



REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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## STAATSKOERANT

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#### OFFICE OF THE PRESIDENCY

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No. 1398. 19 November 1999

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 48 of 1999: Education Laws Amendment Act, 1999.

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#### KANTOOR VAN DIE PRESIDENSIE

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No. 1398. 19 November 1999

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 48 van 1999: Wysigingswet op Onderwyswette, 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.
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*(English text signed by the President.)  
(Assented to 18 November 1999.)*

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# ACT

To amend the South African Certification Council Act, 1986, so as to substitute certain definitions, to delete others and to insert new definitions; to provide anew for the functions of an examining body, the Director-General and the council, with regard to examinations; to allow the council to prescribe fees for the issue or endorsement of a certificate; and to remove obsolete references from the long title; to amend the National Education Policy Act, 1996, so as to make certain technical adjustments; to amend the South African Schools Act, 1996, so as to substitute certain 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; to make further provision regarding co-opted members of governing bodies; to make certain technical adjustments; and to make further provision regarding claims for damages; to amend the Employment of Educators Act, 1998, so as to make provision for a timeframe within which a governing body or council must make its recommendations when an educator is appointed; and to dispense with the necessity for a recommendation by a governing body or council in the case of temporary transfers; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 85 of 1986, as amended by section 1 of Act 89 of 1992**

1. Section 1 of the South African Certification Council Act, 1986, is hereby amended—
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- (a) by the substitution for the definition of “certificate” of the following definition:
- “‘certificate’ means a certificate contemplated in section [9(1)]  
9B(1)(c);”;
- (b) by the substitution for the definition of “Director-General” of the following 10 definition:
- “‘Director-General’ means the Director-General of [National Education]  
the government department responsible for education at national  
level;”;

**ALGEMENE VERDUIDELIKENDE NOTA:**

[ ] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

                 Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

(Engelse teks deur die President geteken.)  
(Goedgekeur op 18 November 1999.)

**WET**

Om die Wet op die Suid-Afrikaanse Sertifiseringsraad, 1986, te wysig ten einde sekere omskrywings te vervang, ander te skrap en nuwe omskrywings in te voeg; om opnuut voorsiening te maak vir die werksaamhede van 'n eksamineringsinstansie, die Direkteur-generaal en die raad, met betrekking tot eksamens; die raad toe te laat om geld te voor te skryf vir die uitreiking of endossering van 'n sertifikaat; en uitgediende verwysings uit die lang titel te verwijder; om die Wet op Nasionale Onderwysbeleid, 1996, te wysig ten einde sekere tegniese aanpassings te doen; om die Suid-Afrikaanse Skolewet, 1996, te wysig ten einde sekere omskrywings te vervang; voorsiening te maak vir die samesmelting van twee of meer openbare skole en om die gevolge van sodanige samesmelting te reguleer; voorsiening te maak vir die tydelike sluiting van 'n openbare skool in geval van nood; voorsiening te maak vir 'n bykomende werksaamheid van 'n beheerliggaam; verder voorsiening te maak betreffende gekoöpteerde lede van beheerliggame; sekere tegniese aanpassings te doen; en verder voorsiening te maak betreffende eise vir skade; om die Wet op die Indiensneming van Opvoeders, 1998, te wysig ten einde voorsiening te maak vir 'n tydskaal waarbinne 'n beheerliggaam of -raad sy aanbevelings moet doen wanneer 'n opvoeder aangestel word; en weg te doen met die vereiste vir 'n aanbeveling deur 'n beheerliggaam of -raad in die geval van tydelike verplasings; en om vir aangeleenthede wat daarmee in verband staan, voorsiening te maak.

**D**AAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:

**Wysiging van artikel 1 van Wet 85 van 1986, soos gewysig deur artikel 1 van Wet 89 van 1992**

5     1. Artikel 1 van die Wet op die Suid-Afrikaanse Sertifiseringsraad, 1986, word hierby gewysig—

(a) deur die omskrywing van "Direkteur-generaal" deur die volgende omskrywing te vervang:

"‘Direkteur-generaal’ die Direkteur-generaal [:Nasionale Opvoeding van die staatsdepartement verantwoordelik vir onderwys op nasionale vlak];";

(b) deur die omskrywing van "eksamineringsinstansie" deur die volgende omskrywing te vervang:

