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GENERAL NOTICE

NOTICE 828 OF 2001

DEPARTMENT OF EDUCATION

INVITATION FOR COMMENT ON THE DRAFT BILLS, 2001

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

- (a) Education Laws Amendment Bill, 2001
- (b) General and Further Education and Training Quality Assurance Bill, 2001
- (c) Higher Education Amendment Bill, 2001

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

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

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

The comments should reach the department not later than 7 May 2001.

PROFESSOR KADER ASMAL, MP

MINISTER OF EDUCATION

DATE:

EDUCATION LAWS AMENDMENT BILL, 2001

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 provide for the representative council of learners as the only recognised student body at a school; to make further provisions on the failure of a governing body to perform its functions; to provide for the prohibition of public school from raising money by means of loans or overdraft or paying moneys into a trust; to provide for technical adjustment to existing provisions; to amend the Employment of Educators Act, 1998 so as to substitute a definition and to provide for technical adjustment to existing provisions; to amend the Further Education and Training Act, 1998 so as to provide for further provisions on loans and overdrafts; and to provide for matters connected therewith.

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

Amendment of section 11 of Act 84 of 1996, as amended by section 3 of Act 100 of 1997

1. Section 11 of the South African Schools Act, 1996, is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

“(1) A representative council of learners at the school must be established at every public school enrolling learners in the eight grade or higher, and this council must be the only recognised student body at the school.”.

- (b) by the substitution for subsection (2) of the following subsection:

“(2) a Member of the Executive Council may, by notice in the Provincial Gazette, determine **[guidelines]** the establishment, election and functions of representative council of learners.”.

Amendment of Section 15 of Act 84 of 1996

2. The South African Schools Act, 1996, is hereby amended by the substitution for section 15 of the following section:

“Status of public schools

15. Every public school is a juristic person **[, with legal capacity to perform]** only for the purpose of performing its functions as prescribed by the **[in terms of this] Act.”.**

Amendment of section 20 of Act 84 of 1996

3. Section 20 of the South African Schools Act, 1996, is hereby amended by the substitution for paragraph (i) in subsection (1) of the following paragraph:

“(i) recommend to the Head of Department the appointment of educators at the school, subject to the **[Educators Employment Act, 1994 (Proclamation 138 of 1994)]** Employment of Educators Act, 1998, (Act No. 76 of 1998), and the Labour Relations Act, 1995 (Act No. 66 of 1995);”.

Amendment of section 25 of Act 84 of 1996

4. Section 25 of the South African Schools Act, 1996, is hereby amended-

- (a) by the substitution for subsection (1) of the following subsection:

“(1) If a governing body has ceased to perform all of its functions or fails to perform any of its functions in terms of this Act, the Head of Department **[must]** may appoint sufficient persons to perform **[those]** all the functions or

a specific function of the governing body for a period not exceeding three months.”.

- (b) by the substitution for subsection (3) of the following subsection:

“(3) If a governing body has ceased to perform all of its functions, [The] the Head of Department must ensure that a governing body is elected in terms of this Act within a year after the appointment of persons contemplated in subsection (1).”.

- (c) by the insertion after subsection (3) of the following subsection:

“(4) If a governing body fails to perform any of its functions, the persons contemplated in subsection (1) must build the necessary capacity within the period of their appointment to ensure that the governing body will perform its functions.”.

Substitution of section 36 of Act 84 of 1996

5. The following section is hereby substituted for section 36 of the South African Schools Act, 1996:

“Responsibility of governing body

“**36(1)** A governing body of a public school must take all reasonable measures within its means to supplement the resources supplied by the State in order to improve the quality of education provided by the school to all learners at the school.

(2) Despite subsection (1), the governing body may not enter into any loan or overdraft agreement so as to supplement the school fund.”.

(3) If a person lends money or grants an overdraft to a public school, the State or the public school may not be bound by the contract of lending money or an overdraft agreement.”.

Amendment of section 37 of Act 84 of 1996

6. Section 37 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (4) of the following subsections:

“(4A) No moneys from school fund of a public school may be paid into a trust or be used to establish a trust.

(4B) Any trust established from moneys of school fund of a public school or where such moneys were paid into a trust prior to 1 January 2002, such trust or payment is invalid and the moneys so paid must be paid back into the school fund.

(4C) No governing body of a public school may collect any monies or contributions from parents to establish or fund a trust, and if any money or contribution of parents were paid into a trust prior to 1 January 2002, such monies or contributions must be paid by the trust into the school fund.”.

Amendment of section 38 of Act 84 of 1996

7. Section 38 of the South African Schools Act, 1996, is hereby amended by the substitution of subsection (1) of the following subsection:

“(1) A governing body of a public school must prepare a budget each year, according to **[guidelines]** prescriptions determined by the Member of the Executive Council in a Provincial Gazette, which shows the estimated income and expenditure of the school for the following financial year.”.

Amendment of section 1 of Act 76 of 1998

8. Section 1 of the Employment of Educators Act, 1998, is hereby amended by the substitution for the definition of “educator” of the following definition:

" 'educator' means any person who teaches, educates or trains other persons or who provides professional **[support]**, including professional therapy and education psychological services, at any public school, further education and training institution, departmental office or adult basic education centre and who is appointed in a post of any educator establishment under this Act;"

Amendment of item 2 of Schedule 2 to Act 76 of 1998

9. Item 2 of Schedule 2 to the Employment of Educators Act, 1998, is hereby amended by the substitution for subparagraph (iv) of paragraph (d) of the following subparagraph:

"(iv) have the right to appeal against **[any]** a finding or sanction contemplated in section 25(2);".

Amendment of item 4 of Schedule 2 to Act 76 of 1998

10. Item 4 of Schedule 2 to the Employment of Educators Act, 1998, is hereby amended-

(a) by the substitution for subparagraph (f) of subitem (4) of the following subparagraph:

"(f) If, during the six-month period, the educator is subject to disciplinary action, the written warning and the written objection or additional information by the educator, if applicable, may be taken into account in deciding on an appropriate sanction;"

(b) by the substitution for subparagraph (f) of subitem (5) of the following subparagraph:

"(f) If, during the six-month period, the educator is subject to disciplinary action, the final written warning and the written objection or additional information by the educator, if applicable, may be taken into account in deciding on an appropriate sanction;"

Amendment of item 5 of Schedule 2 to Act 76 of 1998

11. Item 5 of Schedule 2 to the Employment of Educators Act, 1998, is hereby amended by the substitution for paragraph (e) of subitem (2) of the following paragraph:

“(e) information on the rights of the educator to representation by a legal representative, if the **[employer]** presiding officer so directs; and”.

Amendment of Form A of Schedule 2 to Act 76 of 1998

12. Form A of Schedule 2 to the Employment of Educators Act, 1998, is hereby amended by the substitution for Form A of the following Form:

FORM A**WRITTEN WARNING**

[DATE]

[NAME OF EMPLOYEE]

[PERSAL NO.]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a written warning in terms of the disciplinary procedure. Should you engage in further misconduct, this written warning may be taken into account in determining a more serious sanction.

The written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

If you object to the warning or wish to furnish additional information, you may lodge a written objection or addition which will be filed together with this warning.

The nature of the misconduct is:

SIGNATURE OF REPRESENTATIVE OF THE EMPLOYER
DATE

SIGNATURE OF EMPLOYEE
DATE

SIGNATURE OF WITNESS (if applicable)
DATE

Amendment of Form B of Schedule 2 to Act 76 of 1998

13. Form B of Schedule 2 to the Employment of Educators Act, 1998, is hereby amended by the substitution for Form B of the following Form:

FORM B

FINAL WRITTEN WARNING

[DATE]

[NAME OF EMPLOYEE]

[PERSAL NO.]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a final written warning in terms of the disciplinary procedure. Should you engage in further **[transgressions]**, misconduct it could lead to formal misconduct proceedings being instituted against you.

This final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

Should you wish to do so, you may lodge a written objection to this final warning, or provide additional information which will be filed together with this final warning.

