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Publication date

June 2015

ISBN: 978-1-920649-25-8

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreword</td>
<td>3</td>
</tr>
<tr>
<td>National Qualifications Framework Act</td>
<td>4</td>
</tr>
<tr>
<td>Higher Education and Training Laws Amendment Act</td>
<td>35</td>
</tr>
<tr>
<td>Higher Education Laws Amendment Act</td>
<td>79</td>
</tr>
<tr>
<td>Continuing Education and Training Act</td>
<td>91</td>
</tr>
<tr>
<td>Education Laws Amendment Act</td>
<td>221</td>
</tr>
<tr>
<td>Skills Development Act</td>
<td>253</td>
</tr>
<tr>
<td>Adult Education and Training Act</td>
<td>347</td>
</tr>
<tr>
<td>Basic Education Laws Amendment Bill</td>
<td>411</td>
</tr>
<tr>
<td>General and Further Education and Training Quality Assurance Amendment Act</td>
<td>429</td>
</tr>
<tr>
<td>Dispute Resolution</td>
<td>439</td>
</tr>
</tbody>
</table>
FOREWORD

The NQF related legislation (as included in this booklet) was originally promulgated with the aim of addressing the allocation of responsibility, resolving tensions among important role players, and simplifying the NQF apparatus in order to speed up the achievement of NQF objectives. The original set of legislation has since been reviewed with a view to further enhance these objectives.

The NQF Act forms the cornerstone of the above legislation-set, and forms the basis of SAQA’s understanding of the NQF as a framework for communication, coordination and collaboration across education, training, development and work. It secures an oversight and leadership role for SAQA as the custodian of the values of the NQF. Therefore SAQA has to ensure the development of effective partnerships in the delivery of the NQF, supported by quality research and information on skills to inform national decision making. SAQA is also responsible for informing stakeholders and the public regarding the NQF.

This reference booklet, containing the full reviewed set of NQF related legislation, has been developed as a guideline and to inform the NQF stakeholders. We trust that this booklet will be a useful tool in further understanding and building the NQF in the interest of South African learners.

M J N Njeke
Chairperson: SAQA
NATIONAL QUALIFICATIONS FRAMEWORK ACT

NATIONAL QUALIFICATIONS FRAMEWORK ACT 67 OF 2008

[Assented To: 17 February 2009]
[Commencement date: 1 June 2009]
[GN 576 / GG 32233 / 20090522]

as amended by

Higher Education Laws Amendment Acts 26 of 2010
[with effect from 7 December 2010]

ACT

To provide for the National Qualifications Framework; to provide for the responsibilities of the Minister of Higher Education and Training; to provide for the South African Qualifications Authority; to provide for Quality Councils; to provide for transitional arrangements; to repeal the South African Qualifications Authority Act, 1995; and to provide for matters connected therewith.

[Long title substituted by s. 15 of Act 26/2010]
PREAMBLE

WHEREAS the advancement and recognition of learning is an essential attribute of a free and democratic nation and a prerequisite for the development and well-being of its citizens;

WHEREAS the National Qualifications Framework has been developed and implemented in terms of the South African Qualifications Act, 1995;

WHEREAS the National Qualifications Framework has won wide acceptance as the principal instrument through which national education and training qualifications are recognised and quality-assured; and

WHEREAS a review of the implementation of the National Qualifications Framework has necessitated changes to the governance and organisation of the framework so that its objectives may be more effectively and efficiently realised,

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

CHAPTER 1
DEFINITIONS, OBJECT AND APPLICATION OF ACT

1. Definitions
2. Object of Act
3. Application of Act

CHAPTER 2
NATIONAL QUALIFICATIONS FRAMEWORK

4. Framework
5. Objectives of NQF
6. Framework levels
7. Sub-frameworks

CHAPTER 3
RESPONSIBILITIES OF MINISTERS

8. Responsibilities of Minister
9. ..........

CHAPTER 4
SOUTH AFRICAN QUALIFICATIONS AUTHORITY

10. Continued existence of SAQA
11. Objects of SAQA
12. Accountability of SAQA
13. Functions of SAQA
14. SAQA board
15. Vacation of office by board member and filling of vacancies
16. Committees of board
17. Meetings of board and committees
18. Allowances and remuneration of members of board and committees
19. Appointment of chief executive officer and staff
20. Functions of chief executive officer
21. Funds of SAQA
22. Alienation and encumbrance of property
23. Financial statements, audit and annual report

CHAPTER 5
QUALITY COUNCILS

24. QC for General and Further Education and Training
25. QC for Higher Education
26. QC for Trades and Occupations
27. Functions of QCs

CHAPTER 6
PROFESSIONAL BODIES

28. Co-operation with QCs
29. Recognition by SAQA
30. Registration of professional designation
31. Information

CHAPTER 7
GENERAL PROVISIONS

32. Delegation
33. Regulations
34. Conflicting interpretation
35. Saving
36. Transitional arrangements
37. Repeal of law
38. Short title and commencement
CHAPTER 1

DEFINITIONS, OBJECT AND APPLICATION OF ACT

1. Definitions

In this Act, unless the context indicates otherwise-

“board” means the board of the SAQA established by section 14;

“Council on Higher Education” means the Council established in terms of section 4 of the Higher Education Act, 1997 (Act No. 101 of 1997);

“education institution” means an education institution that is established, declared or registered by law;

“Gazette” means Government Gazette;

“GENFETQA Act” means the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001);

“Higher Education Act” means the Higher Education Act, 1997 (Act No. 101 of 1997);

“learning” means the acquisition of knowledge, understanding, values, skill, competence or experience;

“level” means a level contemplated in Chapter 2;

“Minister” means the Minister of Higher Education and Training;

[Definition of “Minister” substituted by s. 8 of Act 26/2010]
“NQF” means the national qualifications framework contemplated in Chapter 2;

“part qualification” means an assessed unit of learning that is registered as part of a qualification;

“PFMA” means the Public Finance Management Act, 1999 (Act No.1 of 1999);

“professional body” means any body of expert practitioners in an occupational field, and includes an occupational body;

“professional designation” means a title or status conferred by a professional body in recognition of a person’s expertise and right to practise in an occupational field;

“qualification” means a registered national qualification;

“quality council” means a Quality Council contemplated in Chapter 5;

“QC” means a quality council;

“registered” means registered on the NQF by SAQA in terms of Chapter 4;

“relevant Minister” .......... [Definition of “relevant Minister” repealed by s. 8 of Act 67/2008 ]

“SAQA” means the South African Qualifications Authority contemplated in Chapter 4;

“SAQA Act” means the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);
“sector” means a sector of education or training, as the case may be, for whose sub-framework a QC is responsible;

“Skills Development Act” means the Skills Development Act, 1998 (Act No. 97 of 1998);

“skills development provider” means a skills development provider contemplated in section 17 of the Skills Development Act;

“sub-framework” means a sub-framework contemplated in Chapter 2;

“this Act” includes the regulations;

“Umalusi” means the council established by section 4 of the GENFETQA Act.

2. Object of Act

The object of this Act is to provide for the further development, organisation and governance of the NQF.

3. Application of Act

(1) This Act applies to-

(a) education programmes or learning programmes that lead to qualifications or part-qualifications offered within the Republic by-

(i) education institutions; and

(ii) skills development providers; and
(b) professional designations,

subject to the limitations prescribed in this Act.

(2) Every qualification or part-qualification contemplated in subsection (1) must be registered on the National Qualifications Framework in accordance with this Act.

[S. 3 substituted by s. 9 of Act 26/2010]

CHAPTER 2

NATIONAL QUALIFICATIONS FRAMEWORK

4. Framework

The NQF is a comprehensive system approved by the Minister for the classification, registration, publication and articulation of quality-assured national qualifications.

5. Objectives of NQF

(1) The objectives of the NQF are to-

(a) create a single integrated national framework for learning achievements;

(b) facilitate access to, and mobility and progression within, education, training and career paths;

(c) enhance the quality of education and training;

(d) accelerate the redress of past unfair discrimination in education, training and employment opportunities.
(2) The objectives of the NQF are designed to contribute to the full personal development of each learner and the social and economic development of the nation at large.

(3) SAQA and the QCs must seek to achieve the objectives of the NQF by-

(a) developing, fostering and maintaining an integrated and transparent national framework for the recognition of learning achievements;

(b) ensuring that South African qualifications meet appropriate criteria, determined by the Minister as contemplated in section 8, and are internationally comparable; and

(c) ensuring that South African qualifications are of an acceptable quality.

6. Framework levels

(1) The NQF is organised as a series of levels of learning achievement, arranged in ascending order from one to ten.

(2) Each level on the NQF is described by a statement of learning achievement known as a level descriptor.

(3) A level descriptor, referred to in subsection (2), provides a broad indication of learning achievements or outcomes that are appropriate to a qualification at that level.

(4) Level descriptors must be developed and determined, as provided for in section 13(1)(g).
There is one set of level descriptors for the NQF.

7. Sub-frameworks

The NQF is a single integrated system which comprises of three co-ordinated qualifications sub-frameworks, for-

(a) General and Further Education and Training, contemplated in the GENFETQA Act;

(b) Higher Education, contemplated in the Higher Education Act; and

(c) Trades and Occupations, contemplated in the Skills Development Act.

CHAPTER 3

RESPONSIBILITIES OF MINISTERS

8. Responsibilities of Minister

(1) The Minister has the overall executive responsibility for the-

(a) NQF;

(b) SAQA; and

(c) QC for General and Further Education and Training, the QC for Higher Education and the QC for Trades and Occupations contemplated in Chapter 5.

[Para. (c) substituted by s. 10 of Act 26/2010]
(2) The Minister must-

(a) consider advice from SAQA or a QC in terms of this Act;

(b) determine policy on NQF matters in terms of this Act and publish the policy in the *Gazette*;
   [Para. (b) substituted by s. 10 of Act 26/2010]

(c) publish guidelines which set out the government’s strategy and priorities for the NQF, and which may be updated annually;
   [Para. (c) substituted by s. 10 of Act 26/2010]

(d) provide funds from money appropriated by Parliament for SAQA to enable it to fulfil its functions in terms of this Act;

(e) after considering advice from the SAQA, determine the sub-frameworks contemplated in section 7 and publish them in the *Gazette*; and
   [Para. (e) substituted by s. 10 of Act 26/2010]

(f) determine by regulation in the *Gazette*, the process by which a dispute involving the SAQA or a QC must be resolved, and any matter relating thereto.
   [Para. (f) substituted by s. 10 of Act 26/2010]

(3) The Minister must-
   [Words preceding para. (a) substituted by s. 10 of Act 26/2010]

(a) advance the achievement of the objectives of the NQF contemplated in Chapter 2;

(b) uphold the coherence and public credibility of the NQF;
(c) encourage collaboration among the QCs and between the QCs and SAQA.

(4) The Minister may perform any other function consistent with this Act.

9. .........

[S. 9 repealed by s. 11 of Act 26/2010]

CHAPTER 4

SOUTH AFRICAN QUALIFICATIONS AUTHORITY

10. Continued existence of SAQA

The SAQA that existed immediately before the commencement of this Act, continues to exist as a juristic person under the name of the South African Qualifications Authority.

11. Objects of SAQA

The objects of the SAQA are to-

(a) advance the objectives of the NQF contemplated in Chapter 2;

(b) oversee the further development and implementation of the NQF; and

(c) co-ordinate the sub-frameworks.

12. Accountability of SAQA

The SAQA is accountable to the Minister.
13. Functions of SAQA

(1) The SAQA must, in order to advance the objectives of the NQF-

(a) perform its functions subject to this Act; and

(ii) oversee the implementation of the NQF and ensure the achievement of its objectives;

(b) advise the Minister on NQF matters in terms of this Act;

[Para. (b) substituted by s. 12 of Act 26/2010]

(c) comply with policy determined by the Minister in terms of section 8(2)(b);

(d) consider the Minister’s guidelines contemplated in section 8(2)(c);

(e) oversee the implementation of the NQF in accordance with an implementation framework prepared by the SAQA after consultation with the QCs;

(f) develop a system of collaboration to guide the mutual relations of the SAQA and the QCs, after consultation with the QCs and taking into account the objects of the SAQA contemplated in section 11 and the regulations contemplated in section 33; and

(ii) resolve disputes regarding the QCs;

(g) with respect to levels-
(i) develop the content of level descriptors for each level of the NQF and reach agreement on the content with the QCs;

(ii) publish the agreed level descriptors in the *Gazette*; and

(iii) ensure that they remain current and appropriate;

(h) with respect to qualifications-

(i) develop and implement policy and criteria, after consultation with the QCs, for the development, registration and publication of qualifications and part-qualifications, which must include the following requirements:

(aa) The relevant sub-framework must be identified on any document relating to the registration and publication of a qualification or part-qualification; and

(bb) each sub-framework must have a distinct nomenclature for its qualification types which is appropriate to the relevant sub-framework and consistent with international practice;

(ii) register a qualification or part-qualification recommended by a QC if it meets the relevant criteria;

(iii) develop policy and criteria, after consultation with the QCs, for assessment, recognition of prior learning and credit accumulation and transfer;
(i) with respect to professional bodies-

(i) develop and implement policy and criteria for recognising a professional body and registering a professional designation for the purposes of this Act, after consultation with statutory and non-statutory bodies of expert practitioners in occupational fields and with the QCs; and

(ii) recognise a professional body and register its professional designation if the criteria contemplated in subparagraph (i) have been met;

(j) with respect to international relations-

(i) collaborate with its international counterparts on all matters of mutual interest concerning qualifications frameworks; and

(ii) inform the QCs and other interested parties about international practice in the development and management of qualifications frameworks;

(k) with respect to research-

(i) conduct or commission investigations on issues of importance to the development and implementation of the NQF, including periodic studies of the impact of the NQF on South African education, training and employment; and

(ii) publish the findings of the investigations referred to in subparagraph (i);
(l) with respect to records of education and training, maintain a national learners’ records database comprising registers of national qualifications, part-qualifications, learner achievements, recognised professional bodies, professional designations and associated information;

(m) with respect to foreign qualifications, provide an evaluation and advisory service consistent with this Act; and

(n) with respect to other matters-

(i) inform the public about the NQF;

(ii) perform any other function required by this Act; and

(iii) perform any function consistent with this Act that the Minister may determine.

(2) The SAQA must submit, on or before 31 August in each year, to the Minister an annual report which includes the financial statements and audit reports.

14. **SAQA board**

(1) The SAQA is governed by a board.

(2) The board comprises-

(a) 12 members appointed in their personal capacities by the Minister;

[Para. (a) substituted by s. 13 of Act 26/2010]
(b) the chief executive officer of the SAQA contemplated in section 19, who is a member by virtue of his or her office; and

(c) the chief executive officer of each QC contemplated in Chapter 5, who are members by virtue of their offices.

(3)

(a) The Minister must appoint members, from the nomination process contemplated in subsection (4), in such a manner as to ensure, insofar as is practically possible, that the functions of the SAQA are performed according to the highest professional standards provided that at least two members must be appointed from the nominations made by organised labour.

(b) To ensure that the functions of the SAQA are performed in the manner contemplated in paragraph (a), the members appointed must-

(i) be broadly representative of the education and training sectors and related interests;

(ii) have thorough knowledge and understanding of education and training;

(iii) appreciate the role of education and training in the reconstruction and development of the South African economy and society;

(iv) have known and attested commitment to the interests of education and training;
(v) have knowledge and understanding of qualifications matters and quality assurance in education and training; and

(vi) be competent to undertake the governance and oversee the financial affairs of the SAQA.

(c) Due attention must be given to the representativity of the board in terms of such factors as race, gender and disability.

(4) The Minister must invite nominations for the appointment of members by notice in the *Gazette*, from-

(a) persons involved in education and training;

(b) organisations involved in education and training;

(c) professional bodies;

(d) organised labour;

(e) organised business; and

(f) organisations representing community and development interests.

(5) Any member-

(a) holds office for a period not exceeding five years; and

(b) may be reappointed at the expiry of his or her term of office, but may not serve for more than two consecutive terms of office.
(6) The Minister must appoint one of the members as chairperson.

(7) The members must elect a deputy chairperson from amongst their number.