"‘eksamineringsinstansie’ 'n onderwysdepartement of enige ander liggaaam by die raad geregistreer as 'n liggaaam wat verantwoordelik is vir die afneem van eksterne eksamens [by 'n uitstrepunt]";

- (c) by the substitution for the definition of "education department" of the following definition:  
 " 'education department' means a department [of State] responsible for [general or own] education [matters including a provincial education department] at national level or a department responsible for education in a province;"; 5
- (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];"; 10
- (e) by the insertion after the definition of "executive officer" of the following definition:  
 " 'external examination' means an examination at a point of withdrawal taken by the candidates of an examining body;"; 15
- (f) by the deletion of the definition of "formal education";
- (g) by the substitution for the definition of "Minister" of the following definition:  
 " 'Minister' means the Minister of [National] Education;";
- (h) by the deletion of the definition of "non-formal education";
- (i) 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] general 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;"; 20
- (j) 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. "; and 25
- (k) by the deletion of the definition of "school or technical college education". 30

#### **Substitution of section 9 of Act 85 of 1986, as amended by section 2 of Act 89 of 1992**

**2.** The following sections are hereby substituted for section 9 of the South African Certification Council Act, 1986:

#### **"Functions of examining body with regard to external examination**

- 9.** 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)— 35
- (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; 40
- (b) shall ensure that each paper is representative of the prescribed subject matter; 45
- (c) shall ensure that each paper is moderated by at least one competent internal moderator;
- (d) shall submit a paper and memorandum 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 for a stipulated date and time on the examination time-table; 50
- (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 examination;

- (c) deur na die omskrywing van "eksamineringsinstansie" die volgende omskrywing in te voeg:  
 "eksterne eksamen" 'n eksamen by 'n uitreepunt wat deur die kandidate van 'n eksamineringsinstansie afgelê word;";
- 5 (d) deur die omskrywing van "formelege onderwys" te skrap;
- (e) deur die omskrywing van "Minister" deur die volgende omskrywing te vervang:  
 "Minister" die Minister van [Nasionale Opoeding] Onderwys;";
- (f) deur die omskrywing van "nie-formele onderwys" te skrap;
- 10 (g) deur die omskrywing van "onderwysdepartement" deur die volgende omskrywing te vervang:  
 "onderwysdepartement" 'n [Staatsdepartement] departement verantwoordelik vir [algemene of eie onderwyssake, met inbegrip van 'n provinsiale onderwysdepartement] onderwys op nasionalevlak of 'n departement verantwoordelik vir onderwys in 'n provinsie;";
- 15 (h) deur na die omskrywing van "raad" die volgende omskrywing in te voeg:  
 "roupunte" die werklike punte deur 'n kandidaat in 'n vak in 'n eksterne eksamen behaal voordat enige aanpassing van die punte deur die raad gedoen is;";
- 20 (i) deur die omskrywing van "sertifikaat" deur die volgende omskrywing te vervang:  
 "sertifikaat" 'n sertifikaat beoog in [subartikel 9(1)] artikel 9B(1)(c);";
- (j) deur die omskrywing van "skool- of tegniese kollege-onderwys" te skrap; en
- 25 (k) deur die omskrywing van "uitreepunt" deur die volgende omskrywing te vervang:  
 "uitreepunt" 'n stadium in [skool- of tegniese kollege-onderwys of nie-formele onderwys] algemene of verdere onderwys en opleiding waarin 'n kandidaat 'n eksamen moet aflê met die oog op die verwerwing van dokumentêre bewys van bekwaamheid;".

**Vervanging van artikel 9 van Wet 85 van 1986, soos gewysig deur artikel 2 van Wet 89 van 1992**

2. Artikel 9 van die Wet op die Suid-Afrikaanse Sertifiseringsraad, 1986, word hierby deur die volgende artikels vervang:

- 35 **"Werksaamhede van eksamineringsinstansie met betrekking tot eksterne eksaminering**
9. 'n Eksamineringsinstansie, ten aansien van 'n eksterne eksamen wat afgeneem staan te word en behoudens beleid bepaal ingevolge artikel 3(4) van die Wet op Nasionale Onderwysbeleid, 1996 (Wet No. 27 van 1996)—
- 40 (a) moet afdoende maatreëls tref, met inbegrip van maatreëls om onreëlmataighede in die eksamenlokaal te bekamp en veiligheidsmaatreëls vir die versekerung van die vertroulikheid van eksamenvraestelle, om die integriteit van die eksamen te verseker;
- (b) moet verseker dat elke vraestel verteenwoordigend is van die voorgeskrewe leerstof;
- 45 (c) moet verseker dat elke vraestel deur minstens een bekwame interne moderator gemodereer word;
- (d) moet 'n vraestel en memorandum aan 'n eksterne moderator voorlê vir bevestiging dat dit aan die vereiste standaarde voldoen;
- (e) moet verseker dat 'n steekproef van die eksamenskrifte deur 'n eksterne moderator gemodereer word;
- 50 (f) moet 'n spesifieke vraestel op die eksamenrooster skeduleer vir 'n vasgestelde datum en tyd;
- (g) moet voor of op 'n datum en in die vorm deur die raad bepaal, die raad voorsien van 'n punt vir elke vak waarin 'n kandidaat 'n eksamen afgelê het;

- (h) shall without delay and in writing supply the council and the Director-General with full details of any irregularities that occurred in respect of such examination as well as the steps taken with regard to such irregularities;
- (i) shall publish the results of the examination after obtaining the approval of the council; and
- (j) may recommend to the council during the standardisation process that raw marks be adjusted.

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#### **Functions of Director-General with regard to external examination**

##### **9A. With regard to external examination 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, established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), or determined by policy; and
- (c) may institute an investigation into any irregularities which may occur.

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#### **Functions of council with regard to external examination**

##### **9B. (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, with regard to external examination—**

- (a) shall perform the external moderation of examination papers, memoranda and samples of examination scripts of all examining bodies;
- (b) 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;
  - (iii) applied the norms and standards prescribed by the council and the South African Qualifications Authority, established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), and with which a candidate is required to comply in those examinations in order to obtain a certificate; and
  - (iv) complied with every other condition determined by the council;
- (c) shall issue certificates in the form prescribed by the council to candidates who, in one or more subjects at a point of withdrawal—
- (i) have met the requirements set by the council for a certificate; and
  - (ii) have complied with every other condition determined by the council; and
- (d) may adjust raw marks during the standardisation process in consultation with the Director-General.

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

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(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 a certificate of a candidate who has complied with the minimum requirements for admission to study at a higher education institution accordingly.

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- 5                   (h) moet die raad en die Direkteur-generaal sonder versuim en skriftelik voorsien van volle besonderhede van enige onreëlmatighede wat ten aansien van so 'n eksamen voorgekom het, asook die stappe wat ten opsigte van sulke onreëlmatighede gedoen is;
- 10                 (i) moet die uitslae van die eksamen publiseer nadat die goedkeuring van die raad verkry is; en
- 15                 (j) kan tydens die standaardiseringsproses by die raad aanbeveel dat die roupunte aangepas word.

**10 Werksaamhede van Direkteur-generaal met betrekking tot eksterne eksaminering**

**15                 9A. Met betrekking tot eksterne eksaminering—**

- 15                 (a) bevorder die Direkteur-generaal die integriteit van die eksamenstelsel;
- 20                 (b) monitor die Direkteur-generaal die optrede van die raad en die eksamineringsinstansie in die handhawing van die minimum norme en standaarde deur die Suid-Afrikaanse Kwalifikasie-owerheid, ingestel by artikel 3 van die Wet op die Suid-Afrikaanse Kwalifikasie-owerheid, 1995 (Wet No. 58 van 1995), of by wyse van beleid bepaal; en
- 25                 (c) kan die Direkteur-generaal ondersoek instel na enige onreëlmatighede wat mag voorkom.

**Werksaamhede van raad met betrekking tot eksterne eksaminering**

**25                 9B. (1) Behoudens beleid bepaal ingevolge artikel 3(4) van die Wet op Nasionale Onderwysbeleid, 1996 (Wet No. 27 van 1996), en met betrekking tot eksterne eksaminering—**