The nature of the misconduct is:

SIGNATURE OF REPRESENTATIVE OF THE EMPLOYER

DATE

SIGNATURE OF EMPLOYEE

DATE

SIGNATURE OF WITNESS (if applicable)

DATE

Amendment of Form C of Schedule 2 to Act 76 of 1998

14. Form C of Schedule 2 to the Employment of Educators Act, 1998, is hereby amended by the substitution for Form C of the following Form:

FORM C

NOTICE OF DISCIPLINARY MEETING

[DATE]

[NAME OF EMPLOYEE]

[PERSAL NO.]

[PERSONAL DETAILS OF THE EMPLOYEE]

You are hereby given notice to attend a disciplinary hearing in terms of item 6 of the Disciplinary Code.

The alleged misconduct **[and the available evidence]** is based on the following evidence:

[A DETAILED DESCRIPTION OF THE ALLEGED MISCONDUCT MAY BE ATTACHED.]

The hearing will be held at _____ [PLACE] on _____ [DATE] at _____ [TIME]. If you do not attend and cannot provide reasonable grounds for failing to attend, the hearing will be held in your absence.

A fellow employee or a representative of a recognised union may represent you at the hearing. If the presiding officer so directs, you may also be represented by a legal representative.

You may give evidence at the hearing and adduce evidence in the form of documents or through witnesses. You are entitled to question any witness called by the employer.

If the presiding officer finds that you are guilty of misconduct, you may present any relevant circumstances which you wish to be taken into account by the presiding officer in determining the sanction.

SIGNATURE OF REPRESENTATIVE OF THE EMPLOYER
DATE

ACKNOWLEDGEMENT OF RECEIPT BY EMPLOYEE
DATE

SIGNATURE OF WITNESS (if applicable)
DATE

Amendment of Form D of Schedule 2 to Act 76 of 1998

15. Form D of Schedule 2 to the Employment of Educators Act, 1998, is hereby amended by the substitution for Form D of the following Form:

FORM D

SUMMONS TO APPEAR AT DISCIPLINARY HEARING

DATE:

TO: _____
(Name and residential address of person summoned)

You are hereby summoned to appear personally on the _____ day of _____ 20__ at _____ (time) at _____ (place) before the presiding officer of a disciplinary hearing in terms of Schedule 2 to the

Employment of Educators Act, 1998 (Act No. 76 of 1998), for the purpose of giving evidence regarding the following misconduct:

_____ and to
submit the following book, document or object in your possession, custody or control,
which may have a bearing on the matter;

(specify the book, document or object)

SIGNATURE OF REPRESENTATIVE [OR] OF THE EMPLOYER

Substitution of section 20 of Act 98 of 1998

16. The following section is hereby substituted for section 20 of the Further Education and Training Act, 1998:

"Funds of a public further education and training institutions

- "20(1) The funds of a public further education and training institution consists of-
- (a) funds allocated by the State;
 - (b) any donations or contributions received by the institution;
 - (c) money raised by the institution;
 - (d) money raised by means of loans subject to the approval of the Member of the Executive Council;
 - (e) income derived from investments;
 - (f) money received for services rendered to any other institution or person;
 - (g) money payable by students for further education and training programmes proved by the institution;
 - (h) money received from students or employees of the institution for accommodation or other services provided by the institution; and
 - (i) other funds from any other source.

~~(2) If a person lends money or grants an overdraft to a public further education and training institution without the approval of the Member of the Executive Council, the State and the institution may not be bound by the contract of lending money or an overdraft agreement."~~

Amendment of section 49 of Act 98 of 1998

17. Section 49 of the Further Education and Training Act, 1998, is hereby amended by the addition of the following subsections:

~~"(4) Institutions contemplated in subsection (1) may not raise money by means of loans or overdrafts without the approval of the Member of the Executive Council.~~

~~(5) If a person lends money or grant an overdraft to such institutions without the approval of the Member of the Executive Council, the State or the institution may not be bound by the contract of lending money or an overdraft agreement."~~

Short title

18. This Act is the Education Laws Amendment Act, 2001.

EXPLANATORY MEMORANDUM ON THE EDUCATION LAWS AMENDMENT BILL, 2001

1. INTRODUCTION

The Bill provides for the amendment of the South African Schools Act, 1996; the Employment of Educators Act, 1998; and the Further Education and Training Act, 1998.

2. BACKGROUND

The Acts were amended as so to make the necessary technical adjustments and to close loopholes apparent in the Acts. The Minister of Education has indicated in parliament that regulations concerning representivity in governing bodies of public schools will be drafted. These regulations will be published after a further process of consultations with the relevant role players. These proposed regulations are not part of this Bill.

3. DISCUSSION

3.1 The South African Schools Act, 1996

3.1.1 Section 11 is amended as so to make the representative council of learners the only recognized student body at public schools and to omit the word "guidelines" because it makes room for alternatives.

3.1.2 Section 15 is amended to bring legal certainty by ensuring that the governing body of a public school may only perform the specific functions as prescribed by the Act.

3.1.3 Section 20 is amended for technical adjustment. It refers to Educators Employment Act, 1994, an Act which has been repealed by the Employment of Educators Act, 1998.

3.1.4 Section 25 has been amended so as to allow the intervention of the Head of Department not only in cases where the governing body is unable to perform all its functions, but also in cases where it is unable to perform any of its functions. Furthermore, persons who are appointed to perform all the functions or any of the functions of the governing body are also required to build the necessary capacity to ensure that the governing body is able to perform its functions. The intention of the Public Finance Management Act, 1999, is that all statutory bodies must perform their functions within their budgets and that there can be no deficit balances in such budgets.

It is further to be noted that if a public school can not comply with its obligations or liabilities, the State will be liable to compensate claims against the public school.

3.1.5 Section 36 is amended so as to prohibit the governing body from applying for overdrafts or to raise money by means of loans.

3.1.6 Section 37 is amended so as to prohibit the governing body from establishing a trust from school funds or to pay school fees into a trust. The intention of the South African Schools Act, 1996, by establishing a public school as a juristic entity with a protected school fund, was to create an entity similar to that of a trust. A tendency has developed where public schools establish trusts which falls outside the ambit of the South African Schools Act, 1996. This has the potential of diverting away potential compulsory school fees into that trust.

As a trust deed can be amended by the trustees at any stage, including the beneficiary, such trusts can lead to abuses.

3.1.7 Section 38 is amended so as to omit the word "guidelines" because guidelines may be followed with some adjustments, which are not contemplated in the Act. It is crucial that the budget of a public school must conform to the standards set by the State to all public schools. This amendment seeks to ensure that there is uniformity of standards of a budget in a province.

3.2 The Employment of Educators Act, 1998

3.2.1 Section 1 is amended so as to make technical adjustments to the definition of "educator". The definition now includes persons who provide professional support, such as departmental officers.

3.2.2 Item 2 of Schedule 2 is amended because an educator does not have the right to appeal to any decision but only to a finding or sanction made by a presiding officer in a disciplinary hearing. There is no right for appeal against any finding and sanction in the informal disciplinary process. This amendment addresses the ambiguity apparent in the current legislation.

3.2.3 Item 4 of Schedule 2 is amended so as to allow the presiding officer to consider a written objection or additional information by the educator to the written warning or final written warning by the supervisor of the educator.

3.2.4 Item 5 of Schedule 2 is amended to make technical adjustment because it is the presiding officer who must decide whether or not the accused educator should have a legal representative and not the employer. This is consistent with the provisions of the Promotion of Administrative Justice Act, 2000.

3.2.5 Forms A to D have been amended so as to indicate the authority that must sign the forms.

3.3 The Further Education and Training Act, 1998

3.3.1 Section 20 is amended so as to prohibit public institutions from raising overdrafts or loans without the approval of the Member of the Executive Council. If a person grants such an overdraft or loan without the set approval, the institution or State will not be bound by the agreement.

3.3.2 Section 49 is amended so as to prohibit existing public institutions such as technical colleges from raising money by means of loans or overdrafts without the approval of the Member of the Executive Council.

4. FINANCIAL IMPLICATIONS

None.

5. PARLIAMENTARY PROCEDURE

The Department of Education is of the opinion that the procedures contemplated in sections 73 and 76 of the Constitution should be followed.

