

**REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID-AFRIKA**

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Cape Town,  
Kaapstad, 27 November 2008

**No. 31651**

**THE PRESIDENCY**

No. 1286

27 November 2008

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

**No. 39 of 2008: Higher Education Amendment Act, 2008.**

**DIE PRESIDENSIE**

No. 1286

27 November 2008

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

**No. 39 van 2008: Wet op Hoër Onderwys, 2008.**

**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 25 November 2008.)*

# ACT

**To amend the Higher Education Act, 1997, so as to make it consistent with the National Qualifications Framework Act, 2008; 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 101 of 1997, as amended by section 1 of Act 55 of 1999, section 1 of Act 54 of 2000 and section 1 of Act 63 of 2002**

1. Section 1 of the Higher Education Act, 1997 (hereinafter referred to as the principal Act), is hereby amended— 5
- (a) by the insertion after the definition of “grade 12” of the following definition: “**HEQF** means the Higher Education Qualifications Framework;”;
  - (b) by the substitution for the definition of “higher education” of the following definition: 10  
“**higher education** means all learning programmes leading to [qualifications higher than grade 12 or its equivalent in terms of the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), and includes tertiary education as contemplated in Schedule 4 of the Constitution] a qualification that meets the requirements of the HEQF;”;
  - (c) by the insertion after the definition of “higher education institution” of the following definition: 15  
“**Higher Education Qualifications Framework** means the policy on higher education—  
(a) determined and published by the Minister in terms of section 3; and  
(b) referred to in section 7(b) of the National Qualifications Framework Act as the sub-framework for higher education;”;
  - (d) by the insertion after the definition of “Minister” of the following definitions: 20  
“**National Qualifications Framework** means the National Qualifications Framework contemplated in the National Qualifications Framework Act;  
**National Qualifications Framework Act** means the National Qualifications Framework Act, 2008;”;
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**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.
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(Engelse teks deur die President geteken.)  
(Goedgekeur op 25 November 2008.)

**WET**

**Tot wysiging van die Wet op Hoër Onderwys, 1997, ten einde dit met die “National Qualifications Framework Act, 2008”, in ooreenstemming te bring; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.**

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

**Wysiging van artikel I van Wet 101 van 1997, soos gewysig deur artikel 1 van Wet 55 van 1999, artikel 1 van Wet 54 van 2000 en artikel 1 van Wet 63 van 2002**

1. Artikel 1 van die Wet op Hoër Onderwys, 1997 (hierna die Hoofwet genoem), word hierby gewysig—
- (a) deur na die omskrywing van “Direkteur-generaal” die volgende omskrywing in te voeg:  
“**gehalteraad**” dieselfde as ‘quality council’ soos omskryf in artikel 1 van die ‘National Qualifications Framework Act, 2008’;”;
  - (b) deur die omskrywing van “hoër onderwys” deur die volgende omskrywing te vervang:  
“**hoër onderwys**” alle studieprogramme wat lei tot [kwalifikasies] ‘n kwalifikasie [hoër as graad 12 lei of die ekwivalent daarvan ingevolge die Nasionale Kwalifikasieraamwerk soos beoog in die Wet op die Suid-Afrikaanse Kwalifikasie-owerheid, 1995 (Wet No. 58 van 1995), en sluit tersi re onderwys soos bedoel in Bylae 4 van die Grondwet in] wat aan die vereistes van die KRHO voldoen;”;
  - (c) deur na die omskrywing van “Komitee vir Gehalte in Hoër Onderwys” die volgende omskrywings in te voeg:  
“**KRHO**” die Kwalifikasieraamwerk vir Hoër Onderwys;  
“**Kwalifikasieraamwerk vir Ho r Onderwys**” die beleid oor ho r onderwys—  
(a) deur die Minister ingevolge artikel 3 bepaal en gepubliseer; en  
(b) in artikel 7(b) van die ‘National Qualifications Framework Act’ bedoel as die subraamwerk vir ho r onderwys;”;
  - (d) deur na die omskrywing van “Minister” die volgende omskrywings in te voeg:  
“**Nasionale Kwalifikasieraamwerk**” die Nasionale Kwalifikasieraamwerk beoog met ‘National Qualifications Framework’ in die ‘National Qualifications Framework Act’;  
“**National Qualifications Framework Act**” die ‘National Qualifications Framework Act, 2008’;” en

**Act No. 39, 2008****HIGHER EDUCATION AMENDMENT ACT, 2008**

- (e) by the insertion after the definition of “public higher education institution” of the following definition:  
 “**‘quality council’** has the meaning assigned to it in section 1 of the National Qualifications Framework Act, 2008;”; and
- (f) by the substitution for paragraph (a) of the definition of “to provide higher education” of the following paragraph:  
 “(a) the registering of students for—  
 (i) complete qualifications at or above level 5 of the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); or  
 (ii) such part of a qualification which meets the requirements of a unit standard as recognised by the South African Qualifications Authority at or above the level referred to in sub-paragraph (i)] higher education;”. 15

**Amendment of section 5 of Act 101 of 1997, as amended by section 1 of Act 38 of 2003**

- 2.** Section 5 of the principal Act is hereby amended—  
 (a) by the substitution in subsection (1)(f) for subparagraph (i) of the following subparagraph:  
 “(i) conferred on or assigned to it in terms of this Act or the National Qualifications Framework Act;”; and
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:  
 “(a) qualifications, quality promotion and quality assurance;”. 25

**Substitution of section 7 of Act 101 of 1997, as amended by section 1 of Act 23 of 2001**

- 3.** (1) The following section is hereby substituted for section 7 of the principal Act:

**“Qualifications, quality promotion and quality assurance**

- 7.** (1) The CHE performs its functions in relation to qualifications, quality assurance and quality promotion—  
 (a) in terms of this Act; and  
 (b) in its capacity as the quality council for higher education, in terms of the National Qualifications Framework Act.  
 (2) The CHE is responsible for the implementation of the HEQF.  
 (3) The CHE must establish the Higher Education Quality Committee as a permanent committee to perform the quality assurance and quality promotion functions of the CHE in terms of this Act and the National Qualifications Framework Act.  
 (4) The Higher Education Quality Committee may, with the concurrence of the CHE, establish committees to assist it in the performance of its functions.  
 (5) The CHE may charge fees for any service rendered by the Higher Education Quality Committee to any person, institution or organ of state.”.  
 (2) Despite the substitution of section 7 of the principal Act by subsection (1), the Higher Education Quality Committee that existed immediately prior to the commencement of this section continues to exist—  
 (a) as if it were established in terms of section 7(3) of the principal Act; and  
 (b) until a Higher Education Quality Committee is established in terms of section 7(3) of the principal Act. 50

- (e) deur paragraaf (a) van die omskrywing van "om hoër onderwys te voorsien" deur die volgende paragraaf te vervang:
- "(a) die registrasie van studente vir [—
- (i) volledige kwalifikasies op vlak 5 of hoër van die Nasionale Kwalifikasieraamwerk soos beoog in die Wet op die Suid-Afrikaanse Kwalifikasie-owerheid, 1995 (Wet 58 van 1995); of
  - (ii) die gedeelte van 'n kwalifikasie wat aan die vereistes van 'n eenheidstandaard soos erken deur die Suid-Afrikaanse Kwalifikasie-owerheid op of hoër as die vlak bedoel in subparagraaf (i) voldoen;] hoër onderwys";.

**Wysiging van artikel 5 van Wet 101 van 1997, soos gewysig deur artikel 1 van Wet 38 van 2003**

2. Artikel 5 van die Hoofwet word hierby gewysig—
- (a) deur subparagraaf (i) in subartikel (1)(f) deur die volgende subparagraaf te vervang:
- "(i) ingevolge hierdie Wet of die 'National Qualifications Framework Act' aan hom verleen of toegewys"; en
- (b) deur paragraaf (a) in subartikel (2) deur die volgende paragraaf te vervang:
- "(a) kwalifikasies, gehaltebevordering en [-versekering] gehalteverzekering";.

**Vervanging van artikel 7 van Wet 101 van 1997, soos gewysig deur artikel 1 van Wet 23 van 2001**

3. (1) Artikel 7 van die Hoofwet word hierby deur die volgende artikel vervang:

**"Kwalifikasies, gehaltebevordering en gehalteverzekering"** 25

7. (1) Die RHO verrig sy werkzaamhede rakende kwalifikasies, gehalteverzekering en gehaltebevordering—

- (a) ingevolge hierdie Wet; en
  - (b) in sy hoedanigheid as die gehalteraad vir hoër onderwys, ingevolge die 'National Qualifications Framework Act'.
- (2) Die RHO is verantwoordelik vir die inwerkingstelling van die KRHO.
- (3) Dic RHO moet die Komitee vir Gehalte in Hoër Onderwys instel as 'n permanente komitee wat die gehalteverzekering- en gehaltebevorderingswerkzaamhede van die RHO ingevolge hierdie Wet en die 'National Qualifications Framework Act' moet uitvoer.
- (4) Die Komitee vir Gehalte in Hoër Onderwys kan, met die instemming van die RHO, komitees instel om hom in die uitvoering van sy werkzaamhede by te staan.
- (5) Die RHO kan gelde hef vir enige diens wat die Komitee vir Gehalte in Hoër Onderwys aan enige persoon, inrigting of staatsorgaan lewer."
- (2) Ondanks die vervanging van artikel 7 van die Hoofwet deur subartikel (1) hou die Komitee vir Gehalte in Hoër Onderwys wat onmiddellik voor die inwerkingtreding van hierdie artikel bestaan het, aan om te bestaan—
- (a) asof dit ingevolge artikel 7(3) van die Hoofwet ingestel is; en
  - (b) totdat 'n Komitee vir Gehalte in Hoër Onderwys ingevolge artikel 7(3) van die Hoofwet ingestel word.

**Amendment of section 8 of Act 101 of 1997, as amended by section 2 of Act 23 of 2001 and section 2 of Act 63 of 2002**

4. Section 8 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:
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- “(6) The Minister must appoint [six] eight non-voting members of the CHE nominated [respectively] by the Director-General, the Provincial Heads of Education, the Director-General of the Department of [**Arts, Culture,**] Science and Technology, the Director-General of the Department of Labour, the National Research Foundation established in terms of the National Research Foundation Act, 1998 (Act No. 23 of 1998), and the chief executive officers of SAQA and the other quality councils, in their official capacities.”.
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**Amendment of section 53 of Act 101 of 1997, as amended by section 8 of Act 55 of 1999, section 7 of Act 54 of 2000 and section 16 of Act 23 of 2001**

5. Section 53 of the principal Act is hereby amended by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagraph:
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- “(ii) will comply with the requirements of the [**appropriate quality assurance body accredited by SAQA in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995)**] Higher Education Quality Committee; and”.

**Amendment of section 69 of Act 101 of 1997** 20

6. Section 69 of the principal Act is hereby amended by the deletion at the end of paragraph (d) of the word “and” and by the insertion of the following paragraphs:
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- “(dA) the composition, procedures and duration of any committee of the CHE; (dB) the circumstances and manner in which fees for services contemplated in section 7 must be paid; and”.

**Short title**

7. This Act is called the Higher Education Amendment Act, 2008.

**Wysiging van artikel 8 van Wet 101 van 1997, soos gewysig deur artikel 2 van Wet 23 van 2001 en artikel 2 van Wet 63 van 2002**

**4.** Artikel 8 van die Hoofwet word hierby gewysig deur subartikel (6) deur die volgende subartikel te vervang:

“(6) Die Minister moet [ses] agt lede van die RHO sonder stemreg aanstel, soos benoem deur [onderskeidelik] die Direkteur-generaal, die provinsiale onderwyshoofde, die Direkteur-generaal van die Departement van [Kuns, Kultuur,] Wetenskap en Tegnologie, die Direkteur-generaal van die Departement van Arbeid, die Nasionale Navorsingstigting ingestel ingevalgelyk die Wet [oop] op die Nasionale Navorsingstigting, 1998 (Wet No. 23 van 1998), en die hoof-uitvoerende beampies van SAKO en die ander gehalteerde in hul amptelike hoedanigheid..”.

**Wysiging van artikel 53 van Wet 101 van 1997, soos gewysig deur artikel 8 van Wet 55 van 1999, artikel 7 van Wet 54 van 2000 en artikel 16 van Wet 23 van 2001**

**5.** Artikel 53 van die Hoofwet word hierby gewysig deur subparagraaf (ii) in subartikel (1)(b) deur die volgende subparagraaf te vervang:

“(ii) aan die vereistes van die [toepaslike gehalteversekerings-liggaam geakkrediteer deur SAKO ingevalgelyk die Wet op die Suid-Afrikaanse Kwalifikasie-overheid, 1995 (Wet No. 58 van 1995),] Komitee vir Gehalte in Hoër Onderwys sal voldoen; en”.

**Wysiging van artikel 69 van Wet 101 van 1997**

**6.** Artikel 69 van die Hoofwet word hierby gewysig deur die woord “en” aan die einde van paragraaf (d) te skrap en die volgende paragrawe in te voeg:

“(dA) die samestelling, prosedures en duur van enige komitee van die RHO;  
(dB) die omstandighede waaronder en wyse waarop gelde vir in artikel 7 beoogde dienste betaal moet word; en”.

**Kort titel**

**7.** Hierdie Wet heet die Wysigingswet op Hoër Onderwys, 2008.