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Government Notice

OFFICE OF THE PRIME MINISTER

No. 333 1996

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 29 of 1996: Namibia Qualifications Authority Act, 1996.

**NAMIBIA QUALIFICATIONS
AUTHORITY ACT, 1996****ACT**

To provide for the establishment and powers of the Namibia Qualifications Authority, and for matters connected therewith.

(Signed by the President on 21 December 1996)

ARRANGEMENT OF ACT

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BE IT ENACTED by the Parliament of the Republic of Namibia, as follows -

Definitions

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

“Council” means the council referred to in section 5;

“curriculum standards” means a statement by the NQA describing a course of study leading to a qualification;

“Deputy Director” means the Deputy Director referred to in section 10(1)(b);

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“Director” means the Director referred to in section 10(1)(a);

“Minister” means the Minister to whom the administration of this Act has been assigned in terms of section 17;

“national standards”, in relation to a qualification, means such occupational standards and curriculum standards as the NQA may set for such qualification;

“occupational standards” means a statement by the NQA describing the competencies required to fulfil the duties of an occupation, job, post, or position, and the criteria to be used to determine that such competencies have been achieved;

“prescribed” means prescribed by regulation made under section 14;

“qualification” means any formal recognition of the achievement of proficiency in, and meeting the standards set for, any particular subject or subjects or course;

“rules” means the rules made by the Council under section 8;

“staff of the NQA” means the staff referred to in section 11;

“the NQA” means the Namibia Qualifications Authority established by section 2;

“this Act” includes the regulations made under section 14.

Establishment of NQA

2. There is hereby established a juristic person to be known as the Namibia Qualifications Authority, the shortened form of which shall be “NQA”, and which may be used as an alternative to the name Namibia Qualifications Authority.

Objects of NQA

3. The objects of the NQA are -

- (a) to set-up and administer a national qualifications framework;
- (b) to be a forum for matters pertaining to qualifications;
- (c) to set the occupational standards for any occupation, job, post, or position in any career structure;

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- (d) to set the curriculum standards required for achieving the occupational standards for a given occupation, job, post, or position in a career structure;
- (e) to promote the development of, and to analyse, bench marks of acceptable performance norms for any occupation, job, post, or position;
- (f) to accredit persons, institutions and organisations providing education and courses of instruction or training of meeting certain requirements as set out in section 13;
- (g) to evaluate and recognise competencies learnt outside formal education;
- (h) to establish facilities for the collection and dissemination of information in connection with matters pertaining to qualifications;
- (i) to inquire into whether any particular qualification meets the national standards;
- (j) to advise any person, body, institution, organisation or interest group on matters pertaining to qualifications and national standards for qualifications.

Powers, duties and functions of NQA

4. (1) The functions of the NQA shall be to achieve its objects with the means at its disposal, and for the purposes of achieving those objects the NQA may -

- (a) buy, take on lease or otherwise acquire and sell, lease or otherwise dispose of or hypothecate or pledge or otherwise deal with any movable or immovable property or any right in or over immovable property;
- (b) take up, borrow, lend or invest money;
- (c) establish reserve funds for such purposes as the Council may determine;
- (d) open bank accounts, including saving accounts;
- (e) make or accept donations;

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- (f) enter into agreements with any person, body, institution, organisation or interest group upon such conditions as the NQA and that person, body, institution, organisation or group may agree;
- (g) offer or furnish training programmes, technical or other assistance, expert or specialised advice and information and guidance on qualifications;
- (h) obtain information necessary to achieve its objects and perform its functions;
- (i) carry out research activities or cause research activities to be carried out in order to achieve its objects;
- (j) liaise with any person, body, institution, organisation, or interest group in order to facilitate co-operation in setting national standards for qualifications;
- (k) determine policies and procedures for the evaluation and recognition of competencies learnt outside formal education;
- (l) publish information concerning its aims and functions,

and exercise and perform any other power or duty conferred or imposed upon the NQA or the Council under any other provision of this Act, and may, generally, do anything that is necessary for or conducive to the attainment of the objects of the NQA and the exercise or performance of its powers, duties and functions.

(2) The NQA shall, subject to its other functions in terms of this Act -

- (a) undertake such investigations or research with regard to its objects as the Minister may require;
- (b) advise the Minister on matters pertaining to its functions; and
- (c) perform such functions as the Minister may assign to it.

Council of NQA

5. (1) The affairs of the NQA shall be managed by a council, which shall determine the policies and procedures of the NQA with regard to its objects and shall exercise control generally over the performance of the functions of the NQA, the exercise of its powers and the execution of its duties.

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- (2) The Council shall consist of -
- (a) the Permanent Secretary accountable for the management and administration of the Ministry contemplated in section 17;
 - (b) the Vice Chancellor of the University of Namibia;
 - (c) the Rector of the Polytechnic of Namibia;
 - (d) the Director of the NQA;
 - (e) the Permanent Secretaries accountable for the management and administration of the functions of Agriculture, Communications, Fisheries, Health, Justice, Marine Resources, Social Services, Transport, and Works in the Public Service;
 - (f) the Permanent Secretary: National Planning Commission; and
 - (g) 21 other members appointed by the Minister, of whom -
 - (i) nine shall be persons selected by the Minister from persons nominated, by virtue of an invitation made in terms of subsection (3), by organisations contemplated in that subsection and recognised by the Minister for this purpose;
 - (ii) one shall be a staff member responsible for Public Service management or training in the Office of the Prime Minister, nominated by the Prime Minister;
 - (iii) one shall be a staff member of the Public Service Commission, nominated by that Commission;
 - (iv) one shall be a staff member of the Ministry responsible for matters pertaining to youths, other than their education only, nominated by the Minister accountable for the administration of that Ministry;
 - (v) one shall be a staff member in the Ministry responsible for matters pertaining to basic education, and who has experience in matters pertaining to national examinations and assessment of learners, nominated by the Minister accountable for the administration of that Ministry;

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- (vi) one shall be a person nominated by the person charged with the responsibility for women's affairs in the office of the President;
- (vii) one shall be a staff member in the Ministry of Labour, and who has experience in matters relating to employment and labour market information, nominated by the Minister of Labour;
- (viii) one shall be a member of the Namibia Council for Architects and Quantity Surveyors established by section 2 of the Architects' and Quantity Surveyors' Act, 1979 (Act 13 of 1979), and nominated by that Council;
- (ix) one shall be a member of the Engineering Council of Namibia established by section 2 of the Engineering Profession Act, 1986 (Act 18 of 1986), and nominated by that Council;
- (x) one shall be a member of the Council for Health and Social Services Professions established by section 2 of the Council for Health and Social Services Professions Act, 1993 (Act 29 of 1993), and nominated by that Council;
- (xi) one shall be a member of the National Vocational Training Board established by section 5 of the National Vocational Training Act, 1994 (Act 18 of 1994), and nominated by that Board;
- (xii) one shall be a member of the Board for Legal Education established by section 8 of the Legal Practitioners Act, 1995 (Act 15 of 1995), and nominated by that Board; and
- (xiii) one shall be a member of the Council for Professional Land Surveyors, Technical Surveyors and Survey Technicians established by section 2 of the Professional Land Surveyors', Technical Surveyors' and Survey Technicians' Act, 1993 (Act 32 of 1993), and nominated by that Council.

(3) For the purposes of the nomination of persons referred to in subparagraph (i) of paragraph (g) of subsection (2), the Minister shall by notice in the *Gazette* invite -

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- (a) employers organisations;
- (b) employee organisations;
- (c) organisations in the private sector representing agriculture, commerce, finance, fishing, mining, tourism and transport; and
- (d) organizations representing the interests of disabled people,

to nominate such number of persons as members of the Council as may be specified in such notice and to submit such nominations to the Minister within such period as may be so specified.

(4) For the purposes of the nomination of persons referred to in subparagraphs (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii) and (xiii) of paragraph (g) of subsection (2), the Minister shall in writing request the Prime Minister, the Public Service Commission, the Minister or person concerned or the board or council in question, as the case may be, to nominate such number of persons as members of the Council as may be specified in such request and to submit such nomination to the Minister within such period as may be so specified.

(5) The Minister may appoint any member of the Council contemplated in subsections (3) and (4) if no nomination is submitted to him or her as contemplated in those subsections within the period specified by the relevant notice or request.

- (6) (a) The Minister shall designate one of the members of the Council as the first Chairperson of the Council, and another such member as the first Vice-Chairperson of the Council, and may at any time rescind such designation.
- (b) The Chairperson and Vice-Chairperson referred to in subsection (1) shall hold office for the period determined by the Minister at such designation, but not exceeding three years.
- (c) The Council shall at its first meeting after -
 - (i) the expiration of the period of office of such first Chairperson or first Vice-Chairperson, as the case may be; or
 - (ii) the designation of that Chairperson or Vice-Chairperson, as the case may be, has been rescinded under subsection (1); or

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- (iii) the office of that Chairperson or Vice-Chairperson has for any other reason become vacant,

and thereafter from time to time, elect one of its members as Chairperson or Vice-Chairperson of the Council, as the case may be, for such period as it may determine.

- (d) The Vice-Chairperson shall act as Chairperson whenever the Chairperson is for any reason absent, or unable to act as Chairperson, or whenever he or she is requested thereto by the Chairperson.
- (e) Notwithstanding subsection (7), no alternate member shall be designated or appointed under that subsection by or for a member who is Chairperson or Vice-Chairperson of the Council.
- (7) (a) A member of the Council referred to in paragraph (a), (b), (c), (e) or (f) of subsection (2) may designate a staff member in his or her office to act as an alternate member of the Council in his or her stead, whether as a member of the Council or a committee of the Council.
- (b) The Minister may, at the request of the Council, appoint for every member of the Council referred to in paragraph (g) of subsection (2), for such period as may be determined by him or her, an alternate member in the same manner as such member to act as an alternate for such member during the absence of such member or his or her inability to act, whether as a member of the Council or a committee of the Council.
- (c) The provisions of sections 6(2), (3) and (5) shall *mutatis mutandis* apply in relation to an alternate member appointed in terms of paragraph (b) of this subsection.

Periods of office and remuneration of members of Council

6. (1) A member of the Council appointed under section 5(2)(g) shall hold office for a period of three years, but shall at the expiration of his or her period of office as a member of the Council be eligible for re-appointment as such a member.

(2) A member of the Council referred to in subsection (1) shall vacate his or her office -

- (a) if his or her estate is sequestrated;

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- (b) if he or she is declared mentally ill by a competent court;
- (c) if he or she is convicted of any offence and sentenced to imprisonment without the option of a fine;
- (d) if he or she resigns as a member by giving not less than one month's notice in writing to the Minister;
- (e) if he or she absents himself or herself from three consecutive meetings of the Council without its leave;
- (f) in the case of a member referred to in subparagraph (viii), (ix), (x), (xi), (xii) or (xiii) of paragraph (g) of subsection (2) of section 5, if he or she is no longer a member of the board or council in question; or
- (g) if he or she is removed from office in terms of subsection (3).

(3) The Minister may, in consultation with the Council, remove a member of the Council appointed by him or her from office if he or she is of the opinion that there are sufficient reasons for doing so.

(4) Any vacancy on the Council arising from any circumstance referred to in subsection (2), or caused by the death of a member of the Board, shall be filled in accordance with the provisions of section 5, and every such new member shall hold office for the unexpired portion of the period of office of the member who has vacated his or her office or who has died.

(5) A member of the Council, who is not in the full-time employment of the Public Service, shall be paid such remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance.

Meetings and decisions of Council

7. (1) The Council shall meet at least three times in every year at such times and places as the Chairperson of the Council may determine.

- (2) The Chairperson of the Council shall -
 - (a) on request of the Minister; or
 - (b) on written request of at least one-third of the members of the Council,

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convene a special meeting of the Council.

(3) The Chairperson of the Council or, in his or her absence, the Vice-Chairperson, shall preside at the meetings thereof, and if both the Chairperson and the Vice-Chairperson are absent from, or for any other reason unable to preside at any meeting, the members present shall elect one from among their number to act as chairperson at that meeting.

(4) The Chairperson or any other person who acts as chairperson shall determine the procedure of the meeting of the Council over which he or she resides.

(5) The quorum for a meeting of the Council shall be as the rules may prescribe.

(6) The decision of the majority of the members of the Council present at a meeting thereof shall constitute a decision of the Council, and, in the event of an equality of votes relating to any matter, the member presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(7) Any member of the Council shall be entitled to appoint in writing another member of the Council as his or her proxy to attend, speak, and vote in his or her stead at any meeting of the Council.

(8) No decision or act of the Council or act done under the authority of the Council shall be invalid by reason only of the fact that the Council did not consist of the full number of members referred to in section 5, or by reason only of the fact that a disqualified person was present or acted as a member of the Council at the time when such decision was taken or act was done, if the decision was taken or the act was authorised by the requisite majority of members who were present at the time and entitled to sit as members.

(9) The Council shall cause a record to be kept of the proceedings at the meetings of the Council and any committee thereof, and the Minister may at any time require that any such record be submitted to him or her for inspection.

Rules by Council

8. The Council may make rules, not inconsistent with the provisions of this Act, in relation to -

- (a) the good management of the affairs of the Council and the effective execution of its functions;

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- (b) the convening of, procedure at and quorum for meetings of the Council or of a committee of the Council;
- (c) the disciplinary measures and disciplinary procedures applicable to the staff of the NQA;
- (d) the keeping of records, minutes and books of account,

and any other matter which the Council considers necessary or expedient for the effective carrying out of the objects of the NQA, or for the achievement of the purposes of this Act, and may make such rules in such manner as it may deem fit.

Committees of Council

9. (1) The Council may from time to time establish committees to advise it on such matters as the Council may refer to it, or to assist the Council in the exercise of such of its powers or the performance of such of its duties and functions under this Act as the Council may delegate or assign to it under section 15.

(2) A committee referred to in subsection (1) may consist of one or more members of the Council or so many other persons or so many members of the Council and other persons as the Council deems necessary, and the Council may at any time dissolve or reconstitute a committee.

(3) The Council may designate any members of a committee as the chairperson of that committee.

Director and Deputy Director of NQA

10. (1) The Council shall, on the recommendation of a selection committee established by the Council for the purpose, and with the concurrence of the Minister, appoint on such conditions of employment, privileges and period of office as it may determine -

- (a) a suitably qualified and experienced person as Director of the NQA, who shall be the chief executive officer; and
- (b) a suitably qualified and experienced person as Deputy Director of the NQA, who shall-
 - (i) subject to section 15, exercise such powers of the Council or the Director as the Council or the Director may delegate to him or her, and perform such functions or duties of the Council or the Director as the Council or the Director may assign to him or her; and

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(ii) act for the Director as an alternate member of the Council or a committee of the Council.

(2) The Director shall -

- (a) be responsible for the day to day management of the NQA, subject to the directions and control of, and in accordance with the policies, rules and procedures determined by, the Council;
- (b) be responsible for the work in connection with the Council and of its functions in terms of this Act;
- (c) supervise the staff of the NQA, and exercise disciplinary power over such staff in accordance with such provisions as the rules made by the Council may prescribe and, in the case of staff members contemplated in section 11(4), subject to the provisions of the Public Service Act, 1995 (Act 13 of 1995);
- (d) be the accounting officer of the NQA charged with accounting of moneys received and payments made by the NQA, and keep or cause such records of account to be kept as are necessary to represent fairly the state of affairs and business of the NQA;
- (e) report to the Council on the activities of the NQA -
 - (i) once every six months; and
 - (ii) at the end of each financial year,

and exercise such powers and perform such other duties and functions as the Council may delegate or assign to him or her, or this Act may confer or impose.

Staff of NQA and conditions of service

11. (1) The Council may from time to time, on the recommendation of the Director and upon the conditions as it may determine, appoint as officers and employees such persons as it deems necessary with a view to assist the NQA with all such work as may arise through the exercise and performance of its powers, functions and duties in terms of this Act, and may in its discretion dismiss any such officer or employee from its service.

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(2) The NQA shall out of its funds pay to the officers and employees referred to in subsection (1) such remuneration as the Council may determine in accordance with a system approved from time to time for that purpose by the Minister, with the concurrence of the Minister of Finance.

(3) In addition to the remuneration payable to officers and employees of the NQA in terms of subsection (2), the NQA may out of its funds pay the staff of the NQA such allowances, subsidies and other benefits as the Council may approve.

(4) The NQA may, in addition to the officers and employees referred to in subsection (1), be assisted in the performance of its functions by staff members in the Public Service who have been seconded to the NQA in terms of, and subject to, the provisions of section 23 of the Public Service Act, 1995 (Act 13 of 1995).

Funds of NQA, financial year, estimates of revenue and expenditure and auditing of accounts

12. (1) The funds of the NQA shall consist of -

- (a) all moneys appropriated by Parliament for the realisation of the objects of the NQA;
- (b) moneys received by virtue of the provisions of subsection (2); and
- (c) such other moneys as may from time to time accrue, become payable, or be donated to the NQA.

(2) The NQA may charge for any work performed or services rendered by it under this Act, or for the use of its facilities, such fees as may be determined by it, in consultation with the Minister.

(3) The NQA shall apply its funds, in accordance with the relevant approved estimates of expenditure, to defray the expenses in connection with the performance of its functions, but shall apply any donation received in accordance with the conditions, if any, determined by the donor concerned.

(4) The financial year of the NQA shall end on 31 March in each year.

(5) The Council shall submit to the Minister -

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- (a) once during every financial year for his or her approval, with the concurrence of the Minister of Finance, an estimate of the income and expenditure of the NQA for the ensuing financial year, and the Council may also during the course of a financial year submit to the Minister for his or her approval, with the concurrence of the Minister of Finance, supplementary estimates of expenditure for that financial year;
- (b) once during every financial year a report on its activities; and
- (c) as soon as possible, but not later than six months after the end of any financial year, certified copies of its audited financial statements in respect of that financial year.

(6) The Council shall cause the books of account, accounting statements and annual financial statements of the NQA to be audited by a person registered in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951) as an accountant and auditor and appointed, with the concurrence of the Auditor-General, by the Council.

(7) The report and financial statements referred to in paragraphs (b) and (c) of subsection (5) shall be laid upon the Table of the National Assembly by the Minister within 30 days after it became available, if the National Assembly is then in session, or, if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session.

Accreditation of persons, institutions or organisations, or courses of instruction or training

13. (1) Any person, institution, or organisation providing instruction or training may apply to the NQA, in such form as the NQA may determine, for accreditation -

- (a) that such person, institution, or organisation has the capacity -
 - (i) to provide a course or courses of instruction or training; and
 - (ii) to assess the performance of persons partaking in any such course; or

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(b) that a course of instruction or training provided by such person, institution or organisation meets the occupational standards or curriculum standards of the NQA for such course.

(2) An application referred to in subsection (1) shall be accompanied by such fee, if any, as the NQA may determine under section 12(2) and such other information or documents as may be prescribed or the NQA may determine.

(3) The NQA shall consider an application made in terms of subsection (1), as well as such information as may have been submitted to it in connection therewith, and it may make such inquiry in connection therewith as it may deem fit.

(4) If the NQA grants an application made in terms of subsection (1), the Council shall issue the prescribed certificate of accreditation to the person, institution, or organisation, concerned, and record the particulars thereof in a register kept for the purpose.

(5) The period of an accreditation of a person, institution, organisation, or course granted under subsection (4) shall be three years from the date of issue of the certificate issued under that subsection in respect thereof, but at the expiration of such period application may be made under subsection (1) to the NQA for the further accreditation of such person, institution, organisation, or course, as the case may be.

(6) Any person, institution, or organisation that -

(a) in any way pretends or allows another person to pretend that -

(i) he or she or it has been accredited in terms of this section by the NQA; or

(ii) a course of instruction or training being provided by him or her or it has been accredited in terms of this section by the NQA; or

(b) furnishes or allows another person to furnish information in respect of an application made in terms of this section which is false or misleading, knowing that it is false or misleading,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.

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14. The Minister may, on the recommendation of the Council, make regulations relating to -

- (a) the form of any application which may be made in terms of this Act, and the particulars to be furnished in connection with any such application;
- (b) the requirements to be met for accreditations under section 13;
- (c) any matter required or permitted to be prescribed under this Act,

and generally any matter which the Minister considers necessary or expedient to prescribe in order to achieve the purposes of this Act.

Delegation of powers and assignment of functions

15. (1) The Council may in writing-

- (a) delegate any power conferred upon it by or under any provision of this Act, excluding the power to make rules, to the Director, Deputy Director, any committee established under section 9, or any member of the staff of the NQA; or
- (b) assign the performance of any function or duty entrusted to it by or under this Act to the Director, Deputy Director, or such committee, or such member of the staff .

(2) The Director may in writing -

- (a) delegate any power conferred upon him or her by or under this Act to the Deputy Director or any member of the staff of the NQA; or
- (b) assign the performance of any function or duty entrusted to him or her by or under this Act to the Deputy Director or such member of the staff.

(3) A delegation or assignment under subsection (1) or (2) may be made subject to such conditions and restrictions as may be determined by the Council or the Director, as the case may be, and may be withdrawn or amended by it or him or her.

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(4) The Council or the Director shall not be divested of a power or function or duty delegated or assigned by it or him or her in terms of subsection (1) or (2), and may amend or withdraw any decision made in the exercise of such delegated powers or performance of such assigned functions or duties.

(5) Where a power or function is delegated or assigned under subsection (1) or (2) to the holder of an office, such delegation or assignment shall be deemed to have been made to the holder for the time being of the office or to any person at any time lawfully acting in the capacity of such holder.

Winding-up of NQA

16. The NQA shall not be wound-up except by or under the authority of an Act of Parliament.

Administration of Act

17. The President may by proclamation in the *Gazette* assign the administration of this Act to any Minister, and may determine that any power or duty conferred or imposed by this Act on such Minister shall be exercised or carried out by that Minister after consultation with one or more other Ministers.

Short title and commencement

18. This Act shall be called the Namibia Qualifications Authority Act, 1996, and shall come into operation on a date to be determined by the President by Proclamation in the *Gazette*.