15. **Vacation of office by board member and filling of vacancies**

(1) A member must vacate office if he or she-

(a) resigns by giving written notice to the chairperson, or in the case of the chairperson, to the Minister;

(b) is absent from three consecutive meetings of the board, without leave of the board;

(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 his or her personal affairs by a court of law.

(2) The Minister may, in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), remove a member of the board at any time before the expiry of the member’s term of office-

(a) on the grounds of misconduct, incapacity or incompetence; or

(b) for any other sound and compelling reason.
(3) A vacancy on the board must be filled by appointment in accordance with section 14.

(4) The Minister may, in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), dissolve the entire board-

(a) if the board fails to perform in terms of this Act;

(b) if there is a total breakdown in the relationship between the board and the Minister; or

(c) on any reasonable grounds.

16. Committees of board

(1) The board may establish one or more committees which must perform such functions as the board may determine.

(2) A committee may co-opt a person who is not a member of the board but the board must consider the criteria contemplated in section 14 when it appoints such a person to a committee.

(3) The board must appoint one of its members as chairperson of a committee.

(4) A member of a committee is appointed for such period as the board may determine.

17. Meetings of board and committees

(1) The board must meet at least four times a year at such times and places as the chairperson may determine by notice in
writing to the members.

(2) The chairperson must convene a meeting of the board-

   (a) within 14 days of receipt of a written request signed by at least one third of the members of the board; or

   (b) if requested by the Minister to convene a meeting.

(3) If the chairperson and deputy chairperson of the board are absent from any meeting of the board, the members present must elect one of their number to preside at that meeting.

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

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

(6) The board and its committees must keep minutes of their proceedings and decisions which when confirmed must be open to scrutiny by an interested person subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

18. **Allowances and remuneration of members of board and committees**

A member of the board and a member of a committee who is not
in the full-time service of the State may, in respect of services rendered by him or her in connection with the affairs of the board or committee, as the case may be, be paid by the SAQA such allowances and, in the case of the chairperson of the board, such additional remuneration as the Minister, with the concurrence of the Minister of Finance, may determine.

19. Appointment of chief executive officer and staff

(1) The board must appoint a chief executive officer for the SAQA.

(2) 
   (a) The board must appoint such number of employees as it considers necessary for the performance of the SAQA’s functions.

   (b) The board may delegate the function referred to in paragraph (a) to the chief executive officer of the SAQA subject to such conditions as are consistent with the relevant provisions of the PFMA.

(3) The SAQA is the employer of the chief executive officer and other employees.

(4) The board must determine the remuneration, allowances, subsidies and other conditions of service of the chief executive officer, subject to the approval of the Minister with the concurrence of the Minister of Finance.

20. Functions of chief executive officer

The chief executive officer-
(a) is responsible to the board for executing the functions of the SAQA in terms of this Act;

(b) must assign responsibilities and supervise the employees of the SAQA; and

(c) is the accounting officer charged with accounting for monies received, payments made and property purchased by the board.

21. Funds of SAQA

The funds of the SAQA consist of-

(a) money appropriated by Parliament;

(b) donations and contributions received by the SAQA;

(c) money received by the SAQA in respect of fees charged for services;

(d) interest received on investments; and

(e) any other income received by the SAQA.

22. Alienation and encumbrance of property

The board may not without the prior approval of the Minister, granted with the concurrence of the Minister of Finance, sell, exchange or otherwise alienate the immovable property of the SAQA.
23. Financial statements, audit and annual report

The Minister must table in Parliament the annual report, including the financial statements and audit report of the SAQA, within one month after receipt thereof, if Parliament is in ordinary session, and if Parliament is not in ordinary session, within one month after the commencement of the next ordinary session.

CHAPTER 5

QUALITY COUNCILS

24. QC for General and Further Education and Training

Umalusi is the QC for General and Further Education and Training as provided for in the GENFETQA Act.

25. QC for Higher Education

The Council on Higher Education is the QC for Higher Education as provided for in the Higher Education Act.

26. QC for Trades and Occupations

The QC for Trades and Occupations is provided for in the Skills Development Act.

27. Functions of QCs

A QC must, in order to achieve the objectives of the NQF-

(a) perform its functions subject to this Act and the law by which the QC is established;
(b) comply with any policy determined by the Minister in terms of section 8(2)(b);

(c) consider the Minister’s guidelines contemplated in section 8(2)(c);

(d) collaborate with the SAQA and other QCs in terms of the system contemplated in section 13(1)(f)(i);

(e) develop and manage its sub-framework, and make recommendations thereon to the Minister;
   [Para. (e) substituted by s. 14 of Act 26/2010]

(f) advise the Minister on matters relating to its sub-framework;
   [Para. (f) substituted by s. 14 of Act 26/2010]

(g) with regard to level descriptors-

(i) consider and agree to level descriptors contemplated in section 13(1) (g) (i); and

(ii) ensure that they remain current and appropriate;

(h) with regard to qualifications for its sub-framework-

(i) develop and implement policy and criteria, taking into account the policy and criteria contemplated in section 13(1)(h)(i), for the development, registration and publication of qualifications;

(ii) develop and implement policy and criteria, taking into account the policy and criteria contemplated in section 13(1)(h)(iii), for assessment, recognition of prior learning and credit accumulation and transfer;
(iii) ensure the development of such qualifications or part qualifications as are necessary for the sector, which may include appropriate measures for the assessment of learning achievement; and

(iv) recommend qualifications or part qualifications to the SAQA for registration;

(i) with regard to quality assurance within its sub-framework-

(i) develop and implement policy for quality assurance;

(ii) ensure the integrity and credibility of quality assurance;

(iii) ensure that such quality assurance as is necessary for the sub-framework is undertaken;

(j) with regard to information matters-

(i) maintain a database of learner achievements and related matters for the purposes of this Act; and

(ii) submit such data in a format determined in consultation with the SAQA for recording on the national learners’ records database contemplated in section 13(1)(l);

(k) with regard to other matters-

(i) conduct or commission and publish research on issues of importance to the development and implementation of the sub-framework;

(ii) inform the public about the sub-framework;
(iii) perform any other function required by this Act; and

(iv) perform any function consistent with this Act that the Minister may determine.

[Subpara. (iv) substituted by s. 14 of Act 26/2010]

CHAPTER 6

PROFESSIONAL BODIES

28. Co-operation with QCs

Despite the provisions of any other Act, a professional body must co-operate with the relevant QCs in respect of qualifications and quality assurance in its occupational field.

29. Recognition by SAQA

A statutory or non-statutory body of expert practitioners in an occupational field must apply in the manner prescribed by the SAQA in terms of section 13(1)(i)(i) to be recognised as a professional body in terms of this Act.

30. Registration of professional designation

A professional body that is recognised in terms of section 29 must apply to the SAQA, in the manner determined by the SAQA in terms of section 13(1)(i)(ii), to register a professional designation on the NQF.

31. Information

A professional body must, in consultation with the SAQA-
(a) maintain a database for the purposes of this Act;

(b) submit such data in a format determined in consultation with the SAQA for recording on the national learners’ records database contemplated in section 13(1)(l).

32. Delegation

The SAQA and the QCs have the power to delegate any of their functions to a committee, any other body capable of performing the function or an employee, but a delegation-

(a) must be in writing and available for inspection on request by a member of the public;

(b) must specify the terms and conditions of the delegation;

(c) must be consistent with this Act and the Act by which the relevant QC is established;

(d) must be accompanied by sufficient funds to perform the function;

(e) does not exempt the SAQA or the QC, as the case may be, from responsibility for the function; and

(f) does not prevent the performance of the function by the SAQA or the QC, as the case may be.
33. **Regulations**

(1) The Minister may make regulations regarding any matter that this Act requires or permits to be prescribed.

(2) The Minister may make regulations regarding-

   (a) allowances and remuneration of members of the board or a committee contemplated in section 18; and

   (b) generally any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

34. **Conflicting interpretation**

In the event of a conflict in interpretation between this Act, the Higher Education Act, the Skills Development Act and the GENFETQA Act, this Act must be given preference.

35. **Saving**

The Higher Education Qualifications Framework promulgated by the Minister in Government Notice No. 928 dated 5 October 2007 in terms of section 3 of the Higher Education Act remains the sub-framework for higher education as contemplated in sections 7(b) and 8(2)(e) of this Act unless amended in terms of section 8 of this Act and section 3 of the Higher Education Act.

36. **Transitional arrangements**

Despite the repeal of the SAQA Act contemplated in section 37-
(a) the members of the SAQA appointed in terms of the SAQA Act who are in office immediately prior to the commencement of this Act must fulfil the functions contemplated in section 13 until a new board is appointed by the Minister;

(b) the NQF, approved by the Minister as contemplated in the SAQA Act, continues to exist to the extent that it is consistent to this Act and must, where necessary, be amended by SAQA to ensure consistency with this Act;

(c) the regulations made under the SAQA Act continue to exist to the extent that they are consistent with this Act until they are repealed by the Minister by notice in the Gazette;

(d) a process or action which was started in terms of the SAQA Act prior to the commencement of this Act must be concluded in terms of the SAQA Act unless such process or action is inconsistent with this Act;

(e) a policy made under the SAQA Act continues to exist to the extent that it is consistent with this Act until it is withdrawn by the SAQA;

(f) subject to any applicable law, an employee of the SAQA who was employed immediately prior to the commencement of this Act continues to be employed in terms of this Act;

(g) the conditions of service or service benefits of employees of the SAQA which were applicable immediately prior to the commencement of this Act continue to exist until changed by the board; and
(h) all assets, rights, liabilities and obligations of the SAQA that vested in the SAQA under the SAQA Act, continues to vest in the SAQA.

37. Repeal of law

The South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), is hereby repealed in its entirety.

38. Short title and commencement

(1) This Act is called the National Qualifications Framework Act, 2008, and comes into operation on a date determined by the Minister by notice in the Gazette.

(2) Different dates of commencement may be so determined for different sections of this Act.
HIGHER EDUCATION AND TRAINING LAWS AMENDMENT ACT

HIGHER EDUCATION AND TRAINING LAWS AMENDMENT ACT 25 OF 2010

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.

ACT

To amend-

• the Adult Basic Education and Training Act, 2000, so as to amend certain definitions; to make provision for the employment of educators at public centres by inserting provisions in the said Act with regard to employers of educators, salaries and other conditions of service of educators, the educator establishment, powers of employers, appointments and the filling of posts, the transfer of educators, the secondment of educators, the retirement of educators, the discharge of educators, incapacity and misconduct and the performance of other work by
educators; to provide for transitional arrangements with regard to public centres; to make provision for the determination of national education policy for public centres, for directive principles of national education policy, for consultation on policy and legislation, for the publication of national education policy and for the monitoring and evaluation of adult education and training; and to provide for quality assurance in respect of the qualifications offered by public and private centres; and

• the Further Education and Training Colleges Act, 2006, so as to amend certain definitions; to make provision for the determination of national education policy for colleges, for directive principles of national education policy, for consultation on policy and legislation, for the publication of national education policy and for the monitoring and evaluation of further education and training; to make provision for the Council of Education Ministers and the Heads of Education Departments Committee and for their administrative functions; to provide for transitional arrangements with regard to colleges; and to provide for quality assurance in respect of the qualifications offered by colleges;

and to provide for matters connected therewith.

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

**Amendment of section 1 of Act 52 of 2000**

1. Section 1 of the Adult Basic Education and Training Act, 2000, is hereby amended by-

   (a) the substitution for the definition of "**adult basic education and training**" of the following definition:
"'adult [basic] education and training' means all learning and training programmes for adults [from] on level 1 [to 4 where level 4 is equivalent to]-

(a) grade 9 in public schools; or


(b) the substitution for the definition of "Council of Education Ministers" of the following definition:

"'Council of Education Ministers' means the Council established [under section 9 of the National Education Policy Act, 1996 (Act No. 27 of 1996)] by section 41H of the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006);"

(c) the substitution for the definition of "Department" of the following definition:

"'Department' means the [government department responsible for education at national level] Department of Higher Education and Training;"

(d) the substitution for the definition of "educator" of the following definition:

"'educator' means any person who teaches, educates or trains [a learner] another person, or provides professional educational services, including professional therapy and
education psychological services, at any public centre and who is appointed in a post on any educator establishment contemplated in section 20F;"

(e) the insertion after the definition of "educator" of the following definition:

"'employer', in relation to any provision of Chapter 4, 5 or 7 of the Employment of Educators Act, 1998 (Act No. 76 of 1998), which applies to, or is connected with, an educator in the service of-

(a) the Department of Higher Education and Training, means the Director-General; and

(b) a provincial education department, means the Head of Department;"

(f) the insertion after the definition of "Head of the Department" of the following definition:

"'Labour Relations Act' means the Labour Relations Act, 1995 (Act No. 66 of 1995);"

(g) the substitution for the definition of "Minister" of the following definition:

"'Minister' means the Minister of Higher Education and Training;"

(h) the substitution for the definition of "NABABET" of the following definition:

"'[NABABET] NABAET' means the National Advisory Board
for Adult [Basic] Education and Training, established by regulation in terms of section 11 of the National Education Policy Act, 1996 (Act No. 27 of 1996);"; and

(i) the insertion after the definition of "policy" of the following definition:

"'prescribed' means prescribed by regulation made in terms of section 41;".

Amendment of section 11 of Act 52 of 2000

2. Section 11 of the Adult Basic Education and Training Act, 2000, is hereby amended by-

(a) the substitution in subsection (2) for paragraph (a) of the following paragraph:

"(a) educators and employ educators additional to the establishment determined by the Member of the Executive Council in terms of [section 5 of the Employment of Educators Act] Chapter 3A; and"; and

(b) the substitution for subsection (7) of the following subsection:

"(7) [After consultation as contemplated in section 5 of the National Education Policy Act, 1996 (Act No. 27 of 1996, the] The Minister may, by notice in the Government Gazette, determine norms and standards [by notice in the Government Gazette] regarding the funds used for the employment of staff referred to in subsection (2), but such norms and standards may not be interpreted [so] as [to make] making the State a joint employer of such staff.".
Repeal of section 12 of Act 52 of 2000

3. Section 12 of the Adult Basic Education and Training Act, 2000, is hereby repealed.

Insertion of Chapter 3A in Act 52 of 2000

4. The following Chapter is hereby inserted in the Adult Basic Education and Training Act, 2000, after Chapter 3:

“CHAPTER 3A

Application of Chapter

20B. This Chapter applies to the employment of educators at public centres in the Republic.

Employers of educators and other persons

20C.(1) Save as is otherwise provided in this section, the Head of Department shall be the employer of educators in the service of the provincial education department in posts on the educator establishment of public centres for all purposes of employment.

(2) For the purposes of determining the salaries and other conditions of service of educators, the Minister shall be the employer of all educators contemplated in subsection (1).

(3) For the purposes of creating posts on the educator establishment of public centres in a provincial education department, the Member of the Executive Council shall
be the employer of educators in the service of that department.

Salaries and other conditions of service of educators

20D. (1) Notwithstanding anything to the contrary contained in any law but subject to the provisions of this section, the Labour Relations Act or any collective agreement concluded by the Education Labour Relations Council, the Minister shall determine the salaries and other conditions of service of educators.

(2) Different salaries and conditions of service contemplated in subsection (1) may be determined in respect of different ranks and grades of educators.

(3) A determination by the Minister under this section involving expenditure from the National Revenue Fund may only be made with the concurrence of the Minister of Finance.

Educator establishment

20E. (1) Notwithstanding anything to the contrary contained in any law but subject to the norms prescribed for the provisioning of posts, the educator establishment of a provincial education department shall consist of the posts created by the Member of the Executive Council.

(2) The educator establishment of any public centre under the control of a provincial education department shall, subject to the norms prescribed for the provisioning of posts, consist of the posts allocated to the said public
centre or office by the Head of Department from the educator establishment of that department.

(3) For the purposes of this Chapter-

(a) the power to create a post under this section shall include the power to grade, to regrade, to designate, to re-designate, to convert or to abolish the post; and

(b) the power to allocate a post under this section shall include the power to re-allocate the post.

(4) The non-educator establishment of a public centre is determined in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

Powers of employers

20F. (1) Subject to the provisions of this section, the appointment of any person, or the promotion or transfer of any educator, in the service of a provincial education department shall be made, or effected, by the Head of Department.