GENERAL AND FURTHER EDUCATION AND TRAINING QUALITY ASSURANCE BILL, 2001

BILL

To provide for quality assurance in general and further education and training; to provide for control over norms and standards of subject matter and assessment; to provide for the issuing of certificates at the exit points in general and further education and training; to provide for the establishment of the General and Further Education and Training Quality Assurance Council; to provide for the composition and functions of the council; to provide for the conducting of assessment; to provide for the repeal of the South African Certification Council Act, 1986; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Act seeks to provide a general and further education and training quality assurer to function within an education system where specific functions regarding the provisioning and assessment have been given to providers; and

WHEREAS the registration and developing of standards and development of national education quality framework is the responsibility of the South African Qualifications Authority; and

WHEREAS the purpose and function of this council is to ensure that a quality assurance framework is developed for general and further education and training; to improve and monitor achievements and after students and learners have reached the acquired standards, to certify such achievements;

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

CHAPTER 1

DEFINITIONS, SCOPE AND PURPOSE OF ACT

Definitions

1. In this Act, unless the context otherwise indicates-

"accreditation" means the process of assessing a learning programme as registered on the National Qualifications Framework and the approval of the ability of a provider to perform a particular function in the quality assurance system set up in terms of national policy, or the council and subject to the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

"assessment" means the process of identifying, gathering and interpreting information about a learner's achievement in order to-

- (a) assist the learner's development and improve the process of learning and teaching; and
- (b) evaluate and certify competence in order to ensure qualification credibility;

"assessment body" means an education department or any other body registered with the council as a body responsible for conducting external assessment;

"certificate" means a certificate contemplated in section 14(1)(c);

"council" means the General and Further Education and Training Quality Assurance Council established by section 4;

"department of education" means a department responsible for education at national level or a department responsible for education in a province;

"Director-General" means the Director-General of the department responsible for education at a national level;

"employee" means any person who is in the full-time or part-time employ of the council;

"exit point" means a stage in general or further education and training at which a candidate is required to demonstrate competence with a view to obtaining documentary proof of proficiency;

"external assessment" means an assessment at an exit point, taken by the candidates of an assessment body;

"financial year" means a year ending on 31 March in each year;

"further education and training" means all learning and training programmes leading to qualifications from levels 2 to 4 of the National Qualifications Framework, which levels are above general education but below higher education;

"general education and training" means all learning and training programmes leading to a qualification on level 1 of the National Qualifications Framework, which level is below further education and training;

"Head of Department" means the Head of a Department responsible for education in a province;

"Minister" means the Minister of Education;

"National Qualifications Framework" means the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

"provider" means –

(a) in the case of a public provider, the department of education in the province wherein public schools, public further education and training institutions and public adult basic education and training centres deliver learning programmes; and

(b) in the case of a private provider, the private or independent institutions which deliver learning programmes,

and which learning programmes culminate in a specified National Qualifications Framework standard or qualification, and manages the assessment thereof;

"raw marks" means the actual marks obtained by a candidate in a subject in an external assessment before any adjustment of the marks is made by the council;

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

"verifier" means a person who is registered by the council to validate the internally conducted learner assessment as well as the internal moderation processes.

Scope of application

2. This Act applies to all education institutions which have been established, declared or registered under the-

- (a) South African Schools Act, 1996 (Act No. 84 of 1996);
- (b) Further Education and Training Act, 1998 (Act No. 98 of 1998); or
- (c) Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000).

Purpose of Act

3. (1) The purpose of this Act is to-

- (a) establish a quality assurance body to ensure that a continuous enhancement of quality is achieved in the delivery and outcomes of the national education system;
- (b) develop a quality assurance framework for the educational sector;
- (c) regulate the relationships between, the national Department of Education, SAQA the provider and the Council as the quality assurer within the general and further education system.

(2) The providers are responsible for the delivery and assessment of quality education by public schools, public further education and training institutions and public adult basic education and training centres.

(3) The National and provincial education departments are responsible for the setting of policy and for the monitoring and evaluation of the education system.

(4) SAQA has the responsibility to establish and maintain a national education framework and to accredit education and quality assurance bodies.

(5) The General and Further Education and Training Quality Assurance Council will be responsible for monitoring and evaluating quality standards with regard to programmes and institutions throughout the general and further education and training

system and to co-operate with SAQA and providers to ensure that qualifications offered are of the highest possible standards.

CHAPTER 2

ESTABLISHMENT OF COMMITTEES, FUNDING AND FUNCTIONS OF GENFETQA COUNCIL

Establishment of the General and Further Education and Training Council

4. (1) A council is hereby established to be known as the General and Further Education and Training Quality Assurance Council.

(2) The council is a juristic person.

(3) The council must 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) and section 3(4)(b) of the National Education Policy Act, 1996 (Act No. 27 of 1996).

Composition

5. (1) The council consist of:

- (a) a chairperson;
- (b) 14 members; and
- (c) a chief executive officer, who will be a member in his official capacity.

(2) The selection of members of the council contemplated in subsection (1)(a) must be undertaken in such a manner as to ensure, insofar as is practically possible, that-

- (a) the functions of the council in terms of this Act are performed according to the highest professional standards;

- (b) the membership taken as a whole-
 - (i) is broadly representative of the general and further education and training system and related interests;
 - (ii) has thorough knowledge and understanding of general and further education and training;
 - (iii) appreciates the role of the general and further education and training system in reconstruction and development;
 - (iv) has known and attested commitment to the interests of general and further education and training;
 - (v) has knowledge and understanding of accreditation, assessment and certification of general and further education and training programmes; and
 - (vi) has experience in the statistical or financial field; and
- (c) due attention is given to the representivity of the council in terms of such relevant factors as race, gender and disability.

(3) The Minister must invite nominations, by notice in the Government Gazette, for the appointment of members of the council as contemplated in subsections (1)(a) and (b).

- (4) (a) Any person, role-player or organisation active or involved in general and further education may nominate persons for appointment by the Minister.

- (b) The Minister may at his or her discretion accept or refuse a nomination referred to in paragraph (a).

(5) The Minister appoints the chairperson and members of the council, except the chief executive officer, and must consider the nominations within the criteria contemplated in subsection (2).

(6) The chairperson and any member of the council, excluding the chief executive officer, hold office for a period not exceeding four years and may be reappointed at the expiry of his or her term of office.

(7) The chairperson and any member of the council, excluding the chief executive officer, may not serve for more than two consecutive terms of office.

(8) The members must elect one person from their own number as a deputy chairperson.

Vacation of office and filling of vacancies

6. (1) The chairperson or any member of the council shall vacate his or her office if he or she-

- (a) resigns by giving written notice to the chairperson, or in case of the chairperson, to the Minister;
- (b) is absent from three consecutive meetings of the council, without leave of the council;
- (c) is declared insolvent, is removed from an office of trust by a court of law or is convicted of an offence for which the sentence is imprisonment without the option of a fine; or
- (d) is declared unable to manage to his or her personal affairs by a court of law.

(2) The Minister may revoke the appointment of the chairperson or any member of the council appointed in terms of section 5(5) at any time before the expiry of his or her term of office, if in the opinion of the Minister, there exist sound reasons for doing so.

(3) If the chairperson or a member of the council vacates his or her office, the resultant vacancy must be filled by appointment in accordance with section 5.

Committees of council

7. (1) The council may establish committees to assist it in the performance of its functions.

(2) A committee may include persons who are not members of the council.

(3) The chairperson of a committee is appointed by the council and must be a member of the council.

(4) Members of committees are appointed for such periods as the council may determine.

Meetings of council and committees

8. (1) Meetings of the council and its committees must be held at such times and places as may be determined by the chairperson concerned, but the chairperson must convene a meeting of the council at least twice a year or if asked to do so in writing by at least one third of the members of the council, or by the Minister, as the case may be.

(2) Whenever both chairperson and deputy chairperson are absent from any meeting, the council must appoint a person from among themselves to preside at that meeting.

(3) The council may make rules relating to the procedure at meetings of the council and its committees, including the quorum at such meetings, and any other matter necessary or expedient for the performance of the functions of the council or its committees.