- 30                 (a) voer die raad die eksterne moderering van eksamenvraestelle, memorandums en steekproewe van eksamenskrifte van alle eksamineringsinstansies uit;
- 35                 (b) keur die raad in oorleg met die Direkteur-generaal en die eksamineringsinstansie die publikasie van die uitslae van kandidate goed, mits die raad tevrede is dat die eksamineringsinstansie—
- 40                 (i) die eksamen sonder enige onreëlmatighede afgeneem het;
- 45                 (ii) voldoen het aan die vereistes deur die raad voorgeskryf vir die afname van eksamens;
- 50                 (iii) die norme en standaarde toegepas het wat deur die raad en die Suid-Afrikaanse Kwalifikasie-owerheid, ingestel by artikel 3 van die Wet op die Suid-Afrikaanse Kwalifikasie-owerheid, 1995 (Wet No. 58 van 1995), voorgeskryf word en waaraan 'n kandidaat in daardie eksamens moet voldoen met die oog op die verwerwing van 'n sertifikaat; en
- 55                 (iv) aan al die ander voorwaardes wat deur die raad bepaal word, voldoen het;
- (c) reik die raad sertifikate in die vorm deur die raad voorgeskryf uit aan kandidate wat in een of meer vakke by die uittreepunkt—
- (i) aan die vereistes deur die raad gestel vir 'n sertifikaat, voldoen het; en
- (ii) aan elke ander vereiste wat deur die raad bepaal word, voldoen het; en
- (d) kan die raad tydens die standaardiseringsproses in oorleg met die Direkteur-generaal roupunte aanpas.
- (2) Behoudens die goedkeuring van die Minister kan die raad 'n eksamineringsinstansie anders as 'n onderwysdepartement regstreer in ooreenstemming met kriteria deur die raad bepaal.
- (3) Behoudens artikel 74 van die Wet op Hoër Onderwys, 1997 (Wet No. 101 van 1997), kan die raad met die goedkeuring van 'n liggaaam wat gemagtig is om die vereistes te bepaal vir toelating om aan 'n inrigting vir hoër onderwys te studeer, 'n sertifikaat van 'n kandidaat wat aan die minimum vereistes vir toelating om aan 'n inrigting vir hoër onderwys te studeer, dienooreenkomsdig endosseer.

**Fees payable to council**

**9C.** The council may prescribe the fees payable to the council in respect of—

- (a) the issue of a certificate as contemplated in section 9B(1)(c) or of a duplicate certificate; and
- (b) the endorsement of a certificate as contemplated in section 9B(3) or of a duplicate certificate.”.

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**Substitution of long title of Act 85 of 1986**

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

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“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] general 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.”.

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**Amendment of section 3 of Act 27 of 1996, as amended by section 11 of Act 100 of 1997**

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**4.** 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] shall prevail over the whole or a part of any provincial [law] policy on education [the Minister shall inform the provincial political heads of education accordingly, and make a specific declaration in the policy instrument to that effect] if there is a conflict between the national and provincial policies.”.

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**Amendment of section 5 of Act 27 of 1996**

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

- (b) such national organisations representing [college rectors] principals of institutions providing further education and training as defined in section 1 of 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 referred to in section 37(3)(b) of the Labour Relations Act, 1995 (Act No. 66 of 1995), read with paragraph 3(2) of Schedule 1 to that Act;
- (d) such national organisations representing [parents] governing bodies of schools as the Minister may recognise for this purpose;”.

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

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**6.** 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, excluding a person who is appointed to exclusively perform extracurricular duties, who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at a school;”; and

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- (b) by the substitution for the definition of “school” of the following definition:

“‘school’ means a public school or an independent school which enrols learners in one or more grades from grade [zero] R (Reception) to grade twelve;”.

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**Gelde aan raad betaalbaar**

**9C.** Die raad kan die geldie voorskryf, betaalbaar aan die raad, ten aansien van—

- (a) die uitreiking van 'n sertifikaat soos in artikel 9B(1)(c) beoog of van 'n duplikaatsertifikaat; en
- (b) die endossering van 'n sertifikaat soos in artikel 9B(3) beoog of van 'n duplikaatsertifikaat.”.

**Vervanging van lang titel van Wet 85 van 1986**

3. Die Wet op die Suid-Afrikaanse Sertifiseringsraad, 1986, word hierby gewysig deur die lang titel deur die volgende lang titel te vervang:

“Om voorsiening te maak vir beheer oor die norme en standarde van leerstof en eksaminering, en vir die uitreiking van sertifikate, by die verskillende uittreepunte in [skool- en tegniese kollege-onderwys en nie-formele onderwys] algemene en verdere onderwys en opleiding; en vir daardie doel die Suid-Afrikaanse Sertifiseringsraad in te stel; en voorsiening te maak vir die afneem van [gemeenskaplike] eksamens; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.”.