(2) Subject to the provisions of this Chapter, the Labour Relations Act or any collective agreement concluded by the Education Labour Relations Council, appointments in, and promotions or transfers to, posts on any educator establishment under this Act shall be made in accordance with such procedure and such requirements as the Minister may determine.
Appointments and filling of posts

20G.(1) In the making of any appointment or the filling of any post on any educator establishment under this Act, due regard shall be had to equality, equity and the other democratic values and principles which are contemplated in section 195(1) of the Constitution of the Republic of South Africa, 1996, and which include—

(a) the ability of the candidate; and

(b) the need to redress the imbalances of the past in order to achieve broad representation.

(2) A person may be appointed under this Chapter—

(a) in a permanent capacity, whether on probation or not;

(b) in a temporary capacity for a fixed period, whether in a full-time, in a part-time or in a shared capacity; or

(c) on special contract for a fixed period or for a particular assignment, whether in a full-time or in a part-time capacity.

Transfer of educators

20H.(1) Subject to the provisions of this Chapter, the Head of Department may transfer any educator in the service of—

(a) the relevant department to any post or position in any other department of state with the prior
approval of the person in that other department of state having the power to appoint or to transfer and with the consent of that educator; and

(b) the provincial education department to any other post in that department.

(2) The salary and other conditions of service of an educator may not be adversely affected by a transfer under this section without the written consent of that educator.

Secondment of educators

20I. (1) Any educator in the service of any provincial education department may, with the written consent of that educator, be placed at the disposal of-

(a) another department of education;

(b) another government; or

(c) any other body or person, for a particular service or for a stated period on such conditions, in addition to the conditions prescribed by or under any law, as may be determined by the Head of Department.

(2) While so placed at such disposal, the educator shall remain subject to the provisions of this Act.

Retirement

20J. (1) Subject to the provisions of this section-
(a) an educator shall have the right to retire, and shall be so retired, on the day on which the educator attains the age of 65 years; and

(b) an educator who attains the said age after the first day of a month shall be deemed to have attained that age on the first day of the following month.

(2) Notwithstanding the provisions of subsection (1), an educator who was in employment immediately before 2 September 1994 in terms of a law repealed by the Educators' Employment Act, 1994 (promulgated under Proclamation No. 138 of 1994), shall have the right to retire on or after attaining the retirement age applicable to the educator immediately before the said date.

(3) Notwithstanding-

(a) the provisions of subsections (1) and (2), an educator shall have the right to retire on or after attaining the age of 55 years; and

(b) the absence of any reason for discharge in terms of section 20K, the employer may, at the request of an educator, allow the educator to retire before attaining the age of 55 years, if the employer is of the opinion-

(i) that a sufficient reason exists therefor; and

(ii) that the retirement will be to the advantage of the State.
(4) Notwithstanding the provisions of this section, an educator-

(a) who was in employment immediately before 1 May 1996;

(b) who, without interruption of service, has completed a period of 10 years' continuous pensionable service in terms of the pension law applicable to the educator; and

(c) who has attained the age of 50 years, shall have the right to retire.

Discharge of educators

20K.(1) The employer may, having due regard to the applicable provisions of the Labour Relations Act, discharge an educator from service-

(a) on account of continuous ill-health;

(b) on account of the abolition of the educator's post or any reduction in, or reorganisation or re-adjustment of, the post establishments of departments or public centres;

(c) if, for reasons other than the educator's own unfitness or incapacity, the educator's discharge will promote efficiency or economy in the department or public centre in which the educator is employed, or will otherwise be in the interest of the State;

(d) on account of unfitness for the duties attached to
the educator's post or incapacity to carry out those
duties efficiently;

(e) on account of misconduct;

(f) if the educator was appointed in the post in
question on the grounds of a misrepresentation
made by the educator relating to any condition of
appointment; and

(g) if, in the case of an educator appointed on
probation, the educator's appointment is not
confirmed.

(2) If an educator is discharged from service in terms of
subsection (1)(f), that educator shall be deemed to have
been discharged on account of misconduct.

Discharge on account of ill-health

20L. An educator may be discharged on account of ill-health in
the circumstances referred to in Schedule 1 to the
Employment of Educators Act.

Discharge of educators appointed on probation

20M. (1) If it is not desirable to confirm the appointment, transfer
or promotion of an educator on probation, the employer
may, notwithstanding anything to the contrary
contained in this Act but subject to this section-

(a) extend the period of probation of the educator; or

(b) after reasonable notice to the educator, discharge
the educator from service upon the expiry of the period of probation or any extension thereof.

(2) No appointment, transfer or promotion on probation may be extended, and no educator who is serving on probation may be discharged from service, if-

(a) the educator has been diligent;

(b) the educator's conduct has been uniformly satisfactory;

(c) the educator is in all respects suitable for the post which the educator holds; and

(d) the educator has complied with all the conditions applicable to the educator's appointment, transfer or promotion.

(3) An educator whose transfer or promotion on probation is not confirmed and who immediately before such transfer or promotion was an educator, other than an educator on probation, shall be transferred to the post formerly held by that educator, or to a post of equivalent grading.

Resignation

20N.(1) An educator may resign by giving 90 days' notice in writing or such shorter notice as the employer may approve at the request of the educator.

(2) If the name of an educator is struck off the register of educators kept by the South African Council for
Educators, the educator shall, notwithstanding anything to the contrary contained in this Act, be deemed to have resigned with effect from the day following immediately after the day on which the educator's name was so struck off.

Incapacity and misconduct

200. The incapacity and misconduct of educators are dealt with in accordance with the procedure contemplated in Chapter 5 read with Schedules 1 and 2 to the Employment of Educators Act.

Performance of other work by educators

20P. (1) Unless an educator's conditions of service provide otherwise-

(a) an educator shall place such time as the Minister may determine at the disposal of the employer;

(b) no educator shall without permission of the employer perform or undertake to perform remunerative work outside the educator's official duty or work; and

(c) no educator may claim additional remuneration in respect of any official duty or work which the educator-

(i) performs voluntarily; or

(ii) has been ordered to perform by a competent authority.
(2) The employer may order an educator to perform, on a temporary basis, duties other than those ordinarily assigned to the educator, if such temporary duties are appropriate to the grade, designation or classification of the educator's post.

Transitional arrangements in respect of public centres

20Q. (1) For the purposes of this Chapter and with regard to employment and related matters, an educator employed at a public centre under the Employment of Educators Act prior to 31 December 2010, will continue to be employed on the post establishment of that public centre, and the post occupied by that educator shall be deemed to be a post created by the Member of the Executive Council in terms of this Chapter.

(2) The post establishment of the public centre existing immediately before 31 December 2010 shall be deemed to be the educator establishment of that public centre for the purposes of section 20E.

(3) The employment and related matters contemplated in subsection (1), such as salary and other conditions of service applicable to an educator, shall continue to be applicable to that educator for the purposes of this Act and shall be deemed to have been determined by the Minister in terms of section 20D."

Insertion of Chapter 4A in Act 52 of 2000

5. The following Chapter is hereby inserted in the Adult Basic Education and Training Act, 2000, after Chapter 4:
CHAPTER 4A

Objectives of Chapter

25A. The objectives of this Chapter are to provide for-

(a) the determination of national education policy by the Minister in accordance with certain principles;

(b) the consultations to be undertaken prior to the determination of policy, and the establishment of certain bodies for the purposes of consultation;

(c) the publication and implementation of national education policy; and

(d) the monitoring and evaluation of adult education and training.

Determination of national education policy for centres

25B.(1) The Minister shall determine national education policy in accordance with the provisions of the Constitution and this Act.

(2) In determining national policy for adult education and training at centres, the Minister shall take into account the competence of the provincial legislatures in terms of section 146 of the Constitution, and the relevant provisions of any provincial law relating to adult education and training.

(3) Subject to the Constitution, national policy shall prevail over the whole or a part of any provincial policy on adult
education and training if there is a conflict between the national and provincial policies.

(4) Subject to the provisions of subsections (1) to (3), the Minister shall determine national policy for the planning, provision, financing, coordination, management, governance, programmes, monitoring, evaluation and well-being of the adult education and training system and, without derogating from the generality of this section, may determine national policy for-

(a) adult education and training management information systems, including the provision of data in accordance with the international obligations of the government;

(b) the organisation, management and governance of the national adult education and training system;

(c) facilities, finance and development plans for adult education and training, including advice to the Financial and Fiscal Commission;

(d) innovation, research and development in adult education and training;

(e) the organisation, management, governance, funding, establishment and registration of centres;

(f) curriculum frameworks, core syllabuses and adult education and training programmes, learning standards, examinations and the certification of qualifications, subject to the provisions of any law.
establishing a national qualifications framework or a certifying or accrediting body;

(g) co-operation between the Department and-

(i) other state departments;

(ii) provincial education departments;

(iii) local government; and

(iv) non-government organisations,

with a view to advancing the national education policy contemplated in this section and the Reconstruction and Development Programme;

(h) international relations in the field of adult education and training; and

(i) executive functions required to implement national education policy determined in terms of this Chapter, including the implementation of measures to address past discriminatory practices.

Directive principles of national education policy

25C. The policy contemplated in section 25B shall be directed toward-

(a) the advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter 2 of the Constitution and in terms of international
conventions approved by Parliament, in particular the right-

(i) of every person to be protected against unfair discrimination within or by the Department or centres on any ground whatsoever;

(ii) of every person to receive adult education and training and to have equal access to public centres;

(iii) of every person to gain access to adult education and training;

(iv) of every learner to be instructed in the language of his or her choice where this is reasonably practicable;

(v) of every person to the freedoms of conscience, religion, thought, belief, opinion, expression and association at centres;

(vi) of every person to establish, where practicable, centres based on a common language, culture or religion, as long as there is no discrimination on the ground of race; and

(vii) of every person to use the language and participate in the cultural life of his or her choice at centres;

(b) enabling the adult education and training system to contribute to the full personal development of each learner, and to the moral, social, cultural, political and economic development of the nation at large, including
the advancement of democracy, human rights and the peaceful resolution of disputes;

(c) achieving equitable education opportunities and the redress of past inequality in adult education and training provision, including the promotion of gender equality and the advancement of the status of women;

(d) endeavouring to ensure that no person, as a result of physical disability, is denied the opportunity to receive adult education and training to the maximum of his or her ability;

(e) providing opportunities for and encouraging lifelong learning;

(f) achieving an integrated approach to adult education and training within a national qualifications framework;

(g) cultivating skills, disciplines and capacities necessary for reconstruction and development;

(h) recognising the aptitudes, abilities, interests, prior knowledge and experience of learners;

(i) encouraging independent and critical thought;

(j) promoting a culture of respect for teaching and learning at centres;

(k) promoting enquiry, research and the advancement of knowledge;
(l) enhancing the quality of adult education and training and educational innovation-

(i) through systematic research and development in respect of adult education and training;

(ii) through monitoring and evaluation of adult education and training provision and performance; and

(iii) through the training of educators and adult education and training managers;

(m) ensuring broad public participation in the development of adult education and training policy and the representation of stakeholders in the governance of all aspects of the adult education and training system;

(n) achieving the cost-effective use of adult education and training resources and sustainable implementation of adult education and training services;

(o) achieving close co-operation between the national and provincial governments on matters relating to adult education and training, including the development of capacity in the Department and the effective management of the national adult education and training system.

Consultation on national education policy

25D. (1) Policy contemplated in section 25B shall be determined by the Minister after consultation with the Council of Education Ministers.
(2) The policy contemplated in section 25B shall be determined by the Minister with the concurrence of the Minister of Finance in so far as it involves expenditure from the State Revenue Fund.

(3) Nothing in this section shall limit the discretion of the Minister to consult whomsoever he or she wishes for advice on the determination of national education policy.

Consultation on legislation

25E. Legislation on a matter contemplated in section 25B shall be introduced in Parliament or, in the case of regulations, be published in the Gazette only after consultation between the Minister and-

(a) the Council of Education Ministers, in respect of adult education and training at centres; and

(b) all the parties in the Education Labour Relations Council established by section 40 of the Labour Relations Act, in respect of any matter falling within the objectives of that Act.

Publication of national education policy

25F. The Minister shall within 21 days after determining policy in terms of section 25B-

(a) give notice of such determination in the Gazette and indicate in such notice where the policy instrument with regard to which the notice was issued may be obtained; and
(b) table the policy instrument contemplated in paragraph (a) in Parliament within 21 days after the notice has appeared in the Gazette, if Parliament is then in session, or, if Parliament is in recess, within 21 days after the commencement of the first ensuing session of Parliament.

Monitoring and evaluation of adult education and training

**25G.(1)** The Minister shall direct that the standards of adult education and training provision, delivery and performance throughout the Republic be monitored and evaluated by the Department annually or at other specified intervals, with the object of assessing progress in complying with the provisions of the Constitution and with national adult education and training policy, particularly as determined in terms of section 25B.

**25G.(2)** Each directive issued in terms of subsection (1) shall comply with the provisions of any law establishing a national qualifications framework, and shall be formulated after consultation with the Council of Education Ministers.

**25G.(3)** The Department shall undertake the monitoring and evaluation contemplated in subsection (1) by analysis of data gathered by means of adult education and training management information systems, or by other suitable means, in co-operation with provincial departments of education.

**25G.(4)** The Department shall fulfil its responsibilities in terms of subsections (1) to (3) in a reasonable manner, with a view to enhancing professional capacities in monitoring
and evaluation throughout the national education system, and assisting the competent authorities by all practical means within the limits of available public resources to raise the standards of adult education and training provision and performance.

(5) The Department shall prepare and publish a report on the results of each investigation undertaken in terms of subsection (3) after providing an opportunity for the relevant provincial education department to comment, which comment shall be published with the report.

(6) If a report prepared in terms of subsection (5) indicates that the standards of adult education and training provision, delivery and performance in a province do not comply with the Constitution or with the policy determined in terms of section 25B, the Minister shall inform the provincial political head of education concerned and require the submission, within 90 days, of a plan to remedy the situation.

(7) A plan required by the Minister in terms of subsection (6) shall be prepared by the provincial education department concerned, in consultation with the Department, and the Minister shall table the plan in Parliament with his or her comments within 21 days of receipt, if Parliament is then in session, or, if Parliament is in recess, within 21 days after the commencement of the first ensuing session of Parliament.
Functions of Council of Education Ministers in respect of adult education and training

25H. The Council of Education Ministers must-

(a) promote a national adult education and training policy which takes full account of the policies of the government;

(b) share information and views on all aspects of adult education and training in the Republic; and

(c) co-ordinate action on matters of mutual interest to the national and provincial governments.

Functions of Heads of Education Departments Committee in respect of adult education and training

25I. The Heads of Education Departments Committee established by section 41I of the Further Education and Training Act, 2006 (Act No. 16 of 2006), must-

(a) facilitate the development of a national adult education and training system in accordance with the objectives and principles provided for in this Act;

(b) share information and views on national adult education and training;

(c) co-ordinate administrative action on matters of mutual interest to the Department and the provincial education departments; and
(d) advise the Department on any matter contemplated in sections 25B to 25G and 25J in respect of adult education and training or on any other matter relating to the proper functioning of the national adult education and training system.

Transitional arrangements regarding policy

25J. Any policy determined in terms of the National Education Framework Act, 1996 (Act No. 27 of 1996), up to 31 December 2010 and applicable to Adult Basic Education and Training Centres remains in force and effect until amended or repealed by the Minister in terms of this Act.

Substitution of section 32 of Act 52 of 2000, as substituted by section 29 of Act 50 of 2002

6. The following section is hereby substituted for section 32 of the Adult Basic Education and Training Act, 2000:

"Quality assurance of public and private centres

32. (1) Umalusi must, in accordance with the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001), read with the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), perform the functions relating to a Quality Council in respect of all qualifications offered by a public or private centre.

(2) For the purposes of this section, "Umalusi" means the council established by section 4 of the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001)."
Substitution of section 44 of Act 52 of 2000

7. The following section is hereby substituted for section 44 of the Adult Basic Education and Training Act, 2000:

“Short title

44. This Act is called the Adult [Basic] Education and Training Act, 2000.”.

Substitution of certain expressions in Act 52 of 2000

8. The Adult Basic Education and Training Act, 2000, is hereby amended by-

(a) the substitution for the expression "NABABET", wherever it occurs, of the expression "NABAET";

(b) the substitution for the expression "adult basic education and training", wherever it occurs, of the expression "adult education and training"; and

(c) the substitution for the expression "provincial department of education", wherever it occurs, of the expression "provincial education department".