(4) The proceedings at a meeting of the council or a committee are not invalid by reason only of the fact that a vacancy exists on the council or committee, as the case may be, at the time of such meeting.

Appointment of chief executive officer and staff

9. (1) The council must appoint a chief executive officer and may appoint other employees as it may deem necessary to assist it to perform its functions.

(2) The secretariat of the council is the responsibility of the chief executive officer who must carry out the duties as assigned or delegated by the council.

(3) The council is the employer of the employees and must determine their remuneration, allowances, subsidies and other conditions of service, subject to the applicable labour law.

Functions of chief executive officer

10. (1) The chief executive officer must-

- (a) be responsible for the work in connection with the performance by the council of its functions in terms of this Act;
- (b) supervise the employees of the council; and
- (c) be accounting officer to the council charged with accounting for moneys received, payments made and movable property purchased by the council.

(2) The chief executive officer must be assisted in the performance of his or her functions in terms of subsection (1) by such employees of the council as the chief executive officer may designate for that purpose.

Funds of council

11. (1) The funds of the council consist of-

- (a) money appropriated by Parliament;
- (b) donations and contributions received by the council;
- (c) moneys received by the council in respect of fees charged for services;
- (d) interest received on investments referred to in subsection (5);
- (e) subject to chapter 8 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), money obtained by means of loans raised by the council with the approval of the Minister granted with the concurrence of the Minister of Finance; and

(f) any other income received by the council.

(2) The council-

- (a) must keep record of all funds received and spent and of all assets, liabilities and financial transactions;
- (b) must in each financial year, at such time and in such manner as the Minister may determine, subject to chapter 6 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), submit a budget for the ensuing financial year to the Minister for his or her approval, granted with the concurrence of the Minister of Finance;
- (c) may in any financial year submit adjusted budgets to the Minister for his or her approval, granted with the concurrence of the Minister of Finance; and
- (d) may not incur any expenditure which exceeds the total amount approved in terms of paragraphs (b) and (c).

(3) If the Minister does not approve the council's budget, the Minister must require the council to provide a revised budget to him or her within a specified period.

(4) The funds contemplated in subsection (1) must be used by the council in accordance with the approved statement referred to in subsection (2), and any unexpended balance must be carried forward as a credit to the following financial year.

(5) Subject to subsection (4), the council may invest any portion of its funds in such manner as the Minister, with the concurrence of the Minister of Finance, may approve.

Alienation and encumbrance of council's property

12. The council shall not without the prior approval granted by the Minister with the concurrence of the Minister of Finance-

- (a) let, sell, exchange or otherwise alienate its immovable property; or
- (b) as long as a guarantee in terms of section 70 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), is in force in respect of any loan granted to the council-
 - (i) mortgage or otherwise encumber its immovable property acquired with money obtained by means of that loan; and
 - (ii) let, sell, exchange or otherwise alienate, or hypothecate or otherwise encumber its movable property acquired with money obtained by means of that loan.

Auditing and annual report

13. (1) The statements of account and balance sheet of the council shall be audited at the end of each financial year by a person registered as an accountant and auditor in terms of the provisions of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), and appointed by the council with the approval of the Director-General.

(2) The council must not later than three months after the end of each financial year submit to the Minister a report in such form as the Minister may determine on its functions during that financial year, including an audited balance sheet and a statement of income and expenditure.

(3) The Minister must table the report, including the balance sheet and statement of income and expenditure referred to in subsection (2), in Parliament within 14 days after receipt thereof, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

Functions of council

14. Subject to the policy determined in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996) and any general or specific directive given by the Minister, the council must-

(1) (a) accredit general and further education and training providers, subject to chapter 3 and chapter 4, for specific National Quality Framework standards and qualifications and also-

- (i) accredit those providers for delivery of learning programmes which culminate in specified standards and qualifications according to the criteria determined by the South African Qualifications Authority;
- (ii) monitor provisioning of educational programmes by providers; and
- (iii) promote quality among providers; and

(b) recognise learner achievements in general and further education and training that meet the requirements of the council, and award qualifications and credits towards qualifications registered on the National Qualifications Framework, and also-

- (i) manage assessment by providers, either directly or through accredited assessment bodies or agencies;
- (ii) moderate across different accredited assessment bodies, agencies or providers to ensure reliability and validity of external assessment;
- (iii) register assessment for specified registered standards of qualifications in terms of the criteria established for this purpose;
- (iv) verify internally conducted assessments;
- (v) verify internal moderation processes; and
- (vi) ensure that internal and external quality management systems are in place;

- (c) must issue certificates in the form prescribed by the council to candidates who have, in one or more subjects at an exit point -
 - (i) met the requirements set by the council for a certificate; and
 - (ii) complied with every other condition determined by the council;
 - (d) co-operate with the relevant body or bodies appointed to moderate across Education and Training Quality Assurance Bodies including but not limited to, moderating the quality assurance on specified standards or qualifications for which one or more Education and Training Quality Assurance Bodies are accredited;
 - (e) recommend new standards or qualifications to the National Standards Bodies for consideration, or modifications to existing standards or qualifications to National Standards Bodies for consideration;
 - (f) maintain an acceptable data base and follow acknowledged recording and reporting procedures;
 - (g) monitor, audit and report to the Minister and SAQA in accordance with the requirements of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);
 - (h) perform such other functions as may from time to time be assigned to it by SAQA; and
 - (i) monitor and report to the Minister on the performance of departments of education as providers, and recommend steps to rectify any deficiencies.
- (2) 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 assessment -

- (a) must perform the external moderation of assessment papers, memoranda and samples of assessment scripts of all providers or assessment bodies;
- (b) must in consultation with the Director-General and the provider approve the publication of the results of candidates if the council is satisfied that the provider or assessment body has -
 - (i) conducted the assessment free from any irregularity;
 - (ii) complied with the requirements prescribed by the council for conducting assessments;
 - (iii) applied the norms and standards prescribed by the council and SAQA, and with which a candidate is required to comply in those assessments in order to obtain a certificate; and
 - (iv) complied with every other condition determined by the council; and
- (c) may adjust raw marks during the standardisation process in consultation with the Director-General.

(3) Subject to the approval of the Minister and SAQA, the council may register an assessment body in accordance with the criteria determined by SAQA and the council.

(4) Subject to section 74 of the Higher Education Act, 1997 (No. 101 of 1997) the council may with the approval of the South African Universities Vice-Chancellor's Association or the Committee for Technikon Principals or any other similar body recognised by the Minister, endorse a certificate of a candidate who has complied with the minimum requirements for admission to study at a higher education institution accordingly.

(5) The council must apply to SAQA for accreditation as an education and training quality assurance body as contemplated in sections 5(1)(a)(ii)(bb) of the South African Qualifications Act, 1995 (No. 58 of 1995) for all education sectors and must within 18 months from the date of application, be accredited.

Functions of providers or assessment bodies with regard to external assessments

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

- (a) must take adequate measures, including measures to combat irregularities in the assessment venue and security measures for ensuring the confidentiality of assessment papers, to ensure the integrity of the assessments;
- (b) must ensure that each paper is representative of the prescribed subject matter;
- (c) must ensure that each paper is moderated by at least one competent internal moderator;
- (d) must submit a paper and memorandum to an external moderator for confirmation that they conform to the required standards;
- (e) must ensure that a sample of the assessment scripts is moderated by an external moderator;
- (f) must schedule a particular paper for a stipulated date and time on the assessment time-table;
- (g) must 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 assessment;
- (h) must without delay and in writing supply the council and the Director-General with full details of any irregularities that occurred in respect of such assessment as well as the steps taken with regard to such irregularities;
- (i) must publish the results of the assessment 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 Director-General with regard to external assessment

16. With regard to external assessment the Director-General-

- (a) must promote the integrity of the assessment system;
- (b) must monitor the conduct of the council and the assessment body in upholding the minimum norms and standards set by SAQA, or determined by policy; and
- (c) may institute an investigation into any irregularities which may occur.