**Wysiging van artikel 3 van Wet 27 van 1996, soos gewysig deur artikel 11 van Wet 100 van 1997**

20 4. Artikel 3 van die Wet op Nasionale Onderwysbeleid, 1996, word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

“(3) [Wanneer die Minister verlang dat 'n besondere] Behoudens die Grondwet geniet nasionale beleid voorrang [moet geniet] oor die geheel of 'n gedeelte van enige ['n] provinsiale [wet] beleid oor onderwys [verwittig die Minister die provinsiale politieke onderwyshoofde dienooreenkomsdig, en maak hy of sy 'n spesifieke verklaring te dien effekte in die beleidsdokument] indien daar strydigheid bestaan tussen die nasionale en die provinsiale beleid.

**Wysiging van artikel 5 van Wet 27 van 1996**

30 5. Artikel 5 van die Wet op Nasionale Onderwysbeleid, 1996, word hierby gewysig deur subartikel (1) paragrawe (b), (c) en (d) deur die volgende paragrawe te vervang:

“(b) die nasionale organisasies wat [kollegerektore] hoofde van inrigtings wat verdere onderwys en opleiding verskaf soos omskryf in artikel 1 van die Wet op Verdere Onderwys en Opleiding, 1998 (Wet No. 98 van 1998), verteenwoordig en wat die Minister vir hierdie doel erken;

35 (c) die [georganiseerde onderwysberoep] vakbonde wat in die Raad vir Arbeidsverhoudinge in die Onderwys, bedoel in artikel 37(3)(b) van die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), saamgelees met paragraaf 3(2) van Bylae 1 by daardie Wet, verteenwoordig is;

40 (d) die nasionale organisasies wat [ouers] beheerliggame van skole verteenwoordig en wat die Minister vir hierdie doel erken;”.

**Wysiging van artikel 1 van Wet 84 van 1996, soos gewysig deur artikel 1 van Wet 100 van 1997**

45 6. Artikel 1 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig—

(a) deur die omskrywing van “opvoeder” deur die volgende omskrywing te vervang:

“'opvoeder' ['n opvoeder soos omskryf in die Wet op die Indiensneming van Opvoeders, 1994 (Proklamasie No. 138 van 1994)] enige persoon, met uitsondering van 'n persoon wat aangestel is om uitsluitlik buite-kurrikulêre werksaamhede te verrig, wat ander persone onderrig, opvoed of oplei of wat professionele opvoekundige dienste, met inbegrip van professionele terapie en opvoekundige sielkundige dienste, by 'n skool lewer;”; en

50 (b) deur die omskrywing van “skool” deur die volgende omskrywing te vervang:

“'skool' 'n openbare skool of 'n onafhanklike skool wat leerders in een of meer grade van graad [nul] A (Aanvang) tot graad 12 inskryf;”.

**Amendment of section 9 of Act 84 of 1996**

7. Section 9 of the South African Schools Act, 1996, is hereby amended by the substitution in subsection (1) for paragraph (b) 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.”. 5

**Insertion of section 12A in Act 84 of 1996**

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

**“Merger of public schools**

<b>12A.</b> (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. 10
(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; 15
(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 a period of not less than 90 days from the date of the notice referred to in paragraph (b); 20
(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. 25
(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 or her intention to merge the schools in question; 30
(b) consider his or her contractual obligations in terms of the agreement contemplated in section 14;
(c) renegotiate his or her obligations in terms of the existing agreement if necessary; and 35
(d) negotiate a new agreement in terms of section 14 if the single school contemplated in subsection (1) is to be situated on private property.
(4) The single school contemplated in subsection (1) must be regarded as a public school.
(5) All assets, liabilities, rights and obligations of the schools that are merged, must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), vest in the single school. 40
(6) (a) The governing bodies of the schools that are merged must have a meeting before the merger to constitute a single interim governing body comprising of all the members of the governing bodies concerned. 45
(b) The interim governing body must decide on the budget and differences in codes of conduct and school fees, as well as any issue that is relevant to the merger or which is prescribed, until a new governing body is constituted in terms of sections 23 and 28.
(7) The governing body of a public school to be merged, may appeal to the Minister against the decision as contemplated in subsection (1).”.

**Amendment of section 16 of Act 84 of 1996**

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

**Wysiging van artikel 9 van Wet 84 van 1996**

7. Artikel 9 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur in subartikel (1) paragraaf (b) deur die volgende paragraaf te vervang:

“(b) in oorleg met die Departementshoof, in afwagting van 'n beslissing deur die Departementshoof of die leerder uit die skool gesit moet word.”.