Amendment of section 1 of Act 16 of 2006

9. Section 1 of the Further Education and Training Colleges Act, 2006, is hereby amended by-

(a) the substitution for paragraph (b) of the definition of "college" of the following paragraph:
"(b) a college under the authority of a government department other than the Department [of Education];";

(b) the substitution for the definition of "Department" of the following definition:

" 'Department' means the [government department responsible for education at national level] Department of Higher Education and Training;"; and

(c) the substitution for the definition of "Minister" of the following definition:

" 'Minister' means the Minister of Higher Education and Training;".

Insertion of Chapter 6A in Act 16 of 2006

10. The following Chapter is hereby inserted in the Further Education and Training Colleges Act, 2006, after Chapter 6:

"CHAPTER 6A

Objectives of Chapter

41A. The objectives of this Chapter are to provide for-

(a) the determination of national education policy by the Minister in accordance with certain principles;

(b) the consultations to be undertaken prior to the determination of policy, and the establishment of certain bodies for the purposes of consultation;
(c) the publication and implementation of national education policy; and

(d) the monitoring and evaluation of education and training within the scope of qualifications offered by a further education and training college.

Determination of national education policy for colleges

41B. (1) The Minister shall determine national education policy in accordance with the provisions of the Constitution and this Act.

(2) In determining national policy for education and training at colleges, the Minister shall take into account the competence of the provincial legislatures in terms of section 146 of the Constitution, and the relevant provisions of any provincial law relating to education.

(3) Subject to the Constitution, national policy shall prevail over the whole or a part of any provincial policy on further education and training if there is a conflict between the national and provincial policies.

(4) Subject to the provisions of subsections (1) to (3), the Minister shall determine national policy for the planning, provision, financing, coordination, management, governance, programmes, monitoring, evaluation and well-being of the further education and training system and, without derogating from the generality of this section, may determine national policy for-

(a) further education and training management
information systems, including the provision of data in accordance with the international obligations of the government;

(b) the organisation, management and governance of the national further education and training system;

(c) facilities, finance and development plans for further education and training, including advice to the Financial and Fiscal Commission;

(d) innovation, research and development in further education and training;

(e) the organisation, management, governance, funding, establishment and registration of colleges;

(f) curriculum frameworks, core syllabuses and further education and training programmes, learning standards, examinations and the certification of qualifications, subject to the provisions of any law establishing a national qualifications framework or a certifying or accrediting body;

(g) co-operation between the Department and-

(i) other state departments;

(ii) provincial education departments;

(iii) local government; and

(iv) non-government organisations, with a view to advancing the national education policy
contemplated in this section and the
Reconstruction and Development Programme;

(h) international relations in the field of further
education and training;

(i) executive functions required to implement national
education policy determined in terms of this
Chapter, including the implementation of measures
to address past discriminatory practices.

Directive principles of national education policy

41C. The policy contemplated in section 41B shall be directed
toward-

(a) the advancement and protection of the fundamental
rights of every person guaranteed in terms of Chapter 2
of the Constitution and in terms of international
conventions approved by Parliament, in particular the
right-

(i) of every person to be protected against unfair
discrimination within or by the Department or
colleges on any ground whatsoever;

(ii) of every person to receive further education and to
have training and equal access to public colleges;

(iii) of a parent or guardian in respect of the further
education and training of his or her child or ward;

(iv) of every child in respect of his or her further
education and training;
(v) of every student to be instructed in the language of his or her choice where this is reasonably practicable;

(vi) of every person to the freedoms of conscience, religion, thought, belief, opinion, expression and association at colleges;

(vii) of every person to establish, where practicable, colleges based on a common language, culture or religion, as long as there is no discrimination on the ground of race; and

(viii) of every person to use the language and participate in the cultural life of his or her choice at colleges;

(b) enabling the further education and training system to contribute to the full personal development of each student, and to the moral, social, cultural, political and economic development of the nation at large, including the advancement of democracy, human rights and the peaceful resolution of disputes;

(c) achieving equitable education opportunities and the redress of past inequality in further education and training provision, including the promotion of gender equality and the advancement of the status of women;

(d) endeavouring to ensure that no person, as a result of physical disability, is denied the opportunity to receive further education and training to the maximum of his or her ability;
(e) providing opportunities for and encouraging lifelong learning;

(f) achieving an integrated approach to adult education and training within a national qualifications framework;

(g) cultivating skills, disciplines and capacities necessary for reconstruction and development;

(h) recognising the aptitudes, abilities, interests, prior knowledge and experience of students;

(i) encouraging independent and critical thought;

(j) promoting a culture of respect for teaching and learning at colleges;

(k) promoting enquiry, research and the advancement of knowledge;

(l) enhancing the quality of further education and training and educational innovation-

   (i) through systematic research and development on further education and training;

   (ii) through monitoring and evaluating the further education and training provision and performance; and

   (iii) through the training of educators and further education and training managers;
(m) ensuring broad public participation in the development of further education and training policy and the representation of stakeholders in the governance of all aspects of the further education and training system;

(n) achieving the cost-effective use of further education and training resources and sustainable implementation of further education and training services;

(o) achieving close co-operation between the national and provincial governments on matters relating to further education and training, including the development of capacity in the Department, and the effective management of the national further education and training system.

Consultation on national education policy

41D.(1) Policy contemplated in section 41B shall be determined by the Minister after consultation with the Council of Education Ministers established by section 41H.

(2) The policy contemplated in section 41B shall be determined by the Minister with the concurrence of the Minister of Finance in so far as it involves expenditure from the State Revenue Fund.

(3) Nothing in this section shall limit the discretion of the Minister to consult whomsoever he or she wishes for advice on the determination of national education policy.
Consultation on legislation

41E. Legislation on a matter contemplated in section 41B shall be introduced in Parliament or, in the case of regulations, be published in the Gazette only after consultation between the Minister and-

(a) the Council of Education Ministers established by section 41H in respect of further education and training at colleges; and

(b) all the parties in the Education Labour Relations Council referred to in section 54(3) in respect of any matter falling within the functions of the bargaining council.

Publication of national education policy

41F. The Minister shall within 21 days after determining policy in terms of section 41B-

(a) give notice of such determination in the Gazette and indicate in such notice where the policy instrument issued with regard thereto may be obtained;

(b) table the policy instrument contemplated in paragraph (a) in Parliament within 21 days after the notice has appeared in the Gazette, if Parliament is then in session, or, if Parliament is in recess, within 21 days after the commencement of the first ensuing session of Parliament.

Monitoring and evaluation of further education and training

41G. (1) The Minister shall direct that the standards of further
education and training provision, delivery and performance throughout the Republic be monitored and evaluated by the Department annually or at other specified intervals, with the object of assessing progress in complying with the provisions of the Constitution and with national further education and training policy, particularly as determined in terms of section 41B.

(2) Each directive issued in terms of subsection (1) shall comply with the provisions of any law establishing a national qualifications framework, and shall be formulated after consultation with the Council of Education Ministers referred to in section 41D(1).

3) The Department shall undertake the monitoring and evaluation contemplated in subsection (1) by analysis of data gathered by means of further education and training management information systems, or by other suitable means, in co-operation with provincial education departments.

(4) The Department shall fulfil its responsibilities in terms of subsections (1) to (3) in a reasonable manner, with a view to enhancing professional capacities in monitoring and evaluation throughout the national education system, and assisting the competent authorities by all practical means within the limits of available public resources to raise the standards of further education and training provision and performance.

(5) The Department shall prepare and publish a report on the results of each investigation undertaken in terms of subsection (3) after providing an opportunity for the provincial education department concerned to
comment, which comment shall be published with the report.

(6) If a report prepared in terms of subsection (5) indicates that the standards of further education and training provision, delivery and performance in a province do not comply with the Constitution or with the policy determined in terms of section 41B, the Minister shall inform the provincial political head of education concerned and require the submission, within 90 days, of a plan to remedy the situation.

(7) A plan required by the Minister in terms of subsection (6) shall be prepared by the provincial education department concerned, in consultation with the Department, and the Minister shall table the plan in Parliament with his or her comments within 21 days of receipt, if Parliament is then in session, or, if Parliament is in recess, within 21 days after the commencement of the first ensuing session of Parliament.

Council of Education Ministers

41H.(1) There is hereby established a council, called the Council of Education Ministers, consisting of-

(a) the Minister, who is the chairperson; and

(b) every provincial political head of education.

(2) The Director-General shall attend meetings of the Council of Education Ministers in order to report on the proceedings of the Heads of Education Departments Committee established by section 41I, and to advise on
any other matter relating to the responsibilities of the Department.

(3) The chairpersons of the Portfolio Committee on Higher Education and Training of the National Assembly and of the Select Committee on Education and Recreation of the National Council of Provinces may attend meetings of the Council of Education Ministers.

(4) The functions of the Council of Education Ministers shall be to:

(a) promote national further education and training which take full account of the policies of the government;

(b) share information and views on all aspects of further education and training in the Republic; and

(c) co-ordinate action on matters of mutual interest to the national and provincial governments.

(5) The Council of Education Ministers may draw up such rules regarding the convening of its meetings, the frequency of its meetings, the procedure at its meetings, including the quorum for its meetings, and any other administrative or procedural matter it may deem necessary or expedient for the proper performance of its functions or the exercise of its powers.

(6) The proceedings of the Council of Education Ministers shall not be invalid merely by virtue of the fact that there is a vacancy in the Council.
Heads of Education Departments Committee

41. (1) There is hereby established a committee, called the Heads of Education Departments Committee (in this section referred to as the Committee), consisting of-

(a) the Director-General, who shall be the chairperson;

(b) the Deputy Directors-General of the Department; and

(c) the Heads of the provincial education departments.

(2) The functions of the Committee shall be to-

(a) facilitate the development of a national further education and training system in accordance with the objectives and principles provided for in this Act;

(b) share information and views on national further education and training;

(c) co-ordinate administrative action on matters of mutual interest to the higher education and training departments; and

(d) advise the Department on any matter contemplated in sections 41B to 41G and 41J in respect of further education and training, or on any other matter relating to the proper functioning of the national further education and training system.
(3) The Committee may establish subcommittees to assist it in the performance of its functions, and-

(a) may appoint persons who are not members of the Committee to be members of a subcommittee: Provided that the organised teaching profession shall be invited to nominate representatives as members of each subcommittee;

(b) designate the chairperson of a subcommittee or direct that the chairperson be appointed by the subcommittee from among its members.

(4) (a) Meetings of the Committee shall be held at such times and places as the chairperson of the Committee may determine.

(b) The proceedings of the Committee shall not be invalid merely by virtue of the fact that there is a vacancy in the Committee.

(c) If the chairperson of the Committee is absent from a meeting of the Committee, one of the Deputy Directors-General designated for this purpose by the chairperson shall take the chair at that meeting.

(5) The Committee may draw up rules regarding the convening of meetings, the frequency of meetings, the procedure at meetings, including the quorum for meetings, and any other administrative or procedural matter it may deem necessary or expedient for the proper performance of its functions or the exercise of its powers: Provided that the Committee shall not hold less than four meetings per year.
Allowances and remuneration of members of subcommittees

41J. A member of a subcommittee who is not in the full-time employment of the State may, in respect of the services rendered by that member in connection with the affairs of the subcommittee and from money appropriated for that purpose by Parliament, be paid such travelling and subsistence and other allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

Administrative functions of Council and Committee

41K.(1) The administrative functions of the Council established by section 41H and the Committee established by section 41I shall be performed by officials of the Department who are designated by the Director-General for that purpose.

(2) The Director-General shall in respect of the Council and the Committee contemplated in subsection (1) designate a Secretary under whose direction the other officials shall perform their functions.

Consultative bodies

41L.(1) The Minister may by regulation establish a body to be known as the National Education and Training Council and other bodies to advise him or her on any matter contemplated in section 41B or any matter identified by the Minister.

(2) The composition, qualifications for membership, duties, powers and functions of a body established in terms of
subsection (1), and the term of office of its members, shall be as prescribed by regulation.

Transitional arrangements regarding policy

41M. Any policy determined in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996), up to 31 December 2010 and applicable to Further Education and Training Colleges remains in force and effect until amended or repealed by the Minister in terms of this Act.

Amendment of section 42 of Act 16 of 2006

11. Section 42 of the Further Education and Training Colleges Act, 2006, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"Subject to the norms and standards set by the Minister in terms of section 3 of the National Education Policy Act, 1996 (Act 27 of 1996), and by SAQA,] section 41B, the Director-General must-
"

Amendment of section 43 of Act 16 of 2006

12. Section 43 of the Further Education and Training Colleges Act, 2006, is hereby amended by-

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

"(1) The Minister may prescribe minimum norms and standards for further education and training programmes, leading to qualifications within the sub-framework for general and further education and training contemplated in
section 7(a) read with section 13(1)(h) of the National Qualifications Framework Act, that are offered at colleges."

and

(b) the addition of the following subsection:

"(5) A college may apply to the Quality Council for Trades and Occupations established in terms of section 26G of the Skills Development Act, 1998 (Act No. 97 of 1998), for accreditation as a Skills Development Provider in order to offer qualifications registered on the sub-framework for Trades and Occupations contemplated in section 7(c) of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008).".

Short title

Higher Education Laws Amendment Act 26 of 2010

To amend-

• the Higher Education Act, 1997, so as to amend certain definitions; to ensure that all higher education programmes offered in South Africa by a foreign juristic person are registered on the National Qualifications Framework; and to ensure that higher education institutions may offer a degree, diploma or certificate only if it is registered on the National Qualifications Framework; the Skills Development Act, 1998, so as to amend certain definitions; to provide for the appointment of the chief executive officer of the QCTO and for the transfer to and appointment of staff to the QCTO; and to further regulate the composition of the QCTO; the National Student Financial Aid Scheme Act, 1999, so as to amend certain definitions; and the National Qualifications Framework Act, 2008, so as to amend a definition and delete another: to amend the application of the Act in order to require that all qualifications offered in the
Republic are registered on the National Qualifications Framework; and to remove references in the said Act to the Minister of Labour;

and to provide for matters connected therewith.


1. Section 1 of the Higher Education Act, 1997, is hereby amended by-

(a) the substitution for the definition of "Department of Education" of the following definition:

"'Department of Education' means the Government department responsible for education at national level Department of Higher Education and Training;";

(b) the substitution for the definition of "Director-General" of the following definition:

"'Director-General' means the Director-General of the Department of Higher Education and Training;"; and

(c) the substitution for the definition of "Minister" of the following definition:

"'Minister' means the Minister of Higher Education and Training;".
Substitution of section 51 of Act 101 of 1997, as substituted by section 6 of Act 54 of 2000

2. The following section is hereby substituted for section 51 of the Higher Education Act, 1997:

"Registration of private higher education institutions

51. (1) No person other than a public higher education institution or an organ of state may provide higher education unless that person is-

(a) in the prescribed manner, registered or conditionally registered as a private higher education institution in terms of this Act; and

(b) registered or recognised as a juristic person in terms of the Companies Act, 1973 (Act No. 61 of 1973), before such person is registered or conditionally registered [as contemplated in] in accordance with paragraph (a),

(2) If the person contemplated in subsection (1) is a foreign juristic person, that person must ensure that any qualification or part-qualification offered within the Republic is registered on the sub-framework for higher education on the National Qualifications Framework contemplated in section 7(b) read with section 13(1)(h) of the National Qualifications Framework Act.".
Insertion of section 65D in Act 101 of 1997

3. The following section is hereby inserted in the Higher Education Act, 1997, after section 65C:

"Qualifications registered on National Qualifications Framework

65D. (1) No person may offer, award or confer a degree, or a higher education diploma or a higher education certificate, provided for on the HEQF unless such degree, diploma or certificate is registered on the sub-framework for higher education on the National Qualifications Framework contemplated in section 7(b) read with section 13(1)(h) of the National Qualifications Framework Act.

(2) Notwithstanding subsection (1), a public higher education institution intending to offer any education programme or trade and occupational learning programme that leads to a qualification or part-qualification on the sub-framework for trade and occupation contemplated in section 7(c) of the National Qualifications Framework Act may offer the qualification or part-qualification subject to-

(a) the approval of the Minister; and

(b) compliance with any condition set by the Minister."