Fees payable to council

17. The council determines the fees payable to the council in respect of-

- (a) the issue of a certificate as contemplated in section 14(1)(c) or a duplicate certificate; and
- (b) the endorsement of a certificate as contemplated in section 14(4) or of a duplicate certificate.

Cancellation of certificates

- 18. (1)** If in the opinion of the council a substantial irregularity has occurred in relation to the sitting for an external assessment, or if a certificate has been issued by the council to a candidate who in the opinion of the council has not complied with the norms and standards for obtaining that certificate, the council may refuse the issue of the relevant certificate or cancel a certificate that has been issued, as the case may be.

(2) For the purposes of such cancellation the council may by notice in writing direct the candidate to whom the certificate in question has been issued to return the certificate to the council within three weeks after such notice.

(3) Any person who fails to comply with such notice shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

CHAPTER 3

ACCREDITATION OF PUBLIC PROVIDERS

Quality assurance in regard to registration of public providers

19. (1) All public providers are deemed to be accredited.

(2) The council must develop criteria for accreditation to which public providers must adhere.

(3) Different criteria can be developed for different types of public institutions or between schools, further education and training centres and adult basic education and training centres.

(4) The criteria contemplated in subsection (2) must be submitted to the Minister for approval and after approval thereof, the Minister must make policy in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996), with regard to the criteria for accreditation for public providers.

(5) The policy contemplated in subsection (4) is binding on all public providers.

(6) Council must monitor whether all public providers comply substantially with the policy contemplated in subsection (4).

(7) If any of the public providers fail to comply substantially, the council must -

- (a) give written notice to such a public provider and indicate the criteria in which the public provider failed to comply; and
 - (b) give reasonable notice and determine a reasonable period within which such failures must be rectified.
- (8) If after expiration of the period determined in terms of subsection (7)(b), the public provider is still in default, the council must report to the Minister -
- (a) the failure of the public provider in complying with the criteria;
 - (b) that written notice was given to the public provider as contemplated in subsection (7)(a); and
 - (c) that despite a reasonable period that was given, the public provider still failed to rectify the position.
- (9) Subject to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) and section (8) of the National Education Policy Act, 1996 (Act No. 27 of 1996) the Minister must request a report from the province concerning the public provider, giving full details as to why it could not comply with the criteria.
- (10) After consideration of all the relevant factors, the Minister must direct the council and the public provider what reasonable steps to take to solve the problem.
- (11) If there is still no compliance despite the direction given by the Minister, the Minister must report the matter to Parliament for its determination.

CHAPTER 4

ACCREDITATION OF PRIVATE PROVIDERS

Quality assurance in regard to registration of private or independent providers

20. (1) A person who intends to provide education within the general and further education bands as defined by SAQA and is required to register as -

- (a) an independent school in terms of the South African Schools Act, 1996 (Act No. 84 of 1996);
- (b) a private further education and training institution in terms of the Further Education and Training Act, 1998 (Act No. 98 of 1998); or
- (c) a private centre in terms of the Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000);

must apply to the council for accreditation;

(2) A person contemplated in subsection (1) must apply for accreditation to the council on the forms and according to the procedures as determinate by the council.

(3) A person contemplated in subsection (1) must supply the council with all relevant information concerning the institutions to be registered and any programmes that are to be provided by such institutions.

(4) The application for accreditation must include detailed curricula for all the programmes contemplated in subsection (3) and also indicate what educational resources are available in the provision of such programmes.

(5) The council may require any further information to perform its functions in terms of accreditation.

(6) The council must evaluate the programmes and institution within a period of 6 months, unless there are reasonable grounds for the extension of such a period by the Minister.

(7) The council may-

- (a) grant accreditation;
- (b) refuse accreditation; or
- (c) refer the application back to the candidate to supplement it.

(8) The council determines the fees payable to the council in respect of the accreditation of the programmes.

(9) The council must –

- (a) develop criteria for accreditation applicable to private providers; and
- (b) submit the criteria to the Minister for his or her approval.

(10) The Minister makes policy in terms of the National Education Policy Act, 1996 (No. 27 of 1996).

(11) All private providers are bound by these criteria.

Notification of accredited programmes

21. (1) The council must, within 14 days of accrediting the programmes as contemplated in section 20(7), notify –

- (a) the registrar of further education and training institutions; or
- (b) the relevant Head of the Department in the case of private centres or independent schools.

(2) The notification must indicate if any conditions are attached to the accreditation and the nature thereof.

Failure to comply with the criteria for accreditation

22. (1) The council must monitor the private providers to ensure that they comply with the criteria as contemplated in section 20(9) and (11).

(2) If a private provider fails to comply with any of the criteria for accreditation, the council must –

- (a) give notice to such a private provider of the nature and extent in which it failed to comply;
- (b) determine a reasonable period in which such provider must rectify shortcomings; and
- (c) evaluate the steps taken by the private provider to rectify shortcomings, as well as any other submissions made by the provider.

(3) After consideration of the steps taken as contemplated in subsection (c), the council must -

- (a) re-accredit the private provider for a reasonable timeframe; or
- (b) withdraw the private provider's accreditation as from a date specified by council.

(4) The council must notify -

- (a) the head of the department in the case of independent and private adult basic education and training centres; and
- (b) the registrar in the case of private further education and training institutions;

of the intention to withdraw accreditation and also the effective date if it is decided to withdraw the accreditation, and this notification must be given within 3 weeks after the notification contemplated in subsection (a).

CHAPTER 5

GENERAL

Information to be provided to and by council

23. (1) Every education department, every provider of general or further education and training, every institution where general or further education and training is provided and every examining body must provide the council with such information as the council may reasonably require for the performance of its functions in terms of this Act.

(2) The council must on request provide such information as may be reasonably required by any body or organisation referred to in subsection (1).

Regulations

24. The Minister may make regulations on any matter which may or must be prescribed by regulation in terms of this Act, and any matter which is necessary or expedient to prescribe in order to achieve the objects of this Act.

Transitional arrangements

25. (1) Despite section 26, the South African Certification Council established by section 2 of the South African Certification Council Act, 1986 (Act No. 85 of 1986), continues to perform the functions which it performed prior to the commencement of this Act, until the date on which the council is constituted in terms of section 4 of this Act.

(2) The Minister must immediately after the commencement of this Act, initiate the process to constitute the council as contemplated in section 4.

(3) All assets which vested in the South African Certification Council referred to in subsection (1) immediately prior to the date referred to in that subsection, vest in the council on that date.

(4) Existing agreements of employment between the South African Certification Council and its employees, must on the date referred to in subsection (1), be deemed to be agreements entered into between those employees and the council and must continue to exist subject to applicable labour laws, and those employees must be deemed to have served continuously under the same employer without interruption.

Repeal of law

26. The South African Certification Council Act, 1986 (No. 85 of 1986), is hereby repealed.

Short title

27. This Act is the General and Further Education and Training Quality Assurance Act, 2001.

EXPLANATORY MEMORANDUM TO THE GENERAL AND FURTHER EDUCATION AND TRAINING QUALITY ASSURANCE BILL, 2001

1. INTRODUCTION

- 1.1 This Bill provides for the repeal of the South African Certification Council Act, 1986 (Act No. 85 of 1986).
- 1.2 The Department of Education appointed a task team to investigate, develop and produce a suitable quality assurance model for the general and further education and training bands.

2. BACKGROUND

- 2.1 After extensive consultations with all relevant stakeholders and also with quality assurance authorities in Scotland and Canada, the task team proposed a model which was accepted by the Heads of Education Department Committee.
- 2.2 In terms of the proposed model, the main function of an Education and Training Quality Assurer is to monitor and audit education and training achievements and systems in terms of national standards and qualifications.
- 2.3 As the South African Certification Council Act emanates from the previous dispensation, various of its provisions are outdated and the language used is not user and gender friendly. Consequently, the Department of Education proposed that new legislation should be drafted to establish an Education and Training Quality Assurer for the general and further education and training bands on the basis of the model proposed by the task team.

3. DISCUSSION

- 3.1 In terms of clause 3 of the Bill, provision is made that the council must comply with the policies and criteria formulated by the South African Qualifications Authority.

