e. 2 persons appointed by the Minister from nominations by national bodies representing principals of the sector;
- f. 2 persons appointed by the Minister from nominations by national bodies representing university principals;
- g. 2 persons appointed by the Minister from nominations by national bodies representing technikon principals;
- h. 1 person appointed by the Minister from nominations by national bodies representing private institution ;
- i. 2 persons appointed by the Minister from nominations by national bodies representing further education;
- j. 1 person appointed by the Minister from nominations by the National Research Foundation;
- k. 1 person appointed by the Minister from nominations by the heads of provincial departments of education;
- l. 2 persons appointed by the Minister from nominations by the National Economic Development and Labour Council (NEDLAC) established by section 2 of the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994), one representing organised labour and one representing organised business;
- m. no more than 4 persons not directly involved in higher education appointed by the Minister from nominations by the public;
- n. 1 representative from the Department of Education designated by the Director-General; and
- o. no more than 3 additional persons co-opted by the CHE on account of their experience and expertise in matters relating to the functions of the CHE.

(2) For the purpose of nominations contemplated in subsection (1), the Minister must give notice in the Government Gazette, in two national newspapers and by any other means deemed necessary by the Minister of the intention to appoint members of the CHE and request the nomination of persons who, on account of their experience and expertise in matters relating to the functions of the CHE, are suitable candidates for appointment as members of the CHE.

(3) Members referred to in subsection (1)(k) and (n) have no voting powers.

(4) A co-opted member of the CHE has the same rights, powers and duties as any voting member of the CHE.

## **9. Terms of office of members**

- (1) The chairperson of the CHE holds office for a period of 5 years.
- (2) Every student member of the CHE holds office for a period of 2 years.
- (3) Every other member of the CHE holds office for a period of 4 years.
- (4) The CHE may determine that a co-opted member holds office for a period of less than 4 years.
- (5) Every member of the CHE is eligible for reappointment at the end of that member's period of office for one additional term.

## **10. Vacation of office by members**

A member of the CHE must vacate office if the member -

- a. resigns by giving written notice to the chairperson;
- b. is absent from three consecutive meetings of the CHE without the leave of the chairperson;
- c. becomes insolvent or is convicted of an offence for which the member is imprisoned without the option of a fine; or
- d. becomes unable to attend to his or her personal affairs.

## **11. Filling of vacancies**

(1 ) If a member vacates his or her office, that office must be filled by a person representing the same category who must be nominated, appointed or co-opted as provided in this Act.

(2) A decision of the CHE is not invalid by reason only of a vacancy on the CHE.

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

(1) The CHE must appoint an executive officer, who must

- 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, with the approval of the Minister, determines the conditions of service of the executive officer and any other employee 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 is deemed to be 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 is not invalid by reason only of the fact that the decision is revoked by the CHE in terms of subsection (3).

#### **14. Committees of CHE**

- (1) The CHE must establish the Higher Education Quality Committee and may establish other committees to assist it in the performance of its functions, and may include as members of such committees persons who not members of the CHE.
- (2) The chairperson of a committee established in terms of subsection (1) must be appointed by the CHE from among its members.

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

- (1) Meetings of the CHE and its committees are held at such times and places as determined by the respective chairperson .
- (2) Whenever the chairperson is absent from any meeting of the CHE or a committee of the CHE, the members present must elect a person from among themselves to preside at that meeting.
- (3) The CHE may, with the approval of the Minister, 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 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.

#### **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 higher education institutions for services rendered by the CHE or the Higher Education Quality Committee.

(2) The CHE must in each financial year, at such time and in such form as the Minister may determine, submit a statement of its estimated income and expenditure for the ensuing financial year to the Minister for .

(3) If the Minister fails to approve the CHE's statement of its estimated income and expenditure, the Minister must request the CHE to provide a revised statement within a reasonable period.

(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 the provisions of subsection (4), the CHE may invest any portion of its funds in such manner as the Minister, with the agreement 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 chairperson of the CHE, such additional remuneration,

as the Minister with the concurrence of the Minister of Finance may determine.

## **18. Annual audit**

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

## **19. Annual report to Parliament**

(1) The CHE must, not later than three months after the end of each financial year, submit to the Minister a report on the performance of its functions during the financial year.

(2) The Minister must table copies of the report in Parliament within 14 days after the receipt thereof if Parliament is in ordinary session, or, if Parliament is not in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

## CHAPTER 3

### PUBLIC INSTITUTIONS OF HIGHER EDUCATION

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

(1) The Minister may, after consultation with the CHE, by notice in the *Government Gazette*, and from money voted for this purpose by Parliament, establish public institutions of higher education to provide higher education Programmes.

(2) The Minister may establish a university, technikon, or college in terms of subsection (1).

(3) Notwithstanding subsections (1) and (2), a university may be established by an Act of Parliament.

(4) The notice contemplated in subsection (1) must determine the

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

(5) Every institution of higher education established, deemed to be established or declared as a public higher education institution in terms of this Act, is a legal person.

(6) Every public institution of higher education may, subject to the provisions of this Act, purchase or otherwise acquire, hold, let, sell, exchange or otherwise alienate any movable or immovable property or grant to any person any real right in or servitude on its property and invest, lend and borrow money, but no such institution may without the approval of the Minister, dispose of or alienate in any fashion, immovable property acquired with the financial assistance of the State or grant to any person any real right therein or servitude thereon.

#### 21. Declaration of institution as public higher education institution

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

- a. a university, technikon or college; or
- b. a subdivision of a university, technikon or college.

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

- a. the date on which the education institution becomes a public higher education institution or a subdivision of a public higher education institution, as the case may be;

- b. the type and name of the public higher education institution; and
- c. the official address of the institution.

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

- a. after consulting -
  - i. the governing body of the education institution concerned, if it is a public institution;
  - ii. the council of the public higher education institution concerned, if the education institution is to be declared a subdivision of an existing public higher education institution;
  - iii. the responsible Minister, Member of the Executive Council or authority, if the education institution was established by or is administered, controlled or funded by an organ of state other than the Department of Education;
- d. with agreement of the owner of the education institution, if it is a private institution.

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

(5) An education institution may only be declared a public higher education institution after the employer of employees at the institution has consulted such employees regarding such declaration.

## **22. Consequences of declaration as public higher education institution**

(1) As 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:
- b. the assets, liabilities, rights and obligations of the education institution devolve upon the public higher education institution concerned; 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 concerned.

(2) Immovable property devolving upon the public higher education institution concerned in terms of section 22(1)(b) must, subject to the approval 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 referred to in subsection (2) is registered, must, on submission of the title deed concerned, 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 referred to in section 21(2), were vested in the education institution concerned by virtue of a trust, donation or bequest must be applied by the public higher education institution concerned in accordance with the trust, donation or bequest, as the case may be.

### **23. Minister may approve provision of higher education programmes**

(1) The Minister may approve the provision of a higher education programme by an organ of state other than the Department of Education.

(2) The Minister may impose any reasonable conditions on the approval contemplated in subsection (1).

(3) The Minister may, after consulting the Minister, Member of the Executive Council or authority responsible for the organ of state concerned, vary or cancel any condition imposed in terms of subsection (2) or impose new conditions on such approval.

### **24. Closure or merger of public higher education institutions**

(1) The Minister may, by notice in the *Government Gazette*,

- a. close a public higher education institution; or
- b. merge two or more public higher education institutions.

(2) The Minister may not act under subsection (1) unless

- a. the Minister has
  - i. given notice of at least 180 days of his or her intention to do so to every public higher education institution concerned;
  - ii. published a notice in all the official languages used as mediums of instruction by every public higher education institution concerned in one or more daily newspapers circulating in the area in which such public higher education institution provides programmes;
  - iii. given the community in the area or areas in which the institution operates an opportunity to make representations; and
  - iv. considered such representations;



- e. the Minister is satisfied that every employer of employees at every public higher education institution concerned, has consulted with the employees at such public higher education institution regarding the closure or merger, as the case may be.

## **25. Consequences of merger or closure of public higher education institutions**

(1) If a public higher education institution is closed in terms of section 24(1)(a), all assets and liabilities of such public higher education institution must after closure be dealt with as determined by the Minister.

(2) If public higher education institutions are merged in terms of section 24(1)(b), section 22, read with the changes required by the context, applies.

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## **CHAPTER 4**

### **GOVERNANCE OF PUBLIC HIGHER EDUCATION INSTITUTIONS**

## **26. Institutional governance structures**

Every public higher education institution must establish the following structures and offices of institutional governance

- a. a council;
- b. a senate;
- c. a student representative council;
- d. a principal; and
- e. such other structures and offices prescribed by institutional statutes.

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

(1) The council governs the public higher education institution, subject to this Act, any other law and the institutional statutes.

(2) Every council must consist of

- a. the principal;
- b. persons appointed by the Minister, who may not exceed 5;
- c. members of the senate elected by the senate;
- d. academic employees elected by the academic employees;
- e. members of the students' representative council elected by the students' representative council;
- f. non-academic employees elected by the non-academic employees; and
- g. such additional persons as may be prescribed by institutional statutes.

- (3) The number of persons contemplated in subsection (2) and the manner of their election, where applicable, are as prescribed by institutional statutes.
- (4) At least 60 percent of the members of the council must be persons who are not employed by the institution or students of the institution.
- (5) Any person who holds public office or is in the full-time employment of the State may not be a member of the council or be appointed as chancellor of a higher education institution.
- (6) Members of a council must
- a. be persons with knowledge and experience relevant to the interests and governance of the institution concerned: and
  - b. participate in the deliberations of the council in the best interests of the higher education institution concerned.

## **28. Senate of public higher education institution**

- (1) A senate must consist of
- a. the principal;
  - b. academic employees;
  - c. non-academic employees;
  - d. members of the council;
  - e. members of the students' representative council; and
  - f. such additional members as may be determined by institutional statutes.
- (2) The numbers of persons contemplated in subsection (1) and the manner of their appointment or election, as the case may be, are as prescribed by institutional statutes.
- (3) The senate of a higher education institution is responsible for the academic functions of the higher education institution and performs such functions as are delegated or assigned to it by the council, in accordance with institutional statutes.

## **29. Committees of council and senate**

- (1) The council may appoint one or more committees, which may, subject to the directions of the council, perform those functions of the council that the council may determine.
- (2) The council may appoint persons who are not members of the council to such committees and may at any time dissolve or reconstitute such a committee.
- (3) The council is not divested of responsibility for the performance of any function assigned to a committee in terms of this section.

(4) Any decision taken by any such committee in the performance of any function so assigned, must be presented for ratification to the council at its first meeting after the decision was taken.

(5) The senate may establish committees to perform any of its functions and may appoint persons, who are not members of the senate. as members of such committees.

(6) The council and the senate may nominate committees, to be known as joint committees, to perform functions that are common to the council and the senate.

(7) The constitution, manner of election, functions, procedure at meetings and dissolution of a joint committee are as prescribed by the rules of the institution.

### **30. Principal of public higher education institution**

The principal is the chief executive officer responsible for the management and administration of the public higher education institution.

### **31. Institutional statutes and institutional rules**

(1) The council may make

- a. institutional statutes to give effect to any law relating to the higher education institution and to promote the effective management of the higher education institution in respect of matters not expressly prescribed by any law; and
- b. institutional rules to give effect to the institutional statutes.

(2) Institutional statutes or rules in connection with

- a. the composition of a senate may not be made, amended or repealed except on the recommendation of such senate;
- b. the studies, instruction, examinations of the students of a higher education institution may not be made, amended or repealed except with the agreement of the senate of that institution; and
- c. the composition, manner of election, functions and privileges of a students' representative council may not be made, amended or repealed except with the agreement of such council.

### **32. Institutional statutes to be approved by Minister**

(1) Any institutional statutes which a council proposes to make in terms of this Chapter must be submitted for the approval of the Minister, and if so approved must be promulgated in the *Government Gazette* and come into operation on the date of such promulgation.

(2) Any institutional statutes made under section 31 must be tabled in Parliament by

the Minister within 14 days after promulgation thereof, if Parliament is in ordinary session or, if Parliament is not in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

### **33. Public higher education institutions without institutional statutes**

The Minister must prescribe standard institutional statutes which apply to every public higher education institution that has not made institutional statutes until such time as the council of such higher education institution makes its own institutional statutes in terms of section 31.

### **34. Appointment, conditions of service and salaries of employees of public higher education institution**

(1) The council appoints the principal, academic employees and all other employees that it may consider necessary for the efficient instruction of students and the administration of the public higher education institution.

(2) Subject to the Labour Relations Act, 1995 (Act No. 66 of 1995) and notwithstanding anything to the contrary in any other law, the conditions of service, provisions regarding discipline, privileges and functions of the principal and any academic or other employee of a public higher education institution are determined by the council of such institution.

### **35. Students' representative council**

The establishment and composition, manner of election, terms of office, functions and privileges of the students' representative council must be prescribed by institutional statutes.

### **36. Disciplinary measures**

A student at a public higher education institution is subject to such disciplinary measures and disciplinary procedures as prescribed by institutional statutes made after consultation with the senate of such institution.

### **37. Admission to public higher education institutions**

(1) Subject to this Act, the council may determine the admission policy of a public higher education institution and prescribe such policy by institutional statutes.

(2) The admission policy of any public higher education institution must not unfairly discriminate in any way.

(3) Subject to this Act, the council may, with the agreement of the senate

- a. prescribe entrance requirements in respect of particular programmes of higher education;
- b. determine the language policy of the higher education institution, within the framework determined by the Pan South African Language Board;
- c. determine the number of students who may be admitted for a particular higher education programme;
- d. prescribe the minimum requirements for readmission to study at the higher education institution; and
- e. refuse readmission to a student who fails to satisfy such minimum requirements for readmission.

(4) The council, with the agreement of the senate, determines the official language or languages of instruction at a public higher education institution.

(5) The language policy, determined by the council, with the agreement of the senate, must (a) be published in the institutional rules; and (b) may not constitute a barrier to the admission of students.

### **38. Regional co-operation between higher education institutions**

(1) Higher education institutions may co-operate with each other in any sphere to achieve the optimal utilisation of resources and the fulfilment of their functions.

(2) Higher education institutions may establish regional structures to assist and facilitate the co-operation referred to 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.

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## **CHAPTER 5**

### **FUNDING OF PUBLIC HIGHER EDUCATION**

#### **39. Minister allocates funds**

(1) The Minister, after consulting the CHE, by notice in the *Government Gazette*, must determine policy on the funding of higher education.

(2) The Minister, subject to the policy determined in subsection (1), must allocate public funds to higher education on an open and transparent basis.

(3) The Minister may

- a. impose any reasonable condition on an allocation contemplated in subsection (2); and
- b. impose different conditions on different public higher education institutions, different instructional programmes or different allocations, if there is a reasonable basis for such differentiation.

(4) The Minister may, at any time,

- a. amend or withdraw any condition imposed under this section; and
- b. impose further conditions on any allocation of funds under this section.

(5) The Minister may not act under subsection (4) unless

- a. every public higher education institution affected has been furnished with notice of the Minister's intention so to act, stating the reasons why such action is contemplated;
- b. every public higher education institution affected has been granted an opportunity to make written representations regarding such action; and
- c. any such representations have been duly considered by the Minister.

#### **40. Funds of a public higher education institution**

The funds of a public higher education institution consist of

- a. funds allocated by the Minister in terms of section 39 for purposes of higher education;
- b. any donations or contributions received by the institution;
- c. money raised by the institution;
- d. money raised by means of loans;
- 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; and
- h. money received from students or employees of the institution for accommodation or other services provided by the institution.

#### **41. Records to be kept and information to be furnished by council**

Every council must

- a. cause true and correct records to be kept of all its proceedings and true and correct accounts of all money received and paid by or on behalf of the institution;
- b. transmit to the Minister, in respect of the preceding year
  - i. a report on the overall governance of the institution; and
  - ii. a duly audited statement of income and expenditure, and a balance sheet:

- c. furnish the Minister with the information that must be provided in terms of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992); and
- d. provide the Minister with such additional information as the Minister may reasonably require.

#### **42. Action on failure of council to comply with this Act or certain conditions**

(1) If any council fails to comply with any provision of this Act under which an allocation from money voted by Parliament is paid to such institution or with any condition subject to which any such allocation is paid to such institution, the Minister may call upon such council to comply with the said provision or condition within a specified period.

(2) If such council thereafter fails to comply with the said provision or condition, the Minister may, notwithstanding anything to the contrary in any law contained, withhold payment of the whole or any portion of the allocation voted by Parliament in respect of the public higher education institution concerned.

(3) Before taking action under subsection (3), the Minister must

- a. give notice to the public higher education institution concerned of the intention so to act;
- b. provide the council of such higher education institution a reasonable opportunity to make representations; and
- c. consider such representations.

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## **CHAPTER 6**

### **PRIVATE HIGHER EDUCATION INSTITUTIONS**

#### **43. Designation of registrar**

(1) The Director-General must designate an employee of the Department of Education as the registrar of private higher education institutions to perform the functions of registrar in terms of this Act.

(2) The Director-General may designate any number of other employees of the Department of Education as deputy registrars to assist the registrar to perform the functions of registrar in terms of this Act.

(3) A deputy registrar may exercise any of the functions of the registrar that have been generally or specifically delegated to the deputy.

#### **44. Registration of private higher education institution**

Any higher education institution other than a public higher education institution or an organ of state contemplated in section 23 must be provisionally registered or registered as a private higher education institution in terms of this Act.

#### **45. Application for provisional registration**

Any person who intends providing a programme of higher education may apply to the registrar for provisional registration in the prescribed form and manner, subject to payment of the prescribed fee.

#### **46. Requirements for provisional registration**

(1) The registrar may not grant provisional registration unless the registrar is satisfied that the applicant

- a. is financially capable of satisfying its obligations to prospective students; and
- b. will-
  - i. not discriminate on grounds of race;
  - ii. maintain standards of higher education provision that are not inferior to standards at comparable public higher education institutions;
  - iii. present its programmes for accreditation;
  - iv. maintain an acceptable quality assurance system; and
  - v. comply with any other reasonable requirement determined by the registrar.

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

#### **47. Application for registration.**

Every private higher education institution provisionally registered in terms of section 44 may, within the period stipulated in its certificate of provisional registration, apply to the registrar for registration

- a. in the prescribed form and manner; and
- b. pay the prescribed fee.

#### **48. Requirements for registration**

(1 ) The registrar may not register a private higher education institution unless the registrar is satisfied that the institution

- a. has satisfied the requirements of its provisional registration contemplated in section 44;
- b. has complied with any condition attached to such provisional registration; and
- c. complies with any reasonable requirements determined by the registrar.



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

#### **49. Determination of application for registration or provisional registration**

(1) The registrar must consider any application for registration or provisional registration and any further information, particulars or documents provided by the applicant and must register or provisionally register the higher education institution if the relevant requirements for registration or provisional registration are met to the registrar's satisfaction.

(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 and, in the case of provisional registration, the duration of such registration;
  - iii. provide the certificate to the applicant;
  - iv. as soon as practicable after the decision, publish the certificate of registration in the *Government Gazette*:
- e. not to grant the application, the registrar must advise the unsuccessful applicant in writing of the decision and provide the applicant with written reasons for his or her decision.

#### **50. Registration certificate must be displayed**

A private higher education institution must conspicuously display

- a. a copy of its certificate of provisional registration or registration on its premises;  
and
- b. its registration number on its official documents.

#### **51. Access to information**

(1) Any person may inspect

- a. the register of private higher education institutions;
- b. the certificates of registration of private higher education institutions;
- c. the financial statements and auditor's report provided in terms of section 52 of this Act.

(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.

## **52. Records and audits to be provided**

(1 ) Every private higher education institution must, to the standards of generally accepted accounting practice, principles and procedures

- a. keep books and records of income, expenditure, assets and liabilities;
- b. within six months of the end of its financial year, prepare financial statements, including at least
  - i. a statement of income and expenditure for the previous financial year; and
  - ii. a balance sheet showing its assets, liabilities and financial position as at the end of the previous financial year.

(2) Every private higher education institution must

- a. ensure an annual audit of its books and records of account and its financial statements by an auditor, who must conduct the audit in accordance with generally accepted auditing standards;
- b. provide to the registrar, by 31 March each year, a copy of its financial statements and a certified copy of the auditor's report in respect of those financial statements; and
- c. provide to the registrar any additional information, particulars or documents
  - i. required by the registrar; and
  - ii. in a form and manner determined by the registrar.

## **53. Amendment of registration**

A private higher education institution may apply to the registrar to amend its registration or provisional registration

- a. in the prescribed form and manner; and
- b. by paying the prescribed fee.

## **54. Requirements for amendment to registration**

(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 amendment.

## **55. Registrar may impose conditions**

(1) The registrar may impose any reasonable condition on a private higher education institution in respect

of -

- a. its provisional registration;
- b. its registration; or
- c. any amendment to its provisional registration or its registration.

(2) The registrar may impose different conditions in terms of subsection (1) in respect of different institutions, if there is a reasonable basis for such differentiation.

#### **56. Registrar may vary or cancel condition**

The registrar may, on reasonable grounds, vary or cancel any condition imposed in terms of section 55 or impose new conditions in terms of that section.

#### **57. Registrar may cancel registration**

(1) The registrar may, on reasonable grounds, cancel any registration or provisional registration in terms of this Act.

(2) If the accreditation of any programme offered by the private higher education institution is withdrawn, the registrar must review such institution's registration.

#### **58. Consideration by registrar before variation or cancellation**

The registrar may not act under sections 55 or 56 unless the registrar

- a. has informed the private higher education institution of the intention so to act and the reasons therefore;
- b. has granted the private higher education institution an opportunity to make representations to the registrar in relation to such action; and
- c. has considered such representations.

#### **59. Appeal to Minister**

(1) An applicant may appeal to the Minister against any decision of the registrar in terms of this Chapter.

(2) An appeal contemplated in terms of subsection (1), must be lodged with the Minister within 60 days of

- a. the date of the registrar's decision; or
- b. if written reasons for the decision are required, the date of those reasons.

(3) The Minister, on good cause shown, may extend the period within which an applicant may note an appeal against the decision of the registrar.

(4) An appeal in terms of this section does not suspend the operation of any decision of the registrar.

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## CHAPTER 7

### INDEPENDENT ASSESSOR

#### **60. Appointment of independent assessment panel**

The Council on Higher Education must appoint an independent assessment panel consisting of at least three suitable persons who

- a. have knowledge and experience of higher education; and
- b. comply with any other requirements determined by the CHE.

#### **61. Appointment of independent assessor**

(1) The Minister, from the independent assessment panel referred to in section 60, may appoint an assessor who is independent in relation to the public higher education institution to conduct an investigation at a higher education institution

- a. wherever the circumstances, contemplated in section 62 apply; and
- b. after consulting the council of the higher education institution if possible.

(2) The council and any person affected by the investigation must assist and co-operate with the independent assessor in the performance of his or her functions in terms of section 64.

#### **62. Circumstances when independent assessor may be appointed**

(1 ) An independent assessor may be appointed in terms of section 61 if the council requests the appointment.

(2) Notwithstanding subsection (1), the Minister may appoint an independent assessor in terms of section 61 if

- a. circumstances arise at a public higher education institution that -
  - i. involve financial or other maladministration of a serious nature; or
  - ii. seriously undermine the effective functioning of the public higher education institution;
- c. the council has failed to resolve such circumstances; and
- d. the appointment is in the best interests of higher education in an open and democratic society.

### **63. Independent assessor may be appointed for two or more public higher education institutions**

The Minister may appoint an independent assessor in terms of section 61 to conduct an investigation at two or more public higher education institutions.

### **64. Functions of independent assessor**

(1) An independent assessor appointed in terms of section 61 must, within a period of 30 days and on the terms of reference specified by the Minister

- a. conduct an investigation into circumstances at the higher education institution;
- b. report in writing to the Minister regarding the findings of his or her investigation; and
- c. suggest appropriate measures to address the circumstances and to avoid their recurrence.

(2) The Minister must provide a copy of the report referred to in subsection (1 ) to the council.

### **65. Independent assessor may be assisted**

An independent assessor appointed in terms of section 61 may, with the approval of the Minister, appoint any other person with suitable knowledge and experience to assist in the performance of the independent assessor's functions.

### **66. Remuneration and allowances**

The Minister, with the agreement of the Minister of Finance, may determine the remuneration and allowances to be paid to an independent assessor and any person appointed by him or her in terms of section 65.

### **67. Limitation of liability**

Neither the independent assessor, any person appointed in terms of section 65, the CHE nor the Minister is liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the course of performing the functions referred to in section 64.

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## **CHAPTER 8**

### **TRANSITIONAL ARRANGEMENTS**

### **68. Existing legislation on higher education**

(1) All existing legislation dealing with higher education continues to apply unless expressly repealed by this Act.

(2) If such existing legislation conflicts with this Act, this Act prevails.

## **69. Existing technikons and universities**

(1) Any technikon which was established or deemed to be 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 in terms of a private Act continues to exist in terms of such private Act and is deemed to be a public higher education institution in terms of this Act.

(3) Should any provision of this Act conflict with a provision of a private Act of a university, this Act prevails.

(4) Subject to any other applicable law, all conditions of service or service benefits applicable immediately prior to the commencement of this Act at a university or technikon, continue to exist until amended or repealed by the council of the higher education institution concerned.

(5) Councils and senates of technikons and universities which existed at the commencement of this Act continue to exist and exercise all functions which they fulfilled prior to such commencement but must comply with the provisions of this Act by a date determined by the Minister by notice in the *Government Gazette*.

## **70. Existing colleges**

(1) If, at the commencement of this Act, a government department, other than the Department of Education, or a public education institution administered, controlled or funded by such government department, provides a higher education programme, the provision of such programme is deemed to have been approved by the Minister in terms of section 22.

(2) The Minister, after consulting the responsible Minister or Member of the Executive Council, may impose any reasonable condition on the continued provision of a higher education programme contemplated in terms of subsection (1).

(3) Any higher education programme provided by a government department or a public education institution contemplated in subsection (1), is subject to the quality promotion and assurance functions of the CHE.

## **71. Continued existence 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 continues 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 *Government Gazette*.

## **72. Continued existence of Committee of University Principals, Committee of Technikon Principals and Matriculation Board**

(1) The Committee of University Principals, the Committee of Technikon Principals and the Matriculation Board continue to exist 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) The Committee of University Principals, the Committee of Technikon Principals and the Matriculation Board cease to exist on a date or dates to be determined by the Minister, by notice in the *Government Gazette*, after the Minister has

- a. given the bodies at least 180 days notice of the decision to publish such notice;
- b. invited such bodies to make representations in regard to such decision and has considered such representations; and
- c. sought the advice of the CHE.

(3) The Committee of University Principals and the Committee of Technikon Principals determine the manner in which their assets and liabilities must be dealt with upon their dissolution.

(4) Joint statutes and joint 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 contemplated in subsection 72(2)

## **73. Provisional registration of existing private institutions**

(1) Any person, other than a public higher education institution, who provides a higher education programme at the date of commencement of this Act, must apply for provisional registration as a private institution in terms of section 44 by a date determined by the Minister by notice in the *Government Gazette*.

(2) Section 76(4) does not apply to a person contemplated in subsection (1) who applies for provisional registration by the date contemplated in that subsection until such application is refused by the registrar.

## **74. Institution established under name of college**

(1) Any person who provides education or training under a name that includes the word

'college' and is not established, or deemed to be established, declared or registered as a higher education institution in terms of this Act, a school contemplated in section 76(2) or a person contemplated in section 23 must, within 180 days of the commencement of this Act remove the word 'college' from its name.

(2) Until the period referred to in subsection (1) has expired, a person contemplated in subsection (1) is not guilty of an offence in terms of section 76(1)(d) of this Act.

## **75. Serving members of council and chancellors**

Any person who holds public office or is in the full-time employment of the State and serves as chancellor or as a member of council of a higher education institution at the commencement of this Act may despite section 27(5) complete his or her current term of office.

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## **CHAPTER 9**

### **GENERAL**

## **76. Offences**

(1) Any person, excluding a higher education institution, who, without the authority of a higher education institution

- a. in any way makes it known or pretends that such person or some other person offers any instructional programme or subdivision of an instructional programme which entitles a person who has followed such an instructional programme or subdivision of an instructional programme to the granting of any qualification which may be issued by a higher education institution
- b. confers a qualification purporting to be a qualification granted by a higher education institution, or in collaboration with a higher education institution
- c. performs any act which purports to have been performed by or on behalf of a higher education institution; or
- d. establishes or manages an institution, not being a technikon, university or college under a name which ludes the words 'technikon', 'university' or 'college';

is guilty of an offence and on conviction liable to the same sentence which could be imposed for fraud.

(2) Subsection (1)(d) does not apply to a school contemplated in terms of the South African Schools Act, 1996 (Act No. 84 of 1996), which, at the date of commencement of this Act, included the word 'college' in its name.

(3) Any person who pretends that a qualification has been awarded to that person by a



higher education institution, whereas in fact no such qualification has been so awarded, is guilty of an offence and is liable upon conviction to the same sentence which could be imposed for fraud.

(4) Any person, other than a public higher education institution or a person contemplated in section 23, who provides a higher education programme and is not registered or provisionally registered as a private institution in terms of this Act is guilty of an offence and on conviction is liable to a fine not exceeding R100,000 or imprisonment not exceeding 10 years or both such fine and imprisonment

(5) Any private higher education institution which does not comply with section 50 is guilty of an offence and on conviction is liable to a fine not exceeding R20,000.

(6) Despite the provisions of any other law, a Magistrates' Court is competent to impose any sentence contemplated in terms of this Act.

## **77. 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. a council of a public higher education institution;
- b. the CHE;
- c. any employee of the Department of Education; or
- d. any executive organ of state as contemplated in sections 238 and 239 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

(2) A 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 make institutional statutes, and assign any of its duties in terms of this Act or assigned to it in terms of subsection (1), to the senate, the principal or other employee of the public higher education institution

## **78. Regulations**

The Minister may make regulations, not inconsistent with this Act, as to

- a. any matter which under this Act the Minister is empowered or required to prescribe by regulation; and
- b. in general, all matters in respect of the which the Minister may deem it necessary or expedient to make regulations to achieve the objects of this Act.

## **79. 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.

**80. Short title and commencement**

- (1) This Act is called the Higher Education Act, 1997.
  - (2) This Act comes into operation on a date determined by the President by proclamation in the *Government Gazette*.
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