4. Section 1 of the Skills Development Act, 1998, is hereby amended by-

   (a) the substitution for the definition of "Department" of the following definition:

   "Department' means the Department of [Labour] Higher Education and Training, except in-

   (a) sections 2(1)(g) and (h), 2(2)(a)(v), (vi) and (xii), 5(4) (only with respect to Productivity South Africa established by section 26K), 22(1), 23(1)(a) and (d), (2) and (3), 24, 25, 26, 26K, 26L, 26M, 26N, 32(2),36(o), (p) and (q), item 7 of Schedule 2A and Schedule 4; and

   (b) sections 32(1), 33 and 36(a) and (s) and any other provision to the extent that these provisions apply to 'employment services' defined in section 1 or to Productivity South Africa established by section 26K, but excluding section 23(1)(b) and (c),

   where it means the Department of Labour;"

   (b) the substitution for the definition of "Director-General" of the following definition:

   "Director-General' means the Director-General of [Labour] Higher Education and Training;"; and
(c) the substitution for the definition of "Minister" of the following definition:

"'Minister' means the Minister of [Labour] Higher Education and Training, except in-

(a) sections 2(1)(g) and (h), 2(2)(a)(v), (vi) and (xii), 5(4) (only with respect to Productivity South Africa established by section 26K), 22(1), 23(1)(a) and (d), (2) and (3), 24, 25, 26, 26K, 26L, 26M, 26N, 32(2), 36(o), (p) and (q), item 7 of Schedule 2A and Schedule 4; and

(b) sections 32(1), 33 and 36(a) and (s) and any other provision to the extent that these provisions apply to 'employment services' defined in section 1 or to Productivity South Africa established by section 26K, but excluding section 23(1)(b) and (c),

where it means the Minister of Labour;"

Amendment of section 26 of Act 97 of 1998, as inserted by section 11 of Act 37 of 2008

5. Section 26G of the Skills Development Act, 1998, is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) (a) The Minister must appoint the chief executive officer of the QCTO on the recommendation of the members of the OCTO.

(b) If the Minister does not agree with the recommendation of the members of the QCTO, they must make another
recommendation for consideration by the Minister.

(c) The QCTO must appoint such number of employees to assist the QCTO in the performance of its functions as it may deem necessary.

(d) Despite paragraph (a), the QCTO is the employer of the executive officer and employees and must determine their remuneration, allowances, subsidies and other conditions of service.

(e) Staff identified in posts on the establishment of the Department who immediately before the commencement of the Higher Education Laws Amendment Act, 2010, performs functions relating to the administrative management of the QCTO may, subject to section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995), be appointed or transferred to the QCTO.”.

Amendment of Schedule 3 to Act 97 of 1998, as added by section 16 of Act 37 of 2008

6. Schedule 3 to the Skills Development Act, 1998, is hereby amended by-

(a) the substitution in item 1(1) for paragraph (b) of the following paragraph:

"(b) the chief executive officer of the SAQA;"; and

(b) the substitution in item 1(1) for paragraphs (d) and (e) of the following paragraphs, respectively:
"(d) the chief executive officer of the QCTO;

(e) the chief executive director officer of the Higher Education Quality Committee Council on Higher Education established in terms of section 74 of the Higher Education Act, 1997 (Act No. 101 of 1997);".

Amendment of section 1 of Act 56 of 1999, as amended by section 13 of Act 31 of 2007

7. Section 1 of the National Student Financial Aid Scheme Act, 1999, is hereby amended by-

(a) the substitution for the definition of "Department" of the following definition:

" 'Department' means the government department responsible for education at national level Department of Higher Education and Training;"; and

(b) the substitution for the definition of "Minister" of the following definition:

" 'Minister' means the Minister of Higher Education and Training;".

Amendment of section 1 of Act 67 of 2008

8. Section 1 of the National Qualifications Framework Act, 2008, is hereby amended-

(a) by the substitution for the definition of "Minister" of the following definition:
"Minister' means the Minister of Higher Education and Training;"; and

(b) by the repeal of the definition of "relevant Minister".

Substitution of section 3 of Act 67 of 2008

9. The following section is hereby substituted for section 3 of the National Qualifications Framework Act, 2008:

"Application of Act

3. (1) This Act applies to-

(a) education programmes or learning programmes that lead to qualifications or part-qualifications offered within the Republic by-

(i) education institutions; and

(ii) skills development providers; and

(b) professional designations,

subject to the limitations prescribed in this Act.

(2) Every qualification or part-qualification contemplated in subsection (1) must be registered on the National Qualifications Framework in accordance with this Act.”

Amendment of section 8 of Act 67 of 2008

10. Section 8 of the National Qualifications Framework Act, 2008, is
hereby amended-

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

"(c) QC for General and Further Education and Training, [and] the QC for Higher Education and the QC for Trades and Occupations contemplated in Chapter 5;"

(b) by the substitution in subsection (2) for paragraphs (b) and (c) of the following paragraphs, respectively:

"(b) determine policy on NQF matters in terms of this Act [, after consultation with the Minister of Labour,] and publish the policy in the Gazette;

(c) [after consultation with the Minister of Labour,] publish guidelines which set out the government's strategy and priorities for the NQF, and which may be updated annually;"

(c) by the substitution in subsection (2) for paragraphs (e) and (f) of the following paragraphs, respectively:

"(e) [determine,] after considering advice from the SAQA [and after consultation with the Minister of Labour], determine the sub-frameworks contemplated in section 7 [(a) and (b), respectively,] and publish them in the Gazette; and

(f) determine, by regulation in the Gazette, [after consultation with the Minister of Labour,] the process by which a dispute involving the SAQA or a QC must be resolved, and any matter relating thereto."; and
(d) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"The Minister [, after consultation with the Minister of Labour,] must-".

**Repeal of section 9 of Act 67 of 2008**

11. Section 9 of the National Qualifications Framework Act, 2008, is hereby repealed.

**Amendment of section 13 of Act 67 of 2008**

12. Section 13 of the National Qualifications Framework Act, 2008, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) advise the Minister [and the Minister of Labour] on NQF matters in terms of this Act.".

**Amendment of section 14 of Act 67 of 2008**

13. Section 14 of the National Qualifications Framework Act, 2008, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

"(a) 12 members appointed in their personal capacities by the Minister [after consultation with the Minister of Labour];".

**Amendment of section 27 of Act 67 of 2008**

14. Section 27 of the National Qualifications Framework Act, 2008, is hereby amended-
(a) by the substitution for paragraphs (e) and (f) of the following paragraphs, respectively:

"(e) develop and manage its sub-framework, and make recommendations thereon to the [relevant] Minister;

(f) advise the [relevant] Minister on matters relating to its sub-framework;"; and

(b) by the substitution in paragraph (k) for subparagraph (iv) of the following subparagraph:

"(iv) perform any function consistent with this Act that the [relevant] Minister may determine.".

Substitution of long title of Act 67 of 2008

15. The following long title is hereby substituted for the long title of the National Qualifications Framework Act, 2008:

"To provide for the National Qualifications Framework; to provide for the responsibilities of the Minister of Higher Education and [the Minister of Labour] Training; to provide for the South African Qualifications Authority; to provide for Quality Councils; to provide for transitional arrangements; to repeal the South African Qualifications Authority Act, 1995; and to provide for matters connected therewith."

Short title

16. This Act is the Higher Education Laws Amendment Act, 2010.
CONTINUING EDUCATION AND TRAINING ACT

CONTINUING EDUCATION AND TRAINING ACT 16 OF 2006
(Short title; previously ‘Further Education and Training Colleges’, substituted by s. 20 of Act 1 of 2013)

[Assented To 5 December 2006]
[Date of Commencement: 11 December 2006]

as amended by:

Higher Education and Training Laws Amendment Act 25 of 2010
Further Education and Training Colleges Amendment Act 3 of 2012
Further Education and Training Colleges Amendment Act 1 of 2013

REGULATIONS UNDER THIS ACT

To provide for the regulation of continuing education and training; to provide for the establishment, governance and funding of public technical and vocational education and training colleges and public community education and training colleges; to provide for the employment of staff at those colleges; to provide for the registration of private colleges that offer continuing education and training qualifications and part-qualifications; to provide for the establishment of the South African Institute for Vocational and Continuing Education and Training; to provide for the promotion of quality in continuing education and training; to provide for transitional arrangements and the repeal or amendment of laws; to provide for matters connected therewith.

[Long title substituted by s. 23 of Act 1 of 2013.]
WHEREAS it is desirable to-

ESTABLISH a national co-ordinated continuing education and training system which promotes co-operative governance and provides for program-based vocational and occupational training;

RESTRICTURE AND TRANSFORM programmes and colleges to respond better to the human resources, economic and development needs of the Republic;

REDRESS past discrimination and ensure representivity and equal access;

ENSURE access to basic adult education, further education and training and the workplace through continuing education and training by persons who have been marginalised in the past, such as women, the disabled and the disadvantaged;

PROVIDE optimal opportunities for learning, the creation of knowledge and the development of intermediate to high level skills in keeping with international standards of academic and technical quality;

PROMOTE the values which underlie an open and democratic society based on human dignity, equality and freedom;

ADVANCE strategic priorities determined by national policy objectives at all levels of governance and management within the continuing education and training sector;

RESPECT and encourage democracy and foster a collegial culture which promotes fundamental human rights and creates an appropriate environment for teaching and learning;

PURSUE excellence, and promote the full realisation of the potential of every student and member of staff, tolerance of ideas and appreciation of diversity;
RESPOND to the needs of the Republic, the labour market and the communities served by the colleges; and

COMPLEMENT the National Skills Development Strategy;

AND WHEREAS it is desirable for community education and training colleges and technical and vocational education and training colleges to perform specific functions by offering basic adult education and further education contemplated in section 29 (1) of the Constitution of the Republic Of South Africa, 1996, within the context of public accountability and the national need for intermediate to high level skills and knowledge and to provide access to work and higher education,

[Preamble substituted by s. 22 of Act 1 of 2013.]

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

ARRANGEMENT OF ACT

SECTION

CHAPTER 1
DEFINITIONS, PURPOSE AND APPLICATION OF ACT

1. Definition
2. Purpose of the Act

CHAPTER 2
PUBLIC COLLEGES

3. Establishment of public college
4. Declaration of institution as public college
5. Consequences of declaration as public college
6. Merger of public colleges
7. Single council for two or more public colleges
8. Closure of public college
CHAPTER 3
GOVERNANCE OF PUBLIC COLLEGES

9. Public college governance structures
10. Council of public college
11. Academic board of public college
12. Committees of council and academic board
13. Principal of public college
14. Student representative council
15. Disciplinary measures
16. Prohibition of corporal punishment and initiation practices
17. Admission policy of public college
18. Standard college statute

CHAPTER 4
APPOINTMENT OF MANAGEMENT STAFF, LECTURERS AND SUPPORT STAFF IN PUBLIC COLLEGES

19. ...... [S. 19 repeated by s.11 of Act 3 of 2012.]
20. Appointment of staff [S. 20 substituted by s.12 of Act 3 of 2012 insofar as it applies to management staff.]
21. Dispute resolution between college, lecturers and support staff

CHAPTER 5
FUNDING OF PUBLIC COLLEGES

22. Responsibility of State
23. Norms and standards for funding of public colleges
24. Funds of public colleges
25. Financial records and statements of public colleges
26. Failure of council to comply with Act or certain conditions

CHAPTER 6
PRIVATE COLLEGES

27. Designations of registrar
28. Registration of private college
29. Application for registration
30. Requirements for registration
31. Determination of application for registration
32. Certificate of registration
33. Inspection of register and auditor’s report
34. Records and audits
35. Amendment of registration and provisional registration
36. Requirements for amendment of registration or provisional registration and determination of application
37. Conditions for registration
38. Amendment or cancellation of conditions
39. Cancellation of registration
40. Steps before amendment or cancellation
41. Appeal to Minister

CHAPTER 6A

[Chapter 6A inserted by s. 10 of Act 25 of 2010.]

41A. Objectives of Chapter

[S. 41A inserted by s. 10 of Act 25 of 2010.]

41B. Determination of national education policy for colleges

[S. 41B inserted by s. 10 of Act 25 of 2010.]

41C. Directive principles of national education policy

[S. 41C inserted by s. 10 of Act 25 of 2010.]

41D. Consultation on national educational policy

[S. 41D inserted by s. 10 of Act 25 of 2010.]

41E. ......  
[S. 41E inserted by s. 10 of Act 25 of 2010 repealed by s. 23 of act 3 of 2012.]

41F. Publication of national education policy

[S. 41F inserted by s. 10 of Act 25 of 2010.]

41G. Monitoring and evaluation of further education and training

[S. 41G inserted by s. 10 of Act 25 of 2010.]

41H. to 41K. inclusive ......  
[Ss. 41H to 41K inclusive inserted by s .10 of Act 25 OF 2010 repealed by s.23 of Act 3 of 2012.]
41L. Consultative bodies
[S. 41L inserted by s. 10 of Act 25 of 2010.]

41M. Transitional arrangements regarding policy
[S. 41M inserted by s. 10 of Act 25 of 2010.]

CHAPTER 7
PROMOTION OF QUALITY

42. Promotion of quality in continuing education and training
[Heading substituted by s. 13 (a) of Act 1 of 2013.]

43. Continuing education and training qualifications or part-qualifications
[Heading substituted by s. 14 (a) of Act 1 of 2013.]

CHAPTER 8
GENERAL

44. Strategic plan and annual report
45. Duty of colleges to provide information
46. Investigation at public college, and appointment of administrator
47. Name change of public college
48. Offences
49. Limitations of liability
50. Delegation of functions
51. Regulations
52. Application of Act when in conflict with other laws

CHAPTER 9
TRANSITIONAL AND OTHER ARRANGEMENTS

53. Existing public further education and training institutions, structures and bodies
54. Staff
55. Application for registration by private colleges
56. National Board for Further Education and Training (NBFET)
57. Disciplinary measures
CHAPTER 1

DEFINITIONS, PURPOSE AND APPLICATION OF ACT (ss 1-2)

1 Definitions

In this act, unless the context indicates otherwise-

"academic board" means the body contemplated in section 11;

"applicant" means a person who makes an application contemplated in section 29;

"auditor" means a person registered in terms of the Auditing Profession Act, 2005 (Act 26 of 2005);

"Basic Condition of Employment Act" means the Basic Condition of Employment Act, 1997 (Act 75 of 1997);

"college" means-

(a) A public college that is established or declared as

   (i) a technical and vocational education and training college; or

   (ii) a community education and training college; or
(b) a private college that is established, declared or registered under this Act, but does not include a college under the authority of a government department other than the Department;

[Definition of “college” as amended by s. 9 (a) of Act 25 of 2010 and substituted by s. 1 (a) of Act 1 of 2013.]

“college statute” means policy, code of conduct and any other rules developed by a council in accordance with this Act;

“continuing education and training” means all learning and training programmes leading to qualifications or part-qualifications at levels 1 to 4 of the National Qualifications Framework contemplated in the National Qualification Framework Act, 2008 (Act 67 of 2008), provided for at a college in terms of this Act;

[Definition of “contributing education and training” Inserted by s. 1 (b) of Act 1 of 2013.]

“council” means the governing structure of a public college;

“Department” means the Department of Higher Education and Training;

[Definition of “department” substituted by s. 9 (b) of Act 25 of 2010.]

“Director-General” means the Director-General of the Department;

“Employment Equity Act” means the Employment Equity Act, 1998 (Act 55 of 1998);

“financial year” in respect of a college means a year commencing on the first day of January and ending on the 31st day of December of the same year;

“foreign juristic person” means a person that is
(a) registered or established as a juristic person in terms of a law of a foreign country; and

(b) recognised or registered as an external company in terms of the Companies Act, 1973 (Act 61 of 1973)
“further education and training”......
[Definition of “continuing education and training” deleted by s.1(c) of Act 1 of 2013.]

“general education”......
[Definition of “general education” deleted by s.1(c) Act 1 of 2013.]

“Head of Department”......
[Definition of “Head of department” deleted by s. 1(a) of Act 1 of 2013.]