- 3.2 The composition of the council is dealt with in clause 5 of the Bill. In terms of this clause, provision is made to the effect that the general and further education and training systems and related interests are sufficiently represented on the council. Furthermore, due attention is given to representivity of the council with regard to race, gender and disability.
- 3.3 Clause 9 of the Bill makes provision for the appointment of a chief executive officer and other staff. It also provides that the council is the employer of staff and determines the remuneration, allowances, subsidies and other conditions of service, subject to the applicable labour law.
- 3.4 In terms of section 18 of the South African Certification Council Act, 1986, the council is authorised to make regulations. However, in terms of clause 8 of the Bill, the council may only make rules relating to the procedure at meetings and develop criteria for accreditation of providers in terms of section 19(2) and 20(9). The regulations can only be made by the Minister in terms of section 24 of the Bill.
- 3.5 Clause 14 provides for the functions of the council. Its main functions are to accredit general and further education and training providers; to recognise learners achievements and award qualifications and credits towards qualifications registered on the National Qualifications Framework; to issue certificate, to co-operate with the relevant bodies appointed to moderate the quality assurance on specified standards or qualifications for which one or more Education and Training Quality Assurance Bodies are accredited; to recommend new standards or qualifications to the National Standards Bodies for consideration or modifications to existing standards. Furthermore, the council must apply to SAQA for accreditation as an education and training quality assurance body as contemplated in section 5(1)(a)(ii)(bb) of the South African Qualifications Act, 1995 (Act No. 58 of 1995).
- 3.6 Clause 23 of the Bill provides for information to be provided to the by certain bodies and institutions, and also for information to be provided to those bodies and institutions by the council.

- 3.7 Clause 25 of the Bill contains certain transitional arrangements providing for the terms of office of existing members of the council to terminate on the date on which the new council is constituted in terms of clause 4 of the Bill, and also for the manner in which the council must be constituted when the Bill becomes an Act of Parliament and comes into affect.

4. FINANCIAL IMPLICATIONS

As the new statutory body is merely replacing another statutory body it limits the financial implications to the Department of Education. However, the General and Further Quality Assurance Council will have much wider range of functions than its predecessor and will need additional funds. There will be no new financial implications to the provincial education departments.

5. PARLIAMENTARY PROCEDURE

The Department is of the opinion that the procedures contemplated sections 73 and 76 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)

HIGHER EDUCATION AMENDMENT BILL, 2001

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 Higher Education Act, 1997, so as to define certain concepts; to allow for the establishment of interim councils for new, declared or merged public higher education institutions; to provide for a member of council to serve only on one public higher education institution council; to provide for the dissolving of councils of public higher education institutions; to provide for the recomposition of a council if the majority of members resigns; to provide for a seat for a public higher education institution; to provide for conferring of degrees and honorary degrees by a public higher education institution; to provide for the repeal of the Certification Council for Technikon Education Act 88 of 1986; to provide for the repeal of the Universities' Private Acts, to provide for the repeal of old Acts and other matters connected therewith.

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

Amendment of section 1 of Act 101 of 1997

1. Section 1 of the Higher Education Act, 1997 (hereafter referred to as the principal Act) is hereby; amended by-

- (a) the insertion after the definition of "college" of the following definition:

"conditions" means the general or specific stipulation or directive, which may be of a suspensive or prescriptive nature, given by the registrar to be fulfilled by the registered or conditionally registered private higher education institution, and must be fulfilled within a stipulated time-frame".

- (b) the insertion after the definition of "registrar" of the following definition:

"requirements" means the prescribed criteria as contemplated in section 53 to which a private higher education institution must comply before it is eligible for registration.

Amendment of section 20 of Act 101 of 1997

2. Section 20 of the principal Act is hereby amended by -

- (a) the deletion of subsection (2); and
- (b) the addition after subsection (5) of the following subsections:

"(6) The Minister must in the notice contemplated in subsection (1) establish an interim council for a period of six months, to perform the functions relating to governance except the function to make the institutional statute.

(7) The Minister may extend the period referred to in subsection (6) once for a further period not exceeding six months.

(8) The interim council contemplated in subsection (6) consists of -

- (a) the chairperson; and
- (b) four members.

(9) The interim council must co-opt three members of the interim management contemplated in subsection (10)(a) and these co-opted members have no voting powers.

(10) The interim council must perform the functions relating to governance, and must in particular -

- (a) appoint an interim management;

- (b) ensure that a council is constituted in terms of the standard statute contemplated in section 33(3); and
 - (c) ensure that all the other structures are constituted in terms of the standard statute contemplated in section 33(3).
- (11) Any decision of the interim council that may affect the right of any structure of the public higher education institution, may only be taken after consultation with such structure."

Amendment of section 21 of Act 101 of 1997

3. Section 21 of the principal Act is hereby amended by the addition after subsection (5) of the following subsections:

- "(6) The Minister must in the notice contemplated in subsection (1) establish an interim council for six months, to perform the functions relating to governance except the function to make the institutional statute.
- (7) The Minister may extend the period referred to in subsection (6) once for a further period not exceeding six months.
- (8) The interim council contemplated in subsection (6) consists of -
- (a) the chairperson; and
 - (b) four members.
- (9) The interim council must co-opt three members of the interim management contemplated in subsection (10)(a) and these co-opted members have no voting powers.
- (10) The interim council must perform the functions relating to governance, and must in particular -
- (a) appoint an interim management;
 - (b) ensure that a council is constituted in terms of the standard statute contemplated in section 33(3); and
 - (c) ensure that all the other structures are constituted in terms of the standard statute contemplated in section 33(3).
- (11) Any decision of the interim council that may affect the right of any structure of the public higher education institution, may only be taken after consultation with such structure."

Amendment of section 23 of Act 101 of 1997

4. Section 23 of the principal Act is hereby amended by the addition after subsection (4) of the following subsections:

- "(5) The Minister must in the notice contemplated in subsection (1) establish an interim council for six months, to perform the functions relating to governance except the function to make the institutional statute.
- (6) The Minister may extend the period referred to in subsection (5) once for a further period not exceeding six months.
- (7) The interim council contemplated in subsection (5) consists of -
 - (a) the chairperson; and
 - (b) four members.
- (8) The four members contemplated in subsection (7)(b) must be appointed by the Minister from nominations received from the public higher education institutions contemplated in subsection (2)(a).
- (9) The four members contemplated in subsection (7)(b) may not include any member of staff or student from the public higher education institutions contemplated in subsection (2)(a).
- (10) The interim council must co-opt three members of the interim management contemplated in subsection (11)(a) and these co-opted members have no voting powers.
- (11) The interim council must perform the functions relating to governance, and must in particular -
 - (a) appoint an interim management;
 - (b) ensure that a council is constituted in terms of the standard statute contemplated in section 33(3); and
 - (c) ensure that all the other structures are constituted in terms of the standard statute contemplated in section 33(3).
- (12) Any decision of the interim council that may affect the right of any structure of the public higher education institution, may only be taken after consultation with such structure."

Amendment of section 26 of Act 101 of 1997

5. Section 26 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Subject to subsection (4) a structure referred to in subsection (2)(a), (b), (e), (f) and (g) must elect a chairperson, vice-chairperson and other office-bearers from among its members in the manner determined by the institutional statute **[or an Act of Parliament]**.”

Amendment of section 27 of Act 101 of 1997

6. Section 27 of the principal Act is hereby amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) The council of a public higher education institution must govern the public higher education institution, subject to this Act**[, any other law]** and the institutional statute.”; and

(b) by the addition of the following subsections after subsection (7)

~~“(8) A member of a council of a public higher education institution may not serve on the council of another public higher education institution.~~

(9) Despite subsection (8) a member of a council of a public higher education institution who is serving on more than one public higher education institution council on or before 30 November 2001 may complete his or her term of office.

(10) If 60 per cent or more of the members of a public higher education institution council that are not staff or students of such public higher education institution resigned at a particular meeting of council, it is deemed that such council has resigned.

- (11) If a council resigns as contemplated in subsection (10) a new council must be constituted in terms of the statute of the public higher education institution."

Amendment of section 28 of Act 101 of 1997

7. Section 28 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- "(3) The number of persons contemplated in subsection (2)(b), (c), (d), (e), (f) and (g) and the manner in which they are appointed or elected, as the case may be, must be determined by the institutional statute **[or an Act of Parliament].**"

Amendment of section 29 of 101 Act of 1997

8. Section 29 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

- "(4) The composition, manner of election, functions, procedure at meetings and dissolution of a committee and a joint committee are determined by the institutional statute or [,] institutional rules **[or an Act of Parliament].**"

Amendment of section 31 of Act 101 of 1997

9. Section 31 of the principal Act is hereby amended -

- (a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:
"(a) the management, as determined by the institutional statute **[or an Act of Parliament];** "; and
(b) by the substitution for subsection (3) of the following subsection:

"(3) The number of persons contemplated in subsection (2) and the manner in which they are appointed or elected, as the case may be, are determined by the institutional statute **[or an Act of Parliament]**".

Amendment of section 32 of Act 101 of 1997

10. Section 32 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) an institutional statute, subject to section 33, to give effect to any matter not expressly prescribed by this Act **[law relating to the public higher education institution and to promote the effective management of the institution in respect of matters not expressly prescribed by any law]**; and

Amendment of section 35 of Act 101 of 1997

11. Section 35 of the principal Act is hereby amended by the substitution for the section of the following section:

"The establishment and composition, manner of election, term of office, functions and privileges of the students' representative council of a public higher education institution must be determined by the institutional statute or the institutional rules".

Amendment of section 41A of Act 101 of 1997

12. Section 41A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If an audit of the financial records of a public higher education institution, or an investigation by an independent assessor as contemplated in section 47, reveals financial or other maladministration of a serious nature at a public higher education institution or the serious undermining of the effective functioning of a public higher education institution, the Minister

may, after consultation with the council of the public higher education institution concerned, if practicable, and notwithstanding any other provision of this Act **[or a private Act of Parliament]**, appoint a person as administrator to replace the council or management and perform the functions relating to governance or management on behalf of the institution for a period not exceeding six months.”.

Insertion of new sections 65A, 65B and 65C in Act 101 of 1997

13. The principal Act is hereby amended by the insertion after section 65 of the following new sections:

“Seat of public higher education institution

65A. (1) The seat of a public higher education institution is the physical location of the institution as contemplated in section 20(3)(c), section 21(2)(c), section 23(4) or section 24(3).

(2) Subject to the approval of the Minister, a public higher education institution may conduct its activities beyond the seat contemplated in subsection 1.

(3) If the activities contemplated in subsection (2) fall within the seat of another public higher education institution or at a place where the academic activities of another public higher education institution are conducted, the Minister’s approval is subject to consultation with such other public higher education institution.

(4) The seat and other areas of activities of a public higher education institution as contemplated in subsections (1) and (2) must be reflected by institutional statute.

Degrees, diplomas and certificates

- 65B.(1)** A public higher education institution may, subject to the provisions of this Act and its institutional statute, confer such degrees in any faculty as it may deem expedient to confer.
- (2) Save as is provided by subsection (1), no degree may be conferred by the public higher education institution upon any person who has not attained, in examination or other test, the prescribed standard of proficiency.
- (3) A public higher education institution may grant a diploma or certificate to any person who has pursued a course of study approved by the council of the public higher education institution.”.

Honorary degrees

- 65C.** Subject to the provisions of its institutional statute a public higher education institution may, on the resolution of the council and the senate of the public higher education institution, and without examination, confer a honorary degree of master or doctor in any faculty upon any person whom the public higher education institution may deem worthy of such a degree, provided that the holder of such a degree which has been conferred must not, by the fact that he or she has been admitted thereto, be entitled to practise any profession.”

Amendment of section 72 of Act 101 of 1997

- 14.** Section 72 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) Any university established or incorporated by a Private Act of Parliament **[continues to exist in terms of such Private Act and]** is deemed to be a university established in terms of this Act.”.

- “(8) The Certification Council for Technikon Education Act, 1986 (Act No. 88 of 1986).”.

Repeal of laws

15. The laws listed in the Schedule are hereby repealed in their entirety.

Transitional arrangements

16. (1) Despite section 14, the Certification Council for Technikon Education established in terms of section 2 of the Council for Technikon Education Act, 1986 (Act No. 88 of 1986) continue to exist and to perform its functions as if that Act has not been repealed, until a date determined by the Minister by notice in the Gazette.
- (2) All assets which vested in the Certification Council for Technikon Education immediately prior to the commencement of this Act, vest in the Council on Higher Education provided that sufficient funds must be made available to the Certification Council to perform its functions until the date contemplated in subsection (1).

Short title

17. This Act is the Higher Education Amendment Act, 2001.

Schedule

Potchefstroom University College (Private) Act 101 of 1992

Potchefstroomse Universiteit vir Christelike Hoër Onderwys Amendment Act 25 of 1921

Potchefstroomse Universiteitskollege vir Christelike Hoër Onderwys (Private) Act 5 of 1933

Potchefstroomse Universiteit vir Christelike Hoër Onderwys (Private) Act 19 of 1950

Potchefstroomse Universiteit vir Christelike Hoër Onderwys (Private) Act (House of Assembly) 80 of 1993

Potchefstroomse Universiteit vir Christelike Hoër Onderwys (Private) Amendment Act 72 of 1973

Potchefstroomse Universiteit vir Christelike Hoër Onderwys (Private) Amendment Act (House of Assembly) 108 of 1992

Potchefstroomse Universiteit vir Christelike Hoër Onderwys (Private) Amendment Act (House of Assembly) 64 of 1993

Medical University of Southern Africa (Private) Amendment Act 25 of 1997

Rand Afrikaans University (Private) Amendment Act 107 of 1983

Rand Afrikaans University (Private) Amendment Act 33 of 1989

Rand Afrikaans University (Private) Amendment Act 44 of 1987

Rand Afrikaans University (Private) Amendment Act 49 of 1980

Rand Afrikaans University (Private) Amendment Act 70 of 1969

Rand Afrikaans University (Private) Amendment Act 84 of 1970

Rand Afrikaans University (Private) Amendment Act 93 of 1982

Rand Afrikaans University Act 51 of 1966

Rhodes University (Private) Act 15 of 1949

Rhodes University (Private) Act Amendment Act 7 of 1965

Rhodes University (Private) Amendment Act (House of Assembly) Act 159 of 1993

Rhodes University (Private) Amendment Act 21 of 1973

Rhodes University (Private) Amendment Act 62 of 1979

Rhodes University (Private) Amendment Act 69 of 1983

Rhodes University (Private) Amendment Act 81 of 1972

Rhodes University (Private) Amendment Act 99 of 1986

Rhodes University Act Amendment (Private) Act 6 of 1960

University of Cape Town (Private) Act 8 of 1999 Medical University of Southern Africa Act 78 of 1976

University of Durban-Westville (Private) Amendment Act 32 of 1997
University of Durban-Westville (Private) Amendment Act 82 of 1996
University of Durban-Westville Act 81 of 1983
University of Durban-Westville Amendment Act 51 of 1993
University of Fort Hare Act 40 of 1969
University of Fort Hare Amendment Act 28 of 1971
University of Natal (Private) Amendment Act (House of Assembly) 163 of 1993
University of Natal (Private) Amendment Act 66 of 1977
University of Natal (Private) Amendment Act 71 of 1979
University of Natal (Private) Amendment Act 71 of 1983
University of North-West (Private) Act 17 of 1996
University of Port Elizabeth (Private) Amendment Act (HA) 98 of 1988
University of Port Elizabeth (Private) Amendment Act (House of Assembly) 69 of 1992
University of Port Elizabeth (Private) Amendment Act 114 of 1976
University of Port Elizabeth (Private) Amendment Act 66 of 1969
University of Port Elizabeth (Private) Amendment Act 68 of 1983
University of Port Elizabeth (Private) Amendment Act 83 of 1996
University of Port Elizabeth (Private) Amendment Act 86 of 1979
University of Port Elizabeth Act 1 of 1964
University of Port Elizabeth Amendment Act 31 of 1967
University of Port Elizabeth Amendment Act 40 of 1965
University of Pretoria (Private) Act (House of Assembly) 106 of 1990
University of Pretoria (Private) Amendment Act (House of Assembly) 158 of 1993
University of South Africa (Private) Amendment Act 22 of 1973
University of South Africa (Private) Amendment Act 54 of 1993
University of South Africa (Private) Amendment Act 62 of 1969
University of South Africa Act 19 of 1959
University of South Africa Amendment Act 13 of 1964
University of South Africa Amendment Act 53 of 1967
University of Stellenbosch (Private) Act (House of Assembly) 107 of 1992
University of the North Act 47 of 1969
University of the North Amendment Act 150 of 1992
University of the Orange Free State (Private) Act 21 of 1949
University of the Orange Free State (Private) Act Amendment (Private) Act 29 of 1962
University of the Orange Free State (Private) Act Amendment Act 36 of 1959

University of the Orange Free State (Private) Amendment Act (House of Assembly) 68 of 1992

University of the Orange Free State (Private) Amendment Act (House of Assembly) 81 of 1993

University of the Orange Free State (Private) Amendment Act 108 of 1978

University of the Orange Free State (Private) Amendment Act 34 of 1989

University of the Orange Free State (Private) Amendment Act 69 of 1974

University of the Orange Free State (Private) Amendment Act 70 of 1971

University of the Orange Free State (Private) Amendment Act 97 of 1984

University of the Western Cape Act 78 of 1983

University of the Witwatersrand, Johannesburg, (Private) Amendment Act 32 of 1968

University of the Witwatersrand, Johannesburg, (Private) Amendment Act 37 of 1980

University of the Witwatersrand, Johannesburg, (Private) Amendment Act 21 of 1997

University of the Witwatersrand, Johannesburg, (Private) Amendment Act (House of Assembly) 78 of 1991

University of the Witwatersrand, Johannesburg, (Private) Amendment Act (House of Assembly) 78 of 1993

University of the Witwatersrand, Johannesburg, (Private) Act 15 of 1959

University of Transkei (Private) Act 81 of 1996

University of Venda (Private) Act 89 of 1996

University of Zululand (Private) Amendment Act 80 of 1996

University of Zululand Act 43 of 1969

The Certification Council for Technikon Education Act 82 of 1986

The Certification Council for Technikon Education Amended Act 185 of 1993

Universities Acts Amendment Act 9 of 1918

Universities Amendment Act 82 of 1959

Universities Amendment Act 46 of 1961

Universities Amendment Act 43 of 1965

Universities Amendment Act 24 of 1968

Universities Amendment Act 67 of 1969

Universities Amendment Act 67 of 1975

Universities Amendment Act 65 of 1977

Universities Amendment Act 83 of 1983

Universities Amendment Act 86 of 1986

Universities Amendment Act 123 of 1991

Universities Amendment Act 21 of 1993

Universities Amendment Act (House of Assembly) 64 of 1989

University Laws Amendment Act 23 of 1953

Black Education Account Abolition Act 20 of 1972

Black Universities Amendment Act 6 of 1973

General Law Amendment Act 29 of 1974

Black Universities Amendment Act 57 of 1977

Black Education Amendment Act 67 of 1978

Universities for Blacks Amendment Act 52 of 1979

Universities for Blacks Amendment Act 14 of 1982

Technikons (Education and Training) Amendment Act 48 of 1983

Universities, National Education Policy and Technikons Amendment Act 75 of 1984

Technikons (Education and Training) Amendment Act 77 of 1984

Tertiary Education (Education and Training) Act 92 of 1984

University Staff (Education and Training) Amendment Act 28 of 1985

Technikons (National Education) Amendment Act 89 of 1986

Universities and Technikons for Blacks, Tertiary Education (Education and Training) and Education and Training Amendment Act 3 of 1986

Universities (Education and Training) Amendment Act 34 of 1987

Education Laws (Education and Training) Amendment Act 95 of 1987

Education Laws (Education and Training) Amendment Act 31 of 1988

Technikons (National Education) Amendment Act (House of Assembly) Act 33 of 1988

Universities Amendment Act (House of Assembly) Act 64 of 1989

Universities and Technikons (Education and Training) Amendment Act 41 of 1990

Universities Amendment Act 123 of 1991

General Law Amendment Act 49 of 1996

Universities and Technikons Advisory Council Amendment Act 57 of 1985

Universities and Technikons Advisory Council Amendment Act 24 of 1991

EXPLANATORY MEMORANDUM TO THE HIGHER EDUCATION AMENDMENT BILL, 2001

1. INTRODUCTION

This Bill provides for the amendment of the Higher Education Act, 1997 (Act No. 101 of 1997) so as to provide for additional provisions to the Act and to make certain technical adjustments.

2. REASONS FOR AND SUBSTANCE OF BILL

Repeal of the Private Acts

- 2.1 (a) In the White Paper it was indicated that the Minister will request the Council on Higher Education "to investigate and consult upon ... and provide advice on the desirability or otherwise of perpetuating Private University Acts, in the absence of such Private Acts for Technikons and Colleges."
- (b) This was necessary as the Higher Education Act created the legal basis for the establishment of a single, national higher education system and replaced previous legislation dealing with higher education. However, it left intact the Private Acts of Universities. This is anomalous as the Higher Education Act supersedes the Private Acts and technikons are not governed by Private Acts.
- (c) The Council on Higher Education's advice had been received. They recommended, amongst others, that the outcome of the Council on Higher Education's size and shape investigation be awaited. As a result of the report made by the Council on Higher Education on the size and shape of higher education institutions, the Minister developed policy which was published and does not effect the issue of Private Acts in any manner.
- (d) The Institutional Statutes of all Higher Education Institutions have been brought into line with the Higher Education Act in terms of the composition

and functions of councils, senates and institutional forums. As the Private Acts have not been amended (amendments to Private Acts can only be effected by Parliament), the old composition and functions of councils and senates are still in place in the Private Acts. Thus, the Universities' Institutional Statutes are not in compliance with their own Private Acts, which cause confusion. Furthermore, although the Higher Education Act supersedes the Private Acts, there are matters that are contained in the Private Acts on which the Higher Education Act is silent.

- (e) The Private Acts also keep a number of archaic Amendment Acts and Acts "alive" (see Schedule to the Higher Education Amendment Bill, 2001).

Repeal of the Certification Council for Technikon Education (SERTEC)

- 2.2 The Higher Education Quality Committee (HEQC) of the Council on Higher Education has been awarded their Education and Training Quality Assurer status by the South African Qualifications Authority. In this regard, it was decided that the SERTEC Act will be repealed and that the assets of SERTEC will be dealt with through transitional arrangements in the Amendment Bill. As the HEQC will in future perform all the functions SERTEC had performed, SERTEC assets and liabilities will be taken over by Council on Higher Education.

The dissolution of Councils

- 2.3 Given that two Councils had already over the last few years "decided" to dissolve, while there is no authority for such action, it was thought important that such authority be included in the Higher Education Act. If the members of a council decide at a meeting that all or more than 60% of the external members will resign such council is dysfunctional and must be reconstructed in terms of the Institutional Statutes.

The establishment of interim councils for new, declared or merged public institutions

- 2.4 The Higher Education Act is silent on the matter of governance during the process of establishing a new institution, declaring an institution as a Higher Education Institution or merger of Higher Education Institutions. The Bill seeks to address this vacuum.

Seats of institutions

- 2.5 The need has arisen to bring legal certainty to the operational areas of Higher Education Institutions. The seats of Universities were prescribed by the Private Act which is to be repealed by this amendment Bill. There is no prescription of operational areas for Technikons in any current legislation.

3. CONSULTATION

Extensive consultations will be held with all relevant role players (Council on Higher Education, SAUVCA and CTP), on the above issues. The Bill will also be published for the public to make comments on any of the provisions of the Bill.

4. PARLIAMENTARY PROCEDURE

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

5. FINANCIAL IMPLICATION

No additional costs are foreseen as result of these amendments.

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