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GENERAL NOTICE

Notice 1927 of 1999

MINISTRY OF EDUCATION

EDUCATION LAWS AMENDMENT BILL, 1999

The Minister of Education, hereby publishes the Education Laws Amendment Bill, 1999 for comments. An explanatory memorandum is attached to this notice to assist the reader of the Bill regarding the nature and reason for such amendments.

All persons concerned are invited to comment in writing on the draft bill and to send the comments to: The Director-General, Private Bag X895, Pretoria, 0001, for attention: Ms M Locke, Fax no. (012) 326 9128, or e-mail: locke.m@educa.gov.za

The comment must reach the Department of Education not later than 31 August 1999.

Please also provide the name, address, telephone number, fax number and e-mail address of the person or organisation responsible for submitting the comment.

**DEPARTMENT OF EDUCATION
AUGUST 1999**

EXPLANATORY MEMORANDUM

EDUCATION LAWS AMENDMENT BILL, 1999

INTRODUCTION

This Bill seeks to amend an array of education legislation within the general and further education sectors. It addresses those issues identified in the various Acts indicated in the Bill, which make it problematic to implement the policy framework of the Department of Education. Amendments to the various pieces of education are dealt with under the heading indicating the specific Act which this Bill seeks to amend.

SOUTH AFRICAN SCHOOLS ACT, 1996 (NO. 84 OF 1996)

1. Clause 1

Two definitions in section 1 of the South African Schools Act are amended as follows:

The definition of "**educator**" is amended to define an educator in terms of the South African Schools Act, 1996 by linking this definition to the Employment of Educators Act, 1994, which Act has been repealed. It cannot be linked to the Employment of Educators Act, 1998, as this Act only applies to educators employed by the State. "**Educators**" in terms of the South African Schools Act, 1996 has a wider scope, as it includes educators employed by a governing body out of own resources in terms of section 20(4) of the Act.

The definition of a "**school**" is also amended to refer to the reception year as "reception grade" instead of the current reference to grade zero, as this terminology has become defunct.

2. Clause 2

Section 9 of the Act, which deals with suspension and expulsion from public schools, is to be amended. Provision is made for the Head of Department to be involved in the decision-making process when a learner is suspended pending a decision to expel. The Head of Department is responsible for providing sufficient school places to learners who exercise their fundamental right to have access to general and further education in a public school. The Head of Department has currently no function in the decision to suspend a learner pending the decision of expulsion, but is constitutionally obliged to provide access by learners to public schools.

3. Clause 3

A new section 12A is to be inserted and cater for the merger of public schools, and to provide for a process and to deal with the consequences of such a merger. The current provisions require a Head of Department to close down a public school/s through a process provided for in section 33 of the Act. The Head of Department must then establish a new school. The process of closing down a school is usually resisted by the community, who are determined that there is a need for a school in that area, and that schools should just be merged instead of being closed down. This was not possible under the existing provisions, and through this amendment authority will be given to the Head of Department to rationalise existing legal entities into one without closing down such schools.

4. Clause 4

Section 16 is amended to empower the Head of Department to close a school temporarily in the case of an emergency. This will happen in the event of learners and staff members being endangered or in the event of a real threat of damage to property. The discretion to reopen the school rests with the Head of Department after proper notice has been given.

5. Clause 5

Section 21 is amended to empower a school governing body or council to provide for an adult basic education class or centre, with the concurrence of the Head of Department

6. Clause 6

Section 23 of the Act is amended to provide for voting rights to co-opted parents in case the number of parents in the governing body and councils do not exceed the combined total number of other members with voting rights. The Act prescribes that parents must always be in the majority. The effective functioning of a governing body is undermined when parent numbers in a governing body falls below this quota. The re-appoint of a parent member is a process that takes time (democratic process). The option to co-opt a parent to the governing body is not feasible, as such co-opted member has no voting rights.

7. Clause 7

This clause seeks to amend section 29 of the Act. An anomaly exists in the Act, which stipulates that a parent must be the chairperson, but provides that, in the case of public schools for learners with special education needs, a parent category does not need to be represented on the governing body. It is a reality that some public schools for learners with special education needs do not have parents on their governing bodies and cannot therefore appoint a parent as a chairperson. This amendment will allow such schools to elect a chairperson from any of the categories represented on the governing body.

8. Clause 8

Any officer in charge of a deeds office is now empowered to endorse a title deed concerning the

transfer of immovable property to the state, as in the case of schools situated on property with mining rights, the process of registration and the registration authority differ from normal procedures. This clause seeks to amend section 55 of the Act to allow such officer to make the necessary endorsement as required by the Act

9. Clause 9

This clause seeks to amend section 60 of the Act. The Act provides, that a claim against a school should be instituted against the State. Some confusion exists as to who must be cited in the court proceedings, namely the school or the province. This clause seeks to ensure that the correct authority is cited when a claim for damage or loss at a public school is instituted.

The amendment further seeks to exclude the State's liability in cases where a school or a college operates an enterprise or a business, when supplementing their resources. It also obliges a person who acts against a public school in these circumstances to give notice of his or her intentions before instituting such action.

NATIONAL EDUCATION POLICY ACT, 27 (NO. 27 OF 1996)

10. Clause 10

Clause 10 seeks to amend section 3 of this Act by simplifying the language used in the Act. Provinces should adhere to national policy, which requires uniformity across the nation. This policy determined by the Minister should prevail over provincial policy if a conflict between national and provincial policy exists.

11. Clause 11

The amendment. to section 5 is required owing to the need for the Minister to consult with the correct stakeholder. The change in the status and type of stakeholders has been brought about owing to legislation subsequent to 1996. This is to ensure that the bodies and authorities that are currently regarded as key stakeholders be referred to correctly in terms of this Act.

12. Clause 12

Clause 12 seeks to amend section 11 of the Act. A difficulty has been raised by stakeholders that the Minister has established statutory structures to advise him in the various areas of education, but that the Minister is under no obligation to follow such advice. The Minister must always be the proper authority to make the final decision and the amendment seeks to ensure that the Minister will be obliged to provide reasons to an advisory structure if the advice is not acceptable. In cases of urgency or if the advice is not forwarded within a reasonable timeframe, the Minister may act without such advice, but must provide reasons to such body for so doing.

SOUTH AFRICAN CERTIFICATION COUNCIL ACT, 1986 (NO. 85 OF 1986)

13. Clause 13

This clause seeks to amend the long title of the Act owing to the amendments made to this Bill which are of a technical nature.

14. Clause 14

Clause 14 seeks to amend various definitions in this Act. These amendments are mainly of a technical nature to ensure that this Act is in keeping with the terminology used in the latest legislation and policy documents, and also to correct the language that refers to repealed pieces of legislation.

15. Clause 15

This clause seeks to repeal section 9 of the Act and replace it with three new sections which provide for the responsibilities of an examining body, the functions of the Director-General and the functions of the council, so as to ensure that examinations are conducted in a proper way free from irregularities. These clauses are desperately needed to ensure that irregularities that occurred during the 1998 section certificate examination in Mpumalanga may be prevented. The authorities identified by these clauses will be co-ordinated by this amendment.

EMPLOYMENT OF EDUCATORS ACT, 1998 (NO. 76 OF 1998)

16. Clause 16

This clause seeks to amend section 6 of this Act. The current legislation gives the governing body the authority to make recommendations for the appointment of educators employed by the State in terms of this Act. This provision is read with section 20 of the South African Schools Act. Practice has shown that not all governing bodies of public schools are performing this function within a reasonable timeframe. This practice has a huge financial implication as educators who need to be redeployed depend on such a recommendation, and it slows down the process considerably. This amendment seeks to place an obligation on a governing body to act within a period of two months after being requested to make such a recommendation, after which the employer may appoint or transfer an educator without such recommendation.

17. Clause 17

This clause seeks to amend section 8 of this Act. Owing to the need to have an educator in each classroom and to ensure that public resources are not wasted by appointing temporary educators for this purpose, the need has been identified to create a speedy procedure to allow an employer to send an educator who is in excess to the establishment of a particular school to provide education in a classroom in another classroom at a public school in the same province where there is a need for an educator. Owing to the urgency of such actions, it will not be required of the employer to obtain a recommendation from the governing body, but such transfers may be only of a temporarily nature. This amendment will ensure that budgets are utilised effectively and that excess educators to the establishment are redeployed to posts where there is a need for a teacher in a classroom. It will drastically reduce the wastage pertaining to personnel expenditure drastically.

18. Clause 18

The clause seeks to repeal Chapter 5 of the Act to bring it in line with the approach in the Public Service, where misconduct and incapacity are dealt with through collective agreements. There is, however, a transitional arrangement that the existing provision in the Act will continue to be in force until the date on which the collective agreement becomes effective.

EDUCATION LAWS AMENDMENT BILL, 1999

GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the South African Schools Act, 1996 so as to substitute two definitions; to provide for the merger of two or more public schools and to regulate the consequences of such merger; to make provision for the temporary closure of a public school in the case of an emergency; to provide for an additional function of a governing body; and to make certain technical adjustments; to amend the National Education Policy Act, 1996 so as to enable the

Minister to act without the advice of a consultative body under certain circumstances; and to make certain technical adjustments; to amend the South African Certification Council Act, 1986 so as to substitute certain definitions, to delete others and to insert two new definitions; to repeal section 9 and to insert three new sections dealing with the responsibilities of an examining body and the Director-General and the functions of the council, so as to ensure that examinations are conducted in a proper way free from irregularities; to amend the Employment of Educators Act, 1998 so as to make provision for a timeframe with which a Governing Body or Council must make its recommendations when an educator is appointed; to make provision that in the case of temporarily transfers no recommendation of a Governing Body of Council is needed; to repeal the provisions dealing with misconduct and incapacity; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 84 of 1996 as amended by section 1 of Act 100 of 1997

1. Section 1 of the South African Schools Act, 1996 is hereby amended-

- a. by the substitution for the definition of "educator" of the following definition:
"educator" means **[an educator as defined in the Educators' Employment Act, 1994 (Proclamation No.138 of 1994)] any person who teaches educates or trains other persons or who provides professional educational services at a school;** and
- b. by the substitution for the definition of "school" of the following definition:
"school" means a public school or an independent school which enrolls learners in one or more grades from grade **[zero] R (Reception)** to grade twelve;"

Amendment of section 9 of Act 84 of 1996

2. Section 9 of the South African Schools Act, 1996, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) in consultation with the Head of Department, pending a decision as to whether the learner is to be expelled from the school by the Head of Department."

Insertion of a new section in Act 84 of 1996

3. The South African Schools Act, 1996, is hereby amended by the insertion after section 12 of the following new section:

"Merger of public schools

12A.(1) Subject to subsection (2) the Member of the Executive Council may, by notice in the Provincial Gazette merge two or more public schools into a single school

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

- a. give written notice to the schools in question of the intention to merge them;
- b. publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the schools in question are situated;
- c. give the governing bodies of the schools 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 schools have complied with their obligations in terms of the applicable labour law.

(3) If one or more of the schools that are to be merged in terms of subsection (1) are public schools on private property, the Member of the Executive Council must also-

- a. notify the owner of the private property of his intention to merge the schools concerned;
- b. consider his or her contractual obligations in terms of the agreement contemplated in section 14;
- c. renegotiate his obligations in terms of the existing agreement; and
- d. negotiate a new agreement in terms of section 14 if the single school referred to in subsection (1) is situated on private property.

(4) The single school contemplated in subsection (1) is regarded as a public school provided under this Act.

(5) All assets, liabilities, rights and obligations of the schools that are merged, shall, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), vest in the single school."

Amendment of section 16 of Act 84 of 1996

4. Section 16 of the South African Schools Act, 1996 is hereby amended by the addition of the following subsections:

"(4) The Head of Department may close a public school temporarily in the case of an emergency if he or she believes on reasonable grounds that the lives of learners and staff are endangered or that there is a real danger of bodily injury to them or of damage to property.

(5) When the Head of Department decides that the school should be reopened, he or she must inform the governing body and the principal of the date on which the school must reopen.

(6) The principal must inform the educators and parents of the date contemplated in subsection (5)."

Amendment of section 21 of Act 84 of 1996

5. Section 21 of the South African Schools Act, 1996 is hereby amended by the renumbering of the existing paragraph (e) of subsection (1) as paragraph (n) and by the insertion of the following new paragraph:

"(e) to Provide an adult basic education and training class or centre subject to any applicable law; or"

Amendment of section 23 of Act 84 of 1996

6. Section 23 of the South African Schools Act, 1996 is hereby amended-

- a. (a) by the substitution for subsection (8) of the following subsection:
"(8) Subject to subsection (10) [Co-opted] co-opted members do not have voting rights on the governing body.
- b. (b) by the addition of the following subsections:
"(10) If the number of parents at any stage is not more than the combined total of other members with voting rights, the governing body must temporarily co-opt parents with voting rights.

(11) In the case where parents are co-opted with voting rights as contemplated in subsection (10), the co-option ceases when the vacancy or vacancies have been filled as contemplated in section 28(d).

(12) If a person elected as a member of a governing body as contemplated in subsection (2), ceases to fall within the category referred to in that subsection in respect of which

he or she was elected as a member, he or she ceases to be a member of the governing body."

Amendment of section 29 of Act 84 of 1996

7. Section 29 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsection:

"(3) The provisions of subsection (2) do not apply to a public school for learners with special education needs."

Amendment of section 55 of Act 84 of 1996 as amended by section 9 of Act 100 of 1997

8. Section 55 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (11) of the following subsection:

"(11) The [Registrar of deeds in the office] officer in charge of a deeds office or other office where the immovable property of a school is registered, must, on submission of the title deed in question, make such endorsement on the title deed and such entry in the register as may be required to register the transfer of the immovable property."

Amendment of section 60 of Act 84 of 1996

9. Section 60 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:

"(3) Any claim for damage or loss contemplated in subsection (1) must be instituted against the Member of the Executive Council concerned."

"(4) Despite the provisions of subsection (1), the State is not liable for an damage or loss caused as a result of any act or omission in connection with an, enterprise or business operated under the authority of a public school for purpose~ of supplementing the resources of the school as contemplated in section 36 including the offering of practical educational activities related to that enterprise o business."

"(5) Any legal proceedings against a public school for any damage or loss contemplated in subsection (4), or in respect of any act or omission relating to it contractual responsibility as employer as contemplated in section 20(10), may only be instituted after written notice of the intention to institute proceedings against the school has been given to the Head of Department for his or her information."

Amendment of section 3 of Act 27 of 1996

10. Section 3 of the National Education Policy Act, 1996, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) [Whenever the Minister wishes a particular] Subject to the Constitution, national policy [to prevail] prevails over the whole or a part of any provincial [laws] policy on education if there is a conflict between the national and provincial policies. [the Minister shall inform the provincial political heads of education accordingly, and make a specific declaration in the policy instrument to that effect.]"

Amendment of section 5 of Act 27 of 1996

11. Section 5 of the National Education Policy Act, 1996, is hereby amended by the substitution for paragraphs (b), (c) and (d) of subsection (1) of the following paragraphs:

"(b) such national organisations representing [college rectors] principals of institutions providing further education and training as defined in the Further Education and

Training Act, 1998 (Act No. 98 of 1998) as the Minister may recognise for this purpose;

(c) the **[organised teaching profession]** trade unions represented in the Education Labour Relations Council;

(d) such national organisations representing **[parents]** governing bodies of schools as the Minister may recognise for this purpose;".

Amendment of section 11 of Act 27 of 1996

12. Section 11 of the National Education Policy Act, 1996, is hereby amended by the addition of the following subsections:

"(4) The Minister must-

- a. consider any advice given by a body contemplated in subsection (1); and
- b. provide reasons in writing to the body concerned if the Minister does not accept the advice.

(5) The Minister may act without the advice of a body contemplated in subsection (1) if-

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

(6) If the Minister acts as contemplated in subsection (5) the Minister must

- a. notify the body concerned of such action; and
- b. provide reasons in writing to the body for such action."

Amendment of the long title of Act 85 of 1986

13. The South African Certification Council Act, 1986, is hereby amended by the substitution for the long title of the following long title:

"To provide for control over the norms and standards of subject matter and examination, and for the issuing of certificates, at the different points of withdrawal in school education and [technical college education] further education and training [and non-formal education]; and for that purpose to establish the South African Certification Council; and to provide for the conducting of **[common]** examinations; and to provide for matters connected therewith.

Amendment of section 1 of Act 85 of 1986

14. Section 1 of the South African Certification Council Act, 1986, is hereby amended-

- a. by the substitution for the definition of "certificate" of the following definition:
"certificate' means a certificate contemplated in section **[9(1)] 9C(1)(d);**";
- b. by the substitution for the definition of "Director-General" of the following definition:
"Director-General' means the Director-General of **[National Education] the Government department responsible for education at national level;**";
- c. by the substitution for the definition of "education department" of the following definition:
"education department' means a department **[of State responsible for general and own education matters including a provincial education department] responsible for education in a province;**";
- d. by the substitution for the definition of "examining body" of the following definition:
"examining body' means an education department or any other body registered with the council as a body responsible for conducting external examinations **[at a point of withdrawal];**";
- e. by the insertion after the definition of "executive officer" of the following definition:

"external examination' means an examination at a point of withdrawal written by the candidates of an examining body;";

- f. by the deletion of the following definitions:
"formal education";
"non-formal education"; and
"school or technical college education";
- g. by the substitution for the definition of "Minister" of the following definition:
"Minister' means the Minister of **[National]** Education;"
- h. by the substitution for the definition of "point of withdrawal" of the following definition:
"point of withdrawal' means a stage in school **[or technical college]** education or **[non-formal education]** further education and training at which a candidate is required to sit for an examination with a view to obtaining documentary proof of proficiency;"
- i. by the insertion after the definition of "prescribe" of the following definition:
"raw marks' means the actual marks obtained by a candidate in a subject in an external examination before any adjustment of the marks is made by the council."

Repeal of section 9 of Act 85 of 1986 and insertion of new sections

15. The South African Certification Council Act, 1986 is hereby **amended** by the repeal of section 9 and the insertion of the following new sections:

"Responsibilities of examining body

9A . In respect of an external examination to be conducted an examining body, subject to policy determined in terms of section 3(4) of the National Education Policy Act, 1996 (Act No. 27 of 1996)-

- a. shall take adequate measures, including measures to combat irregularities in the examination venue and security measures for ensuring the confidentiality of examination papers, to ensure the integrity of the examinations;
- b. shall ensure that each paper in an external examination is representative of the prescribed subject matter;
- c. shall ensure that each paper in an external examination is moderated by at least one competent internal moderator;
- d. shall submit a paper and memorandum in an external examination to an external moderator for confirmation that they conform to the required standards;
- e. shall ensure that a sample of the examination scripts is moderated by an external moderator;
- f. shall schedule a particular paper in an external examination for a stipulated date and time on the examination time-table;
- g. shall supply the council on or before a date and in the form determined by the council, with a mark for each subject in which a candidate sat for an external examination;
- h. shall supply the council and the Director-general without delay in writing with full details of any irregularities that occurred in respect of an external examination as well as the steps taken in consequence;
- i. shall publish the results of the external examination after obtaining the approval of the council; and
- j. may recommend to the council during the standardisation process that raw marks be adjusted.

Functions of the Director-General

9B. The Director-General-

- a. shall promote the integrity of the examination system;
- b. shall monitor the conduct of the council and the examining body in upholding the minimum norms and standards set by the South African Qualifications Authority or determined by policy; and
- c. may institute an investigation into any irregularities which may occur.

Functions of the Council

9C. (1) Subject to policy determined in terms of section 3(4) of the National Education Policy Act, 1996 (Act No. 27 of 1996) the council -

- a. shall perform the external moderation of examination papers, memoranda and samples of examination scripts of all examining bodies;
- b. may adjust raw marks during the standardisation process in consultation with the Director-General;
- c. shall, in consultation with the Director-General and the examining body, approve the publication of the results of candidates if the council is satisfied that the examining body-
 - i. conducted the examination free from any irregularity;
 - ii. complied with the requirements prescribed by the council for conducting examinations with a view to the obtaining of certificates;
 - iii. applied the norms and standards which may be prescribed by the council and the South African Qualifications Authority and with which a candidate is required to comply in those examinations in order to obtain a certificate; and
 - iv. complied with such other conditions as may be determined by the council; and
- d. shall issue certificates in the form prescribed by council to candidates who in a subject or all the subjects at a point of withdrawal -
 - i. have met the requirements set by the council to obtain a certificate; and
 - ii. complied with such other conditions as may be determined by the council.

(2) The council, subject to the approval of the Minister, may register an examining body other than a department of education in accordance with criteria determined by the council.

(3) Subject to section 74 of the Higher Education Act, 1997 (Act No. 101 of 1997), the council may with the approval of a body authorised to determine the requirements for admission to study at a higher education institution, endorse accordingly a certificate of a candidate who has complied with the minimum requirements for admission to study at a higher education institution.

Money payable to the council

9D. Money payable to the council in respect of-

- a. the issue of a certificate as contemplated in section 9C(1)(d) or of a duplicate thereof; or
- b. the endorsing of a certificate as contemplated in subsection 9C(3) or of a duplicate thereof,

may be Prescribed by the council."

Amendment of section 6 of Act 76 of 1998

16. Section 6 of the Employment of Educators Act, 1998, is hereby amended by the addition in subsection (3) of the following paragraph:

"(d) A recommendation contemplated in paragraph (a) must be made within two months from the date on which a governing body or council was requested to make a recommendation, failing which the Head of Department may make an appointment without such recommendation."

Amendment of section 8 of Act 76 of 1998

17. Section 8 of the Employment of Educators Act, 1998, is hereby amended by the addition of the following subsections:

"(4) A recommendation contemplated in subsection (2) must be made within two months from the date on which a governing body or council was requested to make a recommendation, failing which the Head of Department may make a transfer without such recommendation.

(5) The Head of Department may, without a recommendation contemplated in subsection (2), transfer an educator temporarily for a stated period from a post at a public school or public further education and training institution, to a post at another public school or public further education and training institution.

(6) An educator referred to in subsection (5) must return to his or her previous post at the end of the period contemplated in that subsection."

Repeal of Chapter 5 of Act 76 of 1998

18. (1) The Employment of Educators Act, 1998, is hereby amended by the repeal of Chapter 5.

(2) Notwithstanding the provisions of subsection (1) -

- a. any inquiry into incapacity and any proceedings in respect of a charge of misconduct instituted or commenced under the principal Act, shall be continued and concluded as if Chapter 5 had not been repealed; and
- b. the provisions relating to incapacity and misconduct shall have the effect and status of a collective agreement concluded in the Education Labour Relations Council.

Short title

19. This Act is the Education Laws Amendment Act, 1999.

EDUCATION LAWS AMENDMENT BILL

MEMORANDUM ON THE OBJECTS OF THE EDUCATION LAWS AMENDMENT BILL, 1999

This Bill amends the South African Schools Act (No. 84 of 1996), the National Education Policy Act (No. 27 of 1996), the South African Certification Council Act (No. 58 of 1986), and the Employment of Educators Act (No. 76 of 1998).

South African Schools Act, 1996

The Act is amended in section 1 by substituting the definition of educators. The existing definition is incorrect, as it refers to educators employed in terms of the repealed Educators Employment Act, 1994. The definition of a school is also amended to refer to the reception year as "reception grade".

Section 9 of the Act is amended to ensure that the Head of Department is part of the decision-making process when a learner is suspended pending a decision to expel. The Head of Department is responsible for ensuring that the learner exercises his/her right to education, but the current wording makes him/her responsible for education without being part of the decision-making process when a learner is suspended.

A new clause is inserted as clause 12A to cater for the merger of public schools, and to provide for a process and to deal with the consequences of such a merger.

Section 16 of the Act is amended to empower the Head of Department to close a school temporarily in the case of an emergency, when learners and staff members are endangered or in the event case of a real threat of damage to property. The discretion to reopen the school rests with the Head of Department.

This amendment is necessary to ensure the safety of learners and staff members, as well as school property, which is not provided for in the current Act.

Amendments to section 21 of the Act empower a school governing body or council, on application to the Head of Department, to provide for an adult basic education class or centre.

The amendment to section 23 of the Act provides voting rights to co-opted members in the event of the number of parents in a governing body or council not exceeding the combined total number of other members with voting rights.

An anomaly exists in the Act, which stipulates that a parent must be the chairperson, but provides that in the case of public schools for learners with special education needs, a parent category does not need to be represented on the governing body. Section 29 is amended to address this anomaly.

Section 55 of the Act is amended to empower any officer in charge of a deeds office to endorse a title deed concerning the transfer of immovable property to the state, as in the case of schools situated on property with mining rights, the process of registration and the registration authority differ from normal procedures.

Section 60 of the Act is amended to provide clarity on the authority against which a claim for damage or loss at a public school is instituted. The amendment indemnifies the state from liability for any damage or loss caused by contractual liability between the public school and any enterprise or business operated at the school.

National Education Policy Act, 1996

An amendment to section 3 is necessary to simplify the language used in the Act and to ensure that policy declared by the Minister prevails over provincial policy on education.

The amendment to section 5 of the Act replaces "college rectors" by "principals of Further Education and Training Institutions", as defined in the Further Education and Training Act, 1998, and the "organised teaching profession" by "trade unions" and "parents" by "governing bodies".

The amendment to section 11 ensures that advice given by statutory bodies will be seriously considered, and if not, reasons must be provided as to why it is not acceptable and therefore necessary to disregard such advice.

South African Certification Council Act, 1986

A need has been identified to amend and supplement the Act by correcting the definitions in the Act and to provide for the repealing of section 9 of the Act. This amendment endeavours to identify the functions and responsibilities of the examining body, the certification council and the national Department of Education, and to co-ordinate the relationship between these authorities.

Employment of Educators Act, 1998

Section 6 of the Act is amended, as it is required that a specific time frame be identified within which a governing body or council must exercise its right to make recommendations on the appointment and the redeployment of educators. If a governing body or council does not exercise its right within the specific time frame, the employer may appoint an educator without taking into account a recommendation from the governing body or council.

This amendment also provides for the purpose of temporary transfers within a province and between two different schools without the recommendation of a governing body or council. This amendment will ensure that budgets are utilised effectively and that excess educators to the establishment are redeployed to posts where there is a need for a teacher in a classroom. It will drastically reduce wastage pertaining to personnel expenditure.

Chapter 5 of the Act is also repealed to bring it in line with the approach in the Public Service, where misconduct and incapacity are dealt with through collective agreements.