“higher education” means higher education as defined in the Higher Education Act, 1997 (Act 101 of 1997);

“Institute” means the South African Institute for Vocational and Continuing Education and Training established by the Minister in terms of section 43A
[Definition of “institute” inserted by s.1(d) of Act 1 of 2013.]


“lecturer” means any person who teaches, educates or trains other persons or who provides professional educational services at any college, and who is appointed in a post on any lecturer establishment under this Act;

“local juristic person” means a person established as a juristic person in South Africa in terms of the Companies Act, 1973 (Act 61 of 1973);

“management staff” means the principal and vice-principal of a public college;

“Member of the Executive Council”......
[Definition of “Member of the Executive Council” deleted by s. 1(b) of Act 3 of 2012.]

“Minister” means the Minister of Higher Education and Training;
[Definition of “Minister” substituted by s. 9(c) of Act 25 of 2010.]
“National Qualifications Framework” means the national qualifications framework contemplated in Chapter 2 of the National Qualifications Framework Act, 2008 (Act 67 of 2008);

[Definition of “National Qualifications framework” substituted by s.1 (e) of Act 1 of 2013.]

“NBFET” means the National Board for Further Education and Training, established by regulation in terms of section 11 of the National Education Policy Act, 1996 (Act 27 of 1996);

“organ of state” means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;

“policy” means -

(a) policy determined by the Minister in terms of the National Education Policy Act, 1996 (Act 27 of 1996); or

(b) ……

[Para.(b) deleted by s. 1 (c) of Act 3 of 2012.]

“prescribed” means prescribed by regulation made in terms of section 51;

“principal” means the chief executive and accounting officer of a public college, and includes a rector of a public college;

“private college” means any college that provides continuing education and training on a full-time, part-time or distance basis and which is registered or provisionally registered as a private college under Chapter 6 of this Act;

[Definition of “private college” substituted by s. 1 (f) of Act 1 of 2013.]

“PSCBC” means the Public Service Coordinating Bargaining Council established in terms of the Labour Relations Act;
“public college” means any college that provides continuing education and training on a full-time, part-time or distance basis and which is-

(a) established or regarded as having been established as a public college under section 3 of this Act; or

(b) declared as a public college under section 4 of this Act; and

[Definition of “Public College” substitute by s. 1 (g) of Act 1 of 2013.]

“Public Service Act” means the Public Service Act, 1994 (Proclamation 103 of 1994);

“SAQA” means the South African Qualifications Authority, established by section 10 of the National Qualifications Framework Act, 2008 (Act 67 of 2008);

[Definition of “SAQA” substituted by s. 1 (d) of Act 3 of 2012.]

“school” means a school as defined in the South African Schools Act;

“South African Schools Act” means the South African Schools Act, 1996 (Act 84 of 1996);

“staff” means persons employed at a public college;

“student” means any person registered as a student at a college;

“support staff” includes staff who render-

(a) academic support services;

(b) student support services;

(c) human resource management;

(d) financial management;
(e) administration;

(f) maintenance of the buildings and gardens;

(g) catering services; and

(h) security services;

“this Act” includes any regulation made in terms of section 51;

“to provide continuing education and training” means-

(a) to register students for all learning and training programmes leading to qualifications or part-qualifications at levels 1 to 4 of the National Qualifications Framework provided for at a college in terms of this Act; and

(b) to take responsibility for the registration of students, the provision and delivery of the curriculum and the assessment of students;

[Definition of “to provide further education and training” substituted by s. 1 (h) of Act 1 of 2013.]

“Umalusi” means the council established by section 4 of the General and Further Education and Training Quality Assurance Act, 2001 (Act 58 of 2001);

“vice-principal” includes a vice-rector.

2. Purpose and application of Act

(1) The purpose of this Act is to-

(a) enable students to acquire-

   (i) the necessary knowledge;

   (ii) practical skills; and
(iii) applied vocational and occupational competence; and

(b) provide students with the necessary attributes required for-

(i) employment;

(ii) entry to a particular vocation, occupation or trade; or

(iii) entry into a higher education institution.

(2) This Act applies to all education institutions which have been established or declared a public college or registered as a private college in terms of this Act.

CHAPTER 2

PUBLIC COLLEGES (ss 3-8)

3. Establishment of public college

(1) The Minister, after consulting with the institute, may, by notice in the *Gazette* and from money appropriated for this purpose, establish a public-

(a) technical and vocational educational and training college; or

(b) Community education and training college.

[Sub-s. (1) substituted by s. 2 (a) of Act 3 of 2012 and by s. 2 (a) of Act 1 of 2013.]

(1A) A notice referred to in subsection (1) must be set out-

(a) the date of establishment of the college;
(b) whether the college is a technical and vocational education and training college or whether the college is a community education and training college;

(c) the name of the college; and

(d) the physical location and address of the college.

[Sub-s. (1) substituted by s. 2 (a) of Act 1 of 2013.]

(2) Every public college contemplated in subsection (1) (a) or (b) is a juristic person.

[Sub-s. (2) substituted by s. 2 (a) of Act 1 of 2013.]

(3) Despite subsection (2) but subject to subsection (4), a public college may not, without the concurrence of the Minister, dispose of or alienate in any manner any movable or immovable property acquired with the financial assistance of the State or grant to any person any real right therein or servitude thereon.

[Sub-s. (3) substituted by s. 2 (b) of Act 3 of 2012.]

(4) The Minister –

a) may determine that certain categories of assets below a certain value may be alienated without his or her concurrence; and

(b) must publish the value contemplated in paragraph (a) by notice in the Gazette.

[Sub-s. (4) amended by s. 2 (c) of Act 3 of 2012.]

(5) The Director-General may inspect, and must compile an inventory of all, the assets of a public college.

[Sub-s. (5) substituted by s. 2 (d) of Act 3 of 2012.]

(6) The assets of a public college may not be attached as a result of any legal action taken against the college.
4. **Declaration of institution as public college**

(1) The Minister may, by notice in the *Gazette*, declare any institution providing continuing education and training as a public college.

[Sub-s. (1) substituted s. 3 (a) of Act 3 of 2012 and by s. 3 (a) of Act 1 of 2013.]

(2) The notice contemplated in subsection (1) must determine-

(a) the date on which the institution becomes a public college;

(b) the name of the public college; and

(c) the physical location and the official address of the public college.

(3) The Minister may act in terms of subsection (1) only-

(a)

(i) after consulting council of the institution, if it is a public institution;

(ii) with the concurrence of the responsible Minister, or authority of the institution, if the institution is administered, controlled or funded by an organ of State other than the Department; or

(iii) with the concurrence of the owner and the Minister of Finance, if it is a private institution; and

[Para. (a) substituted by s. 3 (c) of Act 3 of 2012.]

(b) after having -
(i) published a notice in one or more newspapers circulating in the area in which the institution provides continuing education and training, containing the reasons for the declaration referred to in subsection (1);
[Sub-para. (i) substituted by s. 3 (b) of Act 1 of 2013.]

(ii) given any interested person an opportunity to make representations; and

(iii) considered such representations.
[Sub-s. (3) amended by s. 3 (b) of Act 3 of 2012.]

5. **Consequences of declaration as public college**

(1) From the date determined in terms of section 4 (2) (a)-

   (a) the institution in question is regarded as being a public college established under this Act;

   (b) the assets, liabilities, rights and obligations of the institution vest in the public college; and

   (c) any agreement lawfully entered into by or on behalf of the institution must be regarded as having been concluded by the public college.

(2)

   (a) Immovable property vesting in the public college in terms of subsection (1) (b) must, subject to the concurrence of the Minister of Finance, be transferred into its name without payment by it of any transfer duty, stamp duty or other duty or costs due to the State, but subject to any existing right, encumbrance or trust on or over that property.
(b) Any fees charged by the Registrar of Deeds resulting from a transfer contemplated in paragraph (a) must be paid in full or in part from funds appropriated by the provincial legislature for that purpose.

(3) The officer in charge of a deeds office or other office where the immovable property contemplated in subsection (2) is registered must, on submission of the title deed and on application by the public college, make such endorsements on that title deed and such entries in the registers as may be required to register the transfer in question.

(4) The declaration of an institution as a public college in terms of section 4 (1) does not affect anything lawfully done by the institution before the declaration.

(5) All funds which, immediately before the date determined in terms of section 4 (2) (a), were vested in the institution by virtue of a trust, donation or bequest must be applied by the public college in accordance with the trust, donation or bequest, as the case may be.

(6) The Minister must in the notice contemplated in section 3 (1) establish an interim council for the public college for a period not exceeding six months to perform the functions relating to the governance of the college until a council is established in terms of section 9 (1).

[Sub-s. (6) substituted by s. 4 of Act 3 of 2012.]

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

[Sub-s. (7) substituted by s. 4 of Act 3 of 2012.]

(8) The composition of the interim council must be in accordance with section 10 (4) and (7).
(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) Apart from the functions contemplated in subsection (6), the interim council must in particular-

(a) appoint an interim body to manage the day-to-day activities of the college; and

(b) ensure that such other structures as may be determined in terms of this Act are constituted.

(11) Any decision of the interim council which may affect the right of any structure of the public college, may only be taken after consultation with such structure.

(12) Despite sections 197 and 197A of the Labour Relations Act, contracts of employment between the institution and its employees are transferred automatically on declaration of an institution as a public college as from the date of the declaration contemplated in section 4, but any redeployment of an employee as a consequence of the declaration is subject to applicable labour legislation.

6. **Merger of public colleges**

(1) Subject to subsection (2), the Minister may, by notice in the *Gazette*, merge two or more public colleges into a single college.

[Sub-s. (1) substituted by s. 5 (a) of Act 3 of 2012.]

(2) Before merging two or more public colleges the Minister must-

(a) give written notice to the colleges in question of the intention to merge them;
(b) publish a notice giving the reasons for the proposed merger in one or two newspapers circulating in the area in which the colleges in question are situated;

(c) give the councils of the colleges in question and any other interested persons an opportunity to make representations within at least 90 days from the date of the notice referred to in paragraph (b); and

(d) consider such representations.

[Sub-s. (2) amended by s. 5 (b) of Act 3 of 2012.]

(3) The single college contemplated in subsection (1) is regarded as a public college established under this Act.

(4) Section 5 (1) (b), (2), (3), (4) and (5) apply with the necessary changes required by the context to a merger contemplated in subsection (1).

(5) The Minister must, after consultation with the councils of the public colleges that are to be merged, determine by notice contemplated in subsection (1)-

(a) the date of establishment of the college;

(b) the name of the college; and

(c) the physical location and official address of the college.

[Sub-s. (5) amended by s. 5 (c) of Act 3 of 2012.]

(6) The councils of the colleges that are merged must have a meeting before the merger to constitute a single interim council comprising of all members of the councils concerned for a period not exceeding six months.
(7) The Minister may extend the period referred to in subsection (6) once for a further period not exceeding six months.

[Sub-s. (7) substituted by s. 5 (d) of Act 3 of 2012.]

(8) Despite sections 197 and 197A of the Labour Relations Act, the contracts of employment between the institution and its employees are transferred automatically to the merged single public college as from the date of the merger contemplated in subsection (1), but any redeployment of an employee as a consequence of the merger is subject to applicable labour legislation.

(9) If two or more public colleges are merged into a single public college as contemplated in subsection (1), all the rights and obligations between the former employers and each employee at the time of the merger continue in force as if they were rights and obligations between the new employer and each employee and anything done before the merger by or in relation to the former employers is considered to have been done by or in relation to the new employer.

(10) A merger referred to in subsection (1) does not-

(a) interrupt the employee’s continuity of employment; and

(b) affect the liability of any person to be disciplined for, prosecuted for, convicted of or sentenced for any misconduct, crime or offence.

(11) An employee or a student is subject to the code of conduct and rules applicable to the new single public college as from the date of the merger contemplated in subsection (1), but if any enquiry into incapacity or any proceedings in respect of a charge of misconduct had been instituted or commenced against any employee or student before the date of the merger, such enquiry or proceedings must continue in terms of the codes and rules applicable to the relevant public colleges immediately before the merger.
(12) Until the new single public college has made a code of conduct or rules, the disciplinary codes and rules of the respective old public colleges are applicable to the respective employees and students.

(13) If two or more public colleges are merged into a single public college in terms of subsection (1), the new single public college continues with all academic programmes offered by the former colleges under the rules applicable to the respective colleges immediately before the date of the merger, until such programmes and rules are amended or restructured by the new council.

7. Single council for two or more public colleges

(1) The Minister may determine that the governance of two or more public colleges must vest in a single council if-

(a) it is in the best interests of education and the colleges;

(b) it is in the public interest; or

(c) he or she was so requested by the councils of those colleges.

[Sub-s. (1) amended by s. 6 (a) of Act 3 of 2012.]

(2) The Minister may not act in terms of subsection (1) unless he or she has-

(a) given written notice to the colleges in question of the intention to merge them;

(b) given notice in the Gazette of his or her intention so to act;

(c) given the councils of the colleges in question and interested parties an opportunity to make written submissions to him or her within a period of not less than 90 days; and
(d) considered all such submissions.

[Sub-s. (2) amended by s. 6 (b) of Act 3 of 2012.]

(3) The Minister must, by notice in the Gazette, determine the composition of the single council in a manner that ensures that-

(a) each public college is equitably represented; and

(b) it complies with section 10 (6), (7) and (9).

[Sub-s. (3) amended by s. 6 (c) of Act 3 of 2012.]

(4) Any council that is the subject of a notice in terms of subsection (2) continues to exist until the first meeting of the single council constituted in terms of this section.

8. Closure of public college

(1) The Minister may, by notice in the Gazette, close a public college.

[Sub-s. (1) amended by s. 7 (a) of Act 3 of 2012.]

(2) The Minister may not act in terms of subsection (1) unless he or she has-

(a) ........

[Para. (a) deleted by s. 7 (c) of Act 3 of 2012.]

(b) given written notice to the college in question of the intention to close it;

(c) given notice in the Gazette of his or her intention so to act;

(d) given the council of the college in question and interested parties an opportunity to make written representations within a period of not less than 90 days; and
(e) considered those representations
   [Sub-s. (2) amended by s. 7 (b) of Act 3 of 2012.]

(3) If a public college is closed under subsection (1)-

(a) all assets and liabilities of such college must, after such
closure, be dealt with according to law by the Minister; and
   [Para. (a) substituted by s. 7 (d) of Act 3 of 2012.]

(b) any assets remaining after payment of all liabilities vest in
the Minister.
   [Para. (b) substituted by s. 7 (d) of Act 3 of 2012.]

(4) Subsections (2) to (5) of section 5 and section 6 (2) apply with
the necessary changes required by the context to a closure
referred to in subsection (1).

CHAPTER 3

GOVERNANCE OF PUBLIC COLLEGES (ss 9-18)

9. Public college governance structures

(1) Every public college must establish a council, an academic
board and a student representative council.

(2) Every public college may establish such other structures as
may be determined in the college statute.

(3) The structures referred to in subsection (1) must elect a
chairperson, vice-chairperson and other office-bearers from
among its members in accordance with the college statute.

(4) A member of a structure contemplated in subsection (1)-
(a) holds office for a period of five years: Provided that such a member remains eligible to be a member of that structure; and

(b) may not serve for more than two consecutive terms of office.

(5) The procedures for the disqualification, removal and filling of vacancies must be determined in the college statute.

(6) The council may not establish or create any juristic person in terms of any other legislation or common law.

10. **Council of public college**

(1) The council of a public college must perform all the functions, including the development of a college statute, which are necessary to govern the public college, subject to this Act and any applicable national or provincial law.

(2) The council must, with the concurrence of the academic board-

(a) develop a strategic plan for the public college which must-

   (i) incorporate the mission, vision, goals and planning for funding of the college;

   (ii) address past imbalances and gender and disability matters;

   (iii) include safety measures for a safe learning environment for students, lecturers and support staff; and

   (iv) be approved by the Minister;

[Sub-para. (iv) substituted by s. 8 (a) of Act 3 of 2012.]
(b) determine the language policy of the public college, subject to the approval of the Minister; and
[Para. (b) substituted by s. 8 (b) of Act 3 of 2012.]
(c) ensure that the public college complies with accreditation requirements necessary to provide learning programmes in terms of standards and qualifications as registered on the National Qualifications Framework.

(3) The council, after consultation with the student representative council, must provide for a suitable structure to advise on policy for student support services within the public college.

(4) The council of a public college consists of-
(a) the principal;
(b) five external persons appointed by the Minister;
[Para. (b) substituted by s. 8 (c) of Act 3 of 2012.]
(c) one member of the academic board elected by the academic board;
(d) one external member representing donors;
(e) one lecturer of the public college, elected by the lecturers of the college;
(f) one member of the support staff of the public college, elected by the support staff; and
(g) two students of the public college, elected by the student representative council of the public college.

(5) The chairperson, vice-chairperson or other office-bearers of the council may not be students or members of the staff of the college, but the secretary may be a member of staff.
(6) The council must, in consultation with the Minister, appoint four additional external persons with financial, human resources and legal skills as members of the council.

[Sub-s. (6) substituted by s. 8 (d) of Act 3 of 2012.]

(7) The manner in which the members of the council contemplated in subsection (4) (c) to (g) are to be elected, must, where applicable, be determined by the Minister by notice in the Gazette and must, in so far as it is practically possible, ensure that-

(a) the functions of the council or interim council are performed according to the highest professional standards;

(b) the council or interim council is broadly representative of the continuing education and training system and related interests;

[Para. (b) substituted by s. 4 of Act 1 of 2013.]

(c) the members have a thorough knowledge and understanding of the continuing education and training sector;

[Para. (c) substituted by s. 4 of Act 1 of 2013.]

(d) the members appreciate the role of continuing education and training in reconstruction and development; and

[Para. (d) substituted by s. 4 of Act 1 of 2013.]

(e) the council is broadly representative of the community served by the public college in respect of race, gender and disability.

[Sub-s. (7) substituted by s. 8 (e) of Act 3 of 2012.]

(8) At least 60 per cent of the members of a council must be external persons who are not -
(a) students or support staff of the public college;

(b) employed by the Minister;

[Para. (b) substituted by s. 8 (f) of Act 3 of 2012.]

(c) employed by the college.

(9) A member of a council or an interim council-

(a) must be a person with knowledge and experience relevant to the objects and governance of the public college in question;

(b) must participate in the deliberations of the council or interim council in the best interest of the public college in question;

(c) must, before he or she assumes office, declare any business, commercial or financial activities undertaken for financial gain that may raise a possible conflict of interest with the public college in question;

(d) may not place himself or herself under any financial or other obligations to any individual or organisation that might seek to influence the performance of any function of the council;

(e)

(i) may not have a conflict of interest with public college in question;

(ii) may not have a direct or indirect financial, personal or other interest in any matter to be discussed at a meeting and which entails or may entail a conflict or possible conflict of interest with the public college in question; and
(iii) must, before the meeting and in writing, inform the chairperson of that meeting of the conflict of interest.

[Sub-s. (9) substituted by s. 8 (g) of Act 3 of 2012.]

(9A) Any person may, in writing, inform the chairperson of a meeting, before the meeting, of a conflict or possible conflict of interest of a member of council of the public college in question of which such person may be aware.

[Sub-s. (9A) inserted by s. 8 (h) of Act 3 of 2012.]

(9B) A member referred to in subsection (9) (e) and (9A) is obliged to recuse himself or herself from the meeting during the discussion of the matter and voting thereon.

[Sub-s. (9B) inserted by s. 8 (h) of Act 3 of 2012.]

(9C) A committee of the council with delegated functions in terms of section 50 (1) may not take a decision on the matter considered by it, if any member of the committee has any conflict contemplated in this section.

[Sub-s. (9C) inserted by s. 8 (h) of Act 3 of 2012.]

(9D) A member of the council or a member of the committee of the council who contravenes subsection (9), (9A), or (9B) after the council has followed a due process, may be-

(a) suspended from attending a meeting; or

(b) disqualified as a member of the council or a member of a committee of the council.

[Sub-s. (9D) inserted by s. 8 (h) of Act 3 of 2012.]

(9E) The council must-

(a) having regard to the provisions of subsections (9), (9A), and (9B) adopt a code of conduct to which all members of the council, all members of the committees of the council and all persons who exercise functions of the council in terms of delegated authority must subscribe; and
(b) determine rules and procedures for an annual declaration-

(i) by each member of the council, each member of council committees and each persons who exercises functions of the council in terms of delegated authority;

(ii) of his or her financial interests and fiduciary roles, the latter to include but not be limited to offices, directorships of companies, memberships of close corporations and trusteeships held; and

(iii) and of the financial interests and fiduciary roles of the member of his or her immediate family.

[Sub-s. (9E) inserted by s. 8 (h) of Act 3 of 2012.]

(10) The Minister must-

(a) by notice in the Gazette, or by any other reasonably practicable means, invite nominations for the appointment of the members contemplated in subsection (4) (b); and

(b) consider the nominations and appoint the members with due regard to the criteria contemplated in this section.

[Sub-s. (10) amended by s. 8 (i) of Act 3 of 2012.]

(11) For the purpose of this section, ‘immediate family’, in relation to a member, means his or her parent, sibling, child, including an adopted child or a step-child or spouse (whether by statutory, customary, or religious law), and including a life partner who is a person living with that member as if they were married to each other.

[Sub-s. (11) added by s. 8 (j) of Act 3 of 2012.]
11. Academic board of public college

(1) The academic board of a public college is accountable to the council for-

(a) the academic functions of the public college and the promotion of the participation of women and the disabled in the learning programmes;

(b) establishing internal academic monitoring and quality promotion mechanism;

(c) ensuring that the requirements of accreditation to provide learning against standards and qualifications registered on the National Qualifications Framework are met; and

(d) performing such other functions as may be delegated or assigned to it by the council.

(2) Subject to the approval of the council and to any applicable policy, the academic board must determine the learning programmes contemplated in section 43 that will be offered at the public college.

(3) The academic board of a public college consists of-

(a) the principal;

(b) the vice-principal or vice-principals;

(c) lecturers;

(d) members of the council;

(e) members of the student representative council; and
(f) such additional persons as may be determined by the council.

(4) The number of persons contemplated in subsection (3) (c), (d), (e) and (f) and the manner in which they are appointed or elected, as the case may be, must be determined by the council in accordance with the college statute.

(5) The majority of the members of the academic board must be lecturers.

(6) The Minister may, by notice in the Gazette, determine that a community education and training college specified in the Gazette, determined that a community education and training college specified in the Gazette does not require an academic board contemplated in section 9 (1) if-

(a) the diversity of qualifications or part-qualifications do not justify the establishment of the academic board; and

(b) the decision is taken in the best interest of the college and delivering of continuing education and training within that college.

[Sub-s. (6) added by s. 5 of Act 1 of 2013.]

(7) If the Minister publishes a notice in terms of subsection (6), the Department must perform the functions of the academic board applicable to the college.

[Sub-s. (7) added by s. 5 of Act 1 of 2013.]

12. Committees of council and academic board

(1) The council may-

(a) establish a committee to assist it in the performance of its functions; and
(b) appoint a person who is not a member of the council as member of the committee.

(2) The chairperson of a committee must be a member of the council.

(3) The council is not divested of the responsibility for the performance of any function delegated to a committee.

(4) The council must determine the-

(a) composition of a committee;

(b) functions of a committee;

(c) procedure at meetings; and

(d) dissolution of a committee.

(5) Subsections (1) to (4) apply with the necessary changes to the academic board.

(6) The council and the academic board may jointly establish a committee to assist them in the performance of functions that are common to the council and the academic board.

(7) Subsections (1) to (4) apply with the necessary changes to a joint committee established in terms of subsection (6).

13. **Principal of public college**

The principal of a public college is responsible for the management and administration of the college.
14. **Student representative council**

The establishment, composition, manner of election, term of office, functions and privileges of the student representative council of a public college must be determined by the council after consultation with the students of the college, subject to policy determined by the Minister.

[S. 14 substituted by s. 9 of Act 3 of 2012.]

15. **Disciplinary measures**

(1) Every student at a public college is subject to a code of conduct, disciplinary measures and procedures which are determined by the council, subject to provincial policy.

(2) The code of conduct, disciplinary measures and procedures may only be determined after consultation with the academic board and the student representative council of the public college in question.

(3) The policy contemplated in subsection (1) must include measures to curb racism and any form of unfair discrimination, violence and harassment, especially sexual violence and sexual harassment.

16. **Prohibition of corporal punishment and initiation practices**

(1) No person may administer corporal punishment to a student at a college.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which may be imposed for assault.

(3) No person may conduct or participate in initiation practices at a college.
(4) Any person who contravenes subsection (3) is guilty of misconduct and disciplinary action must be instituted against such a person.

(5) Despite subsection (4), a person may institute civil action against any person or group of persons who manipulated or forced the first-mentioned person to conduct or participate in initiation practices.

(6) For the purposes of this section, “initiation practice” means any act that in the process of initiation, admission into or affiliation with, or as condition for continued membership of, a college, a group, intramural or extramural activities, a sports team or an organisation-

(a) endangers the mental or physical health or safety of a person;

(b) undermines the intrinsic worth of human beings by treating some as inferior to others;

(c) subjects individuals to humiliating or violent acts that undermine the constitutional guarantee to dignity in the Bill of Rights;

(d) undermines the fundamental rights and values that underpin the Constitution;

(e) impedes the development of a culture that entitles an individual to be treated as worthy of respect and concern; or

(f) destroys public or private property.
(7) In considering whether conduct or participation of a person in any initiation practice falls within the definition of “initiation practice”, the relevant disciplinary authority must take into account the right of the student not to be subjected to such practice.

17. **Admission policy of public college**

(1) Subject to applicable policy, the council of a public college determines the admission policy of the college, after consulting the academic board and with the approval of the Minister.

[Sub-s. (1) substituted by s. 10 (a) of Act 3 of 2012.]

(2) The admission policy of a public college may not unfairly discriminate in any way and must provide appropriate measures for the redress of past inequalities.

(3) The council may, subject to applicable policy, the approval of the Director-General and after consultation with the academic board-

(a) determine admission requirements in respect of particular continuing education and training qualifications or part-qualifications;

[Para. (a) substituted by s. 6 of Act 1 of 2013.]

(b) determine the number of students who may be admitted for a particular continuing education and training qualification or part-qualification and the manner of their selection;

[Para (b) substituted by s. 6 of Act 1 of 2013.]

(c) determine the minimum requirements for readmission to study at the public college in question; and

(d) refuse the readmission of a student who fails to satisfy the minimum requirements for readmission.

[Sub-s (3) amended by s. 10 (b) of Act 3 of 2012.]
(4) The council of a public college must take the necessary steps within its available resources to ensure that the college is accessible to disabled students.

18. **Standard college statute**

A public college that has not developed a college statute in terms of section 10 (1) must make use of the standard college statute set out in Schedule 1.

**CHAPTER 4**

**APPOINTMENT OF MANAGEMENT STAFF, LECTURERS AND SUPPORT STAFF IN PUBLIC COLLEGES (ss 19-21)**

19. ...... [S.19 repealed by s. 11 of Act 3 of 2012.]

20. **Appointment of staff**

(1) The staff of public colleges consists of persons appointed by-

(a) the Minister in terms of the Public Service Act in posts established on the organisational structure of the Department and identified as posts to the respective colleges; and

(b) the council in posts established in addition to posts contemplated in paragraph (a).

(2) Subject to the Public Service Act and an other applicable law, the Minister must-

(a) establish the posts contemplated in subsection (1) (a);

(b) appoint staff in the identified posts; and
(c) remunerate staff from the funds allocated to the respective colleges in accordance with the norms and standards contemplated in section 23.

(3) The staff contemplated in subsection (1) (a) must-

(a) report to the council in respect of matters and functions allocated to them by the council in terms of this Act; and

(b) report to the Minister as the employer for all employment purposes.

(4) Subject to this Act, the Labour Relations Act, the Basic Condition of Employment Act, the Employment Equity Act and any other applicable law, the council-

(a) may establish posts contemplated in subsection (1) (b) for staff other than the management staff, which posts are additional to the posts contemplated in subsection (2) (a);

(b) may appoint staff in those posts;

(c) must remunerate staff from the funds received by the public college in question from other sources than the money received in terms of section 22;

(d) must determine the functions, conditions of service and privileges of the staff contemplated in paragraph (a); and

(e) must pay remuneration to the staff contemplated in paragraph (a) that may not be less than remuneration paid to a comparable appointment made in terms of the Public Service Act contemplated in subsection (1) (a).
(5) When presenting the annual financial reports contemplated in section 25 the council must provide sufficient details of any posts envisaged in terms of subsection (4) (a), including the estimated cost relating to the employment of staff in those posts and the manner of which it is proposed that the costs will be met.

(6) The staff contemplated in subsection (2) and (4) must be employed in compliance with the basic values and principle referred to in section 195 of the Constitution of the Republic of South Africa, 1996, and factors to be taken into account when making appointments include, but are not limited to-

(a) the ability of the candidates;

(b) the principle of equity;

(c) the need to redress past injustices; and

(d) the need for representation.

(7) A member of staff must in writing-

(a) before he or she is appointed, declare any business that may raise a conflict or a possible conflict of interest with the continuing education and training college concerned; and

(b) notify the continuing education and training college concerned of any conflict or possible conflict of interest before such further education and training college procures any goods or services from such member of staff or an organisation with in which such member holds an interest.
(8) A member of staff may not conduct business directly or indirectly with the further education and training college at which he or she is employed that entails or may entail a conflict of interest with the further education and training college unless the council of such further education training college is of the opinion that-

(a) such goods, products or services are unique;

(b) the supplier is a sole provider;

(c) it is in the best interest of the institution.

(9) A member of staff of a further education and training college may not, on behalf of that further education and training college, contract with himself or herself or any entity in which he or she has a direct or indirect financial or personal interest.

(10) Contracting referred in subsection (9) relates to conduct that is aimed at receiving any direct or indirect personal gain that does not form part of the employment relationship contemplated in subsection (1).

[S. (20) substituted by s. 12 of Act 3 of 2012 insofar as it applies to management staff.]

[Date of commencement of S. 20 as substituted by s. 12 of Act 3 of 2012 insofar as it relates to staff other than management staff: 1 April 2015.]

21. Dispute resolution between college, lecturers and support staff

(1) If a dispute arises about the payment or employment conditions of a lecturer or a member of the support staff, any party to the dispute may refer the dispute in writing to-

(a) a bargaining council established in terms of the Labour Relations Act, if the employer or employee parties to the dispute fall within the registered scope of a bargaining council; or
(b) the Commission for Conciliation, Mediation and Arbitration established by section 12 of the Labour Relations Act, if no bargaining council has jurisdiction.

[NB: Subs-s. (1) has been amended by s. 13 of the Further Education and Training Colleges Amendment Act 3 of 2012, a provision which will come into operation on 1 April 2015. See PENDLEX]

(2) The party referring the dispute must satisfy the bargaining council or the Commission for Conciliation, Mediation and Arbitration that a copy of the referral has been served on the other party.

(3) The bargaining council or the Commission for Conciliation, Mediation and Arbitration must attempt to resolve the dispute through conciliation.

(4) If the bargaining council or the Commission for Conciliation, Mediation and Arbitration is satisfied that the dispute remains unresolved, a party may refer the dispute for adjudication to the Labour Court established in terms of section 151 of the Labour Relations Act.

CHAPTER 5

FUNDING OF PUBLIC COLLEGES (ss 22-26)

22. Responsibility of State

(1) The Minister must from money appropriated for this purpose by Parliament fund public colleges on a fair, equitable and transparent basis.

(2) The Minister may, subject to the norms and standards determined in terms of section 23, impose-

(a) any condition in respect of an allocation of funding contemplated in subsection (1); and
(b) different conditions in respect of different public colleges, different continuing education and training qualifications or part-qualifications or different allocations, if there is a reasonable basis for such differentiation.

[Para. (b) substituted by s. 7 of Act 1 of 2013.]

(3) Subject to the requirements in the minimum norms and standards determined in terms of section 23, the Minister must determine further appropriate measures for the redress of past inequalities.

(4) The Minister must, on an annual basis, provide sufficient information to public colleges regarding the funding referred to in subsection (1) to enable the colleges to prepare their budgets for the next financial year.

[S. 22 substituted by s. 14 of Act 3 of 2012.]