**Invoeging van artikel 12A in Wet 84 van 1996**

8. Die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur die invoeging na artikel 12 van die volgende artikel:

**“Samesmelting van openbare skole**

- 10        **12A.** (1) Behoudens subartikel (2) kan die *Lid van die Uitvoerende Raad* by kennisgewing in die *Proviniale Koerant* twee of meer *openbare skole* in 'n enkele *skool* laat saamsmelt.
- 15        (2) Alvorens twee of meer *openbare skole* saamgesmelt word, moet die *Lid van die Uitvoerende Raad*—
- (a) aan die betrokke *skole* skriftelik kennis gee van die beoogde samesmelting;
  - (b) 'n kennisgewing met uiteensetting van die redes vir die beoogde samesmelting publiseer in een of meer koerante wat in die gebied sirkuleer waarin die betrokke *skole* geleë is;
  - 20        (c) die *beheerliggame* van die betrokke *skole* en enige ander belanghebbendes die geleentheid bied om binne 'n tydperk van minstens 90 dae na die datum van die kennisgewing in paragraaf (b) bedoel, vertoë te rig;
  - (d) die vertoë oorweeg; en
  - 25        (e) tevrede wees dat die werkgewers van personeel by die *openbare skole* hulle verpligtings ingevolge die toepaslike arbeidswetgewing nagekom het.
- 30        (3) Indien een of meer van die *skole* wat ingevolge subartikel (1) saamgesmelt staan te word, *openbare skole* op private eiendom is, moet die *Lid van die Uitvoerende Raad* ook—
- (a) die eienaar van die private eiendom in kennis stel van sy of haar voorneme om die betrokke *skole* te laat saamsmelt;
  - (b) sy of haar kontraktuele verpligtinge ingevolge die ooreenkoms in artikel 14 beoog, oorweeg;
  - 35        (c) sy of haar verpligtings ingevolge die bestaande ooreenkoms herbeding, indien nodig; en
  - (d) 'n nuwe ooreenkoms ingevolge artikel 14 beding indien die enkele *skool* in subartikel (1) beoog op private eiendom geleë gaan wees.
- 40        (4) Die enkele *skool* in subartikel (1) beoog moet as 'n *openbare skool* beskou word.
- 45        (5) Alle bates, laste, regte en verpligtinge van die *skole* wat saamgesmelt, berus, behoudens die voorwaardes van enige skenking, bemaking of trust in artikel 37(4) beoog, by die enkele *skool*.
- 50        (6) (a) Die *beheerliggame* van die *skole* wat saamgesmelt word, moet 'n vergadering voor die samesmelting hou om 'n enkele interim *beheerliggaam*, bestaande uit al die lede van die betrokke *beheerliggame*, saam te stel.
- 55        (b) Die interim *beheerliggaam* moet besluit oor die begroting en verskille in gedragskodes en skoolgelde, asook enige aangeleentheid wat relevant is tot die samesmelting of wat voorgeskryf word, totdat 'n nuwe *beheerliggaam* ingevolge artikels 23 en 28 saamgestel is.
- 60        (7) Die *beheerliggaam* van 'n *openbare skool* wat saamgesmelt staan te word, kan by die Minister appèl aanteken teen die besluit soos in subartikel (1) beoog.”.

**55 Wysiging van artikel 16 van Wet 84 van 1996**

9. Artikel 16 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur die volgende subartikels by te voeg:

"(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 or a person designated by the Head of Department must inform the educators and parents of the date contemplated in subsection (5)."

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#### Amendment of section 21 of Act 84 of 1996

**10.** Section 21 of the South African Schools Act, 1996, is hereby amended—

(a) by the deletion in subsection (1) of the word "or" at the end of paragraph (d);  
and

(b) by the insertion in subsection (1) after paragraph (d) of the following paragraph:

"(dA) to provide an adult basic education and training class or centre subject to any applicable law; or".

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#### Amendment of section 23 of Act 84 of 1996

**11.** Section 23 of the South African Schools Act, 1996, is hereby amended—

(a) by the substitution for subsection (8) of the following subsection:

"(8) [Co-opted] Subject to subsection (10), co-opted members do not have voting rights on the governing body."; and

(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.

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(11) If a parent is co-opted with voting rights as contemplated in subsection (10), the co-option ceases when the vacancy has been filled through a by-election which must be held according to a procedure determined in terms of section 28(d) within 90 days after the vacancy has occurred.

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(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."

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#### Amendment of section 29 of Act 84 of 1996

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

"(3) In the case of a public school for learners with special education needs any member of the governing body elected from the categories of persons referred to in section 24(1)(a), (e), (f), (g), (h) and (i) may serve as the chairperson of that governing body."

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

**13.** 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 the 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."

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#### Amendment of section 60 of Act 84 of 1996

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

- “(4) Die *Departementshoof* kan ‘n *openbare skool* in geval van nood tydelik sluit indien hy of sy op redelike gronde glo dat die lewens van die *leerders* en die personeel in gevaar is of dat daar ‘n wesentlike gevaar van liggaaamlike leed aan hulle of beskadiging van eiendom bestaan.
- 5 (5) Wanneer die *Departementshoof* besluit dat die *skool* moet heropen, moet hy of sy die *beheerliggaam* en die *prinsipaal* in kennis stel van die datum waarop die *skool* moet heropen.
- (6) Die *prinsipaal* of ‘n persoon deur die *Departementshoof* aangewys, moet die *opvoeders* en die *ouers* in kennis stel van die datum in subartikel (5) beoog.”.

#### 10 Wysiging van artikel 21 van Wet 84 van 1996

10. Artikel 21 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig—
- (a) deur in subartikel (1) die woord “of” aan die einde van paragraaf (d) te skrap; en
- 15 (b) deur in subartikel (1) na paragraaf (d) die volgende paragraaf in te voeg:
- “(DA) behoudens enige toepaslike wet, die voorsiening van ‘n klas of ‘n sentrum vir basiese onderwys en opleiding vir volwassenes; of”.

#### Wysiging van artikel 23 van Wet 84 van 1996

11. Artikel 23 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig—
- 20 (a) deur subartikel (8) deur die volgende subartikel te vervang:
- “(8) Gekoöpteerde lede het, behoudens subartikel (10), nie stemreg op die *beheerliggaam* nie.”; en
- (b) deur die volgende subartikels by te voeg:
- 25 “(10) Indien die getal *ouers* in enige stadium nie meer is as die gekombineerde totaal van die ander lede met stemreg nie, moet die *beheerliggaam ouers* tydelik met stemreg koöpteer.
- (11) Waar ‘n *ouer* gekoöpteer is met stemreg soos in subartikel (10) beoog, staak die koöptering wanneer die vakature gevul is by wyse van ‘n tussenverkiesing wat binne 90 dae nadat die vakature ontstaan het, gehou moet word, ooreenkomsdig ‘n prosedure bepaal ingevolge artikel 28(d).
- 30 (12) Indien ‘n persoon wat as lid van ‘n *beheerliggaam* verkies is soos in subartikel (2) beoog, nie meer in die kategorie in daardie subartikel bedoel ten aansien waarvan hy of sy as lid verkies is, val nie, staak sy of haar lidmaatskap van die *beheerliggaam*.”.
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#### Wysiging van artikel 29 van Wet 84 van 1996

12. Artikel 29 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur die volgende subartikel by te voeg:
- 40 “(3) In die geval van ‘n *openbare skool* vir *leerders* met spesiale onderwys behoeftes mag enige lid van die *beheerliggaam* wat uit die kategorieë van persone bedoel in artikel 24(1)(a), (e), (f), (g), (h) en (i) verkies is, as voorsitter van daardie *beheerliggaam* dien.”.

#### Wysiging van artikel 55 van Wet 84 van 1996, soos gewysig deur artikel 9 van Wet 100 van 1997

- 45 13. Artikel 55 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur subartikel (11) deur die volgende subartikel te vervang:
- “(11) Die [*registrateur van aktes in die kantoor*] beampete in beheer van die *aktekantoor* of ander kantoor waar die vaste eiendom van ‘n *skool* geregistreer is, moet, by voorlegging van die betrokke titelakte, die endossement op die akte aanbring en die inskrywing in die akteregister aanteken wat vereis word om die oordrag van die vaste eiendom te regstreer.”.

#### Wysiging van artikel 60 van Wet 84 van 1996

14. Artikel 60 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur die volgende subartikels by te voeg:

"(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 any damage or loss caused as a result of any act or omission in connection with any enterprise or business operated under the authority of a *public school* for purposes of supplementing the resources of the *school* as contemplated in section 36, including the offering of practical educational activities relating to that enterprise or 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 its 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 6 of Act 76 of 1998

15. Section 6 of the Employment of Educators Act, 1998, is hereby amended—  
 (a) by the substitution in subsection (3)(a) for the word “Any” of the expression  
“Subject to paragraph (d), any”; and  
 (b) by the addition to subsection (3) of the following paragraph:  
“(d) A recommendation contemplated in paragraph (a) shall 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

16. Section 8 of the Employment of Educators Act, 1998, is hereby amended—  
 (a) by the substitution in subsection (2) for the word “No” of the expression  
“Subject to subsections (4) and (5), no”; and  
 (b) by the addition of the following subsections:  
“(4) A recommendation contemplated in subsection (2) shall 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) shall return to his or her previous post at the end of the period contemplated in that subsection.”.

#### Short title

17. This Act is the Education Laws Amendment Act, 1999. 40

"(3) Enige eis weens skade of verlies in subartikel (1) beoog moet teen die betrokke Lid van die Uitvoerende Raad ingestel word.

5 (4) Ondanks die bepalings van subartikel (1) is die Staat nie verantwoordelik vir enige skade of verlies as gevolg van enige handeling of versuim in verband met enige onderneming of besigheid wat onder die beheer van 'n *openbare skool* bedryf word vir doeleinades van die aanvulling van die hulpbronne van die *skool* soos in artikel 36 beoog nie, met inbegrip van die aanbied van praktiese opvoedkundige aktiwiteite in verband met daardie onderneming of besigheid.

10 (5) Enige regstappe teen 'n *openbare skool* vir enige skade of verlies in subartikel (4) beoog, of ten aansien van enige handeling of versuim in verband met sy kontraktuele verantwoordelikheid as werkewer soos in artikel 20(10) beoog, kan ingestel word slegs nadat skriftelike kennisgewing van die voorneme om regstappe teen die *skool* te doen, aan die *Departementshoof* vir sy of haar inligting gegee is.”.

## 15 Wysiging van artikel 6 van Wet 76 van 1998

**15.** Artikel 6 van die Wet op die Indiensneming van Opvoeders, 1998, word hierby gewysig—

- (a) deur in subartikel (3)(a) die woorde ““n Aanstelling” te skrap en deur die woorde “Behoudens paragraaf (d) mag ‘n aanstelling” te vervang, en deur die woorde “mag” te skrap; en
- 20 (b) deur die volgende paragraaf by subartikel (3) te voeg:  
“(d) ‘n Aanbeveling in paragraaf (a) beoog, moet gedoen word binne twee maande vanaf die datum waarop ‘n beheerliggaam of -raad versoek is om ‘n aanbeveling te doen, en by gebreke daarvan kan die Departementshoof ‘n aanstelling doen sonder die aanbeveling.”.

## Wysiging van artikel 8 van Wet 76 van 1998

**16.** Artikel 8 van die Wet op die Indiensneming van Opvoeders, 1998, word hierby gewysig—

- (a) deur in subartikel (2) die woorde “Geen” deur die woorde “Behoudens subartikels (4) en (5) mag geen” te vervang, en deur die woorde “mag” te skrap; en
- 30 (b) deur die volgende subartikels by te voeg:  
“(4) ‘n Aanbeveling in subartikel (2) beoog, moet gedoen word binne twee maande vanaf die datum waarop ‘n beheerliggaam of -raad versoek is om ‘n aanbeveling te doen, en by gebreke daarvan kan die Departementshoof ‘n verplasing doen sonder die aanbeveling.
- 35 (5) Die Departementshoof kan, sonder ‘n aanbeveling in subartikel (2) beoog, ‘n opvoeder tydelik vir ‘n vasgestelde tydperk verplaas van ‘n pos by ‘n openbare skool of openbare inrigting vir verdere onderwys en opleiding na ‘n pos by ‘n ander openbare skool of openbare inrigting vir verdere onderwys en opleiding.
- 40 (6) ‘n Opvoeder in subartikel (5) bedoel moet na sy of haar vorige pos terugkeer aan die einde van die tydperk in daardie subartikel beoog.”.

## Kort titel

45 **17.** Hierdie Wet heet die Wysigingswet op Onderwyswette, 1999.