23. Norms and standards for funding of public colleges

Subject to the Constitution and this Act, the Minister must, after consultation with the Minister of Finance, determine minimum norms and standards for the funding of public colleges.

[S. 23 substituted by s. 15 of Act 3 of 2012.]

24. Funds of public colleges

(1) The funds of a public college consist of -

(a) funds allocated by the State;

(b) any donations or contributions received by the public college;

(c) money raised by the public college;

(d) money raised by means of loans, subject to the approval of the Minister;

[Para. (d) substituted by s. 16 (a) of Act 3 of 2012.]
(e) income derived from investments;

(f) money received from services rendered;

(g) money payable by students for continuing education and training qualifications or part-qualifications provided by the public college;

[Para. (g) substituted by s. 8 of Act 1 of 2013.]

(h) money received from students or employees of the public college for accommodation or other services provided by the public college; and

(i) funds from any other source.

(2) A public college may not raise money by means of a loan or overdraft without the approval of the Minister.

[Sub-s. (2) substituted by s. 16 (b) of Act 3 of 2012.]

(3) If a person lends money or grants an overdraft to a public college without the approval of the Minister, the State and the college are not bound by the contract of lending money or an overdraft agreement.

[Sub-s. (2) substituted by s. 16 (c) of Act 3 of 2012.]

25. Financial records and statements of public colleges

(1) The council of a public college must, in the manner determined by the Minister-

(a) keep records of all its proceedings;

(b) keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions of the public college as a whole, of its substructures and of other bodies operating under its auspices; and
(c) implement internal audit and risk management systems which are not inferior to the standards contained in the Public Finance Management Act, 1999 (Act 1 of 1999).

[Sub-s. (1). substituted by s. 17 (a) of Act 3 of 2012.]

(2) The council of a public college must appoint an auditor to audit the records and financial statements referred to in this section.

(3) The council of a public college must, in respect of the preceding financial year, and by a date or dates and in the manner determined by the Minister, provide the Minister with-

(a) a report on the overall management and governance of the college;

(b) a report on the overall performance of students on the programmes offered by the college;

(c) a duly audited statement of income and expenditure; and

(d) a balance sheet and cash flow statement.

[Sub-s. (3) substituted by s. 17 (b) of Act 3 of 2012.]

(4) The council of a public college must provide the Minister with such additional information as the Minister may require.

[Sub-s. (4) substituted by s. 17 (c) of Act 3 of 2012.]

26. **Failure of council to comply with Act or certain conditions**

(1) If the management staff or council of a public college fails to comply with any provision of this Act under which an allocation from money appropriated by Parliament is paid to the college, or with any condition subject to which any allocation is paid to the public college, the Minister may call upon the management staff or council to comply with the provision or condition within a specified period.
(2) If the management staff or council thereafter fails to comply with the provision or condition timeously, the Minister may withhold payment of any portion of any allocation appropriated by Parliament in respect of the public college concerned.

(3) Before taking action under subsection (2), the Minister must-

(a) give notice to the management staff or council of the public college concerned of the intention so to act;

(b) give such management staff or council a reasonable opportunity to make representations; and

(c) consider such representations.

(4) If the Minister acts under subsection (2), a report regarding the action must be tabled in Parliament by the Minister as soon as reasonably practical after the action.

[S. 26 substituted by s. 18 of Act 3 of 2012.]

CHAPTER 6

PRIVATE COLLEGES (ss 27-41)

27. Designation of registrar

(1) The Director-General is the registrar of private colleges.

(2) The registrar may delegate any of his or her functions in terms of this Act to any employee in the Department.

28. Registration of private college

No person other than a public college or an organ of state may provide continuing education and training unless that person is-
(a) incorporated or recognised as a company in terms of the companies Act, 2008 (Act 71 of 2008); and
[Para. (a) substituted by s. 19 of Act 3 of 2012.]

(b) Registered or provisionally registered as a private college in terms of this Act.
[Sub-s. 28 amended by s. 9 of Act 1 of 2013.]

29. Application for registration

An application for registration as a private college must be made to the registrar in the manner determined by the registrar and must be accompanied by the prescribed fee.

30. Requirements for registration

(1) The registrar must register an applicant as a private college if the registrar has reason to believe that the applicant-

(a) is financially capable of satisfying its obligations to prospective students; and

(b) with regard to all its continuing education and training qualifications or part-qualifications-

(i) will maintain acceptable standards that are not inferior to standards at comparable public colleges;

(ii) will comply with the requirements of Umalusi; and

(iii) complies with any other reasonable requirement prescribed by the Minister.
[Para. (b) amended by s. 10 of Act 1 of 2013.]

(2) The registrar may require further information, particulars and documents in support of any application for registration.
31. **Determination of application for registration**

(1) The registrar-

(a) must consider any application for registration as a private college and any further information, particulars or documents provided by the applicant;

(b) may, when considering the application, differentiate between a foreign juristic person and a local juristic person with regard to matters such as its scope and range of operations, its size and its collegial configuration; and

(c) may register the applicant as a private college if the requirements for registration contemplated in section 30 are fulfilled.

(2) 

(a) If the registrar decides to grant the application, the registrar must-

(i) enter the applicant’s name in the appropriate register of private colleges;

(ii) issue a certificate of registration, stating the terms of such registration;

(iii) furnish the certificate to the applicant; and

(iv) as soon as practicable after the decision, publish the name of the applicant so registered and the title of the qualification offered by the applicant, in the *Gazette*.

(b) ......

[Para. (b) deleted by s. 20 of Act 3 of 2012.]
(c) If the registrar decides not to grant the application, the registrar must advise the applicant in writing of the decision and furnish the applicant with written reasons for the decision.

(3) Despite subsection (1), the registrar may provisionally register an applicant other than a foreign juristic person who does not fulfill the requirements for registration contemplated in section 30 if the registrar believes that the applicant will be able to fulfill the relevant requirements within a reasonable period.

(4) If the registrar provisionally registers an applicant under subsection (3), the registrar must-

(a) determine the period within which the applicant must satisfy the requirements for registration;

(b) enter the applicant’s name in the appropriate register of private colleges;

(c) issue a certificate of provisional registration, stating the terms and the duration of such registration;

(d) provide the certificate of provisional registration to the applicant; and

(e) as soon as practicable after the decision, publish the name of the applicant so provisionally registered and the title of the qualifications offered by the applicant in the Gazette.

(5) The registrar may, on good cause shown, extend the period referred to in subsection (4) (a).

(6) If, on the expiry of the period referred to in subsection (4) (a) or any extension thereof, the applicant-
(a) satisfies the requirements for registration specified by the registrar, the registrar must register the applicant in accordance with subsection (2) (a); or

(b) fails to satisfy the requirements for registration specified by the registrar, the applicant’s provisional registration lapses.

32. Certificate of registration

(1) A private college must conspicuously display-

(a) its certificate of registration or provisional registration or a certified copy thereof on its premises; and

(b) its registration number and an indication that it is registered or provisionally registered on all its official documents.

(2) If the registrar has cancelled the registration or provisional registration of a private college in terms of section 39, the private college must return the original certificate of registration or provisional registration to the registrar within 14 days of such cancellation.

33. Inspection of register and auditor’s report

(1) Any person may inspect the register of private colleges and the auditor’s report contemplated in section 34 (2) (b).

(2) The registrar must furnish a certified copy of, or extract from, any of the documents referred to in subsection (1) to any person who has paid the prescribed fee.

34. Records and audits

(1) Every private college must, in accordance with generally accepted accounting practice, principles and procedures-
(a) keep books and records of income, expenditure, assets and liabilities; and

(b) prepare financial statements within three months after the end of its financial year, including at least-

(i) a statement of income and expenditure for the previous year;

(ii) a balance sheet as at the end of the previous year; and

(iii) such other information as the registrar may require.

(2) Every private college must, within the period determined by the registrar-

(a) ensure that an annual audit of its books, records of account and financial statements is carried out by an auditor, who must conduct the audit in accordance with generally accepted auditing standards;

(b) furnish the registrar with a certified copy of the auditor’s report in respect of the financial statements referred to in subsection (1); and

(c) furnish the registrar with any additional information, particulars or documents in the manner determined by the registrar.

35. **Amendment of registration and provisional registration**

A private college may apply to the registrar to amend its registration or provisional registration-

(a) in the manner determined by the registrar; and
(b) by paying the prescribed fee.

36. Requirements for amendment of registration or provisional registration and determination of application

(1) The registrar may not amend the registration or provisional registration of a private college unless he or she is satisfied that such amendment is in the interests of continuing education and training and is compatible with this Act.

[Sub-s. (1) substituted by s. 11 of Act 1 of 2013.]

(2) The registrar may require further information, particulars or documents in support of any application for such amendment.

(3)

(a) If the registrar decides to grant the application, he or she must-

(i) amend the certificate of registration or provisional registration accordingly;

(ii) furnish a copy of the amended certificate to the applicant; and

(iii) as soon as reasonably practicable after the decision, publish the name of the applicant whose certificate has been amended in the Gazette.

(b) If the registrar decides not to grant the application, he or she must advise the applicant in writing of the decision and furnish the applicant with written reasons for the decision.
37. **Conditions for registration**

(1) The registrar may impose any condition on a private college in respect of-

(a) its registration;

(b) its provisional registration; or

(c) any amendment of its registration or provisional registration.

(2) The registrar may impose different conditions under subsection (1) in respect of different private colleges, if there is a reasonable basis for such differentiation.

38. **Amendment or cancellation of conditions**

Subject to section 40, the registrar may, on reasonable grounds, amend or cancel any condition imposed under section 37 or impose new conditions under that section.

39. **Cancellation of registration**

(1) Subject to section 40, the registrar may, on reasonable grounds, cancel any registration or provisional registration in terms of this Act.

(2) If the accreditation of any continuing education and training qualifications or part-qualifications offered by a private college is withdrawn, the registrar must review the registration of such college.

[Sub-s. (2) substituted by s. 12 of Act 1 of 2013.]

40. **Steps before amendment or cancellation**

The registrar may not act under section 38 or 39 unless he or she-
(a) has informed the private college of the intention so to act and the reasons therefore;

(b) has granted the private college and other interested persons an opportunity to make written representations in relation to such action, within 30 working days of the notice of the Registrar; and

(c) has considered such representations.

41. **Appeal to Minister**

(1) Any interested party may appeal to the Minister against any decision of the registrar in terms of this Chapter, and the Minister may confirm or set aside, in whole or in part, or vary, the decision of the registrar.

(2) A decision of the Minister contemplated in subsection (1) may include an order setting aside any condition attached to a registration if the Minister is not satisfied that the condition is reasonable and justifiable.

(3) An appeal referred to in subsection (1) must be lodged with the Minister within 60 days of the date of the decision of the registrar.

(4) The Minister may, on good cause shown, extend the period within which an appeal may be noted against the decision of the registrar.

**CHAPTER 6A (ss 41A-41M)**

[Chapter 6A inserted by s. 10 of Act 25 of 2010.]

41A. **Objectives of Chapter**

The objectives of this Chapter are to provide for-
(a) the determination of national education policy by the Minister in accordance with certain principles;

(b) the consultations to be undertaken prior to the determination of policy, and the establishment of certain bodies for the purposes of consultation;

(c) the publication and implementation of national education policy; and

(d) the monitoring and evaluation of education and training within the scope of qualifications offered by a further education and training college.

[S. 41A inserted by s. 10 of Act 25 of 2010.]

41B. Determination of national education policy for colleges

(1) The Minister shall determine national education policy in accordance with the provisions of the Constitution and this Act.

(2) and (3) ......  
[Sub-s. (2) and (3) deleted by s. 21 of Act 3 of 2012.]

(4) Subject to the provisions of subsections (1) to (3), the Minister shall determine national policy for the planning, provision, financing, coordination, management, governance, programmes, monitoring, evaluation and well-being of the further education and training system and, without derogating from the generality of this section, may determine national policy for-

(a) further education and training management information systems, including the provision of data in accordance with the international obligations of the government;
(b) the organisation, management and governance of the national further education and training system;

(c) facilities, finance and development plans for further education and training, including advice to the Financial and Fiscal Commission;

(d) innovation, research and development in further education and training;

(e) the organisation, management, governance, funding, establishment and registration of colleges;

(f) curriculum frameworks, core syllabuses and further education and training programmes, learning standards, examinations and the certification of qualifications, subject to the provisions of any law establishing a national qualifications framework or a certifying or accrediting body;

(g) co-operation between the Department and-

(i) other state departments;

(ii) provincial education departments;

(iii) local government; and

(iv) non-government organisations, with a view to advancing the national education policy contemplated in this section and the Reconstruction and Development Programme;

(h) international relations in the field of further education and training;
(i) executive functions required to implement national education policy determined in terms of this Chapter, including the implementation of measures to address past discriminatory practices.

[S. 41B inserted by s. 10 of Act 25 of 2010.]

41C. Directive principles of national education policy

The policy contemplated in section 41B shall be directed toward-

(a) the advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter 2 of the Constitution and in terms of international conventions approved by Parliament, in particular the right-

(i) of every person to be protected against unfair discrimination within or by the Department or colleges on any ground whatsoever;

(ii) of every person to receive further education and to have training and equal access to public colleges;

(iii) of a parent or guardian in respect of the further education and training of his or her child or ward;

(iv) of every child in respect of his or her further education and training;

(v) of every student to be instructed in the language of his or her choice where this is reasonably practicable;

(vi) of every person to the freedoms of conscience, religion, thought, belief, opinion, expression and association at colleges;
(vii) of every person to establish, where practicable, 
colleges based on a common language, culture or 
religion, as long as there is no discrimination on the 
ground of race; and

(viii) of every person to use the language and participate 
in the cultural life of his or her choice at colleges;

(b) enabling the continuing education and training system 
to contribute to the full personal development of each 
student, and to the moral, social, cultural, political and 
economic development of the nation at large, including 
the advancement of democracy, human rights and the 
peaceful resolution of disputes;

(c) achieving equitable education opportunities and the 
redress of past inequality in further education and 
training provision, including the promotion of gender 
equality and the advancement of the status of women;

(d) endeavouring to ensure that no person, as a result of 
physical disability, is denied the opportunity to receive 
further education and training to the maximum of his or 
her ability;

(e) providing opportunities for and encouraging lifelong 
learning;

(f) achieving an integrated approach to adult education and 
training within a national qualifications framework;

(g) cultivating skills, disciplines and capacities necessary for 
reconstruction and development;

(h) recognising the aptitudes, abilities, interests, prior 
knowledge and experience of students;
(i) encouraging independent and critical thought;

(j) promoting a culture of respect for teaching and learning at colleges;

(k) promoting enquiry, research and the advancement of knowledge;

(l) enhancing the quality of continuing education and training and educational innovation-

   (i) through systematic research and development on further education and training;

   (ii) through monitoring and evaluating the further education and training provision and performance; and

   (iii) through the training of educators and further education and training managers;

(m) ensuring broad public participation in the development of further education and training policy and the representation of stakeholders in the governance of all aspects of the further education and training system;

(n) achieving the cost-effective use of further education and training resources and sustainable implementation of further education and training services;

(o) achieving close co-operation between the national and provincial governments on matters relating to further education and training, including the development of capacity in the Department, and the effective management of the national further education and training system.

[S. 41C inserted by s. 10 of Act 25 of 2010.]
41D. **Consultation on national education policy**

(1) Policy contemplated in section 41B shall be determined by the Minister.

[Sub.s (1) submitted by s. 22 of Act 3 of 2012.]

(2) The policy contemplated in section 41B shall be determined by the Minister with the concurrence of the Minister of Finance in so far as it involves expenditure from the State Revenue Fund.

(3) Nothing in this section shall limit the discretion of the Minister to consult whomsoever he or she wishes for advice on the determination of national education policy

[S. 41D inserted by s. 10 of Act 25 of 2010.]

41E ..... 
[S. 41E inserted by s. 10 of Act 25 of 2010 and repealed by S. 23 of Act 3 of 2012.]

41F. **Publication of national education policy**

The Minister shall within 21 days after determining policy in terms of section 41B-

(a) give notice of such determination in the *Gazette* and indicate in such notice where the policy instrument issued with regard thereto may be obtained;

(b) table the policy instrument contemplated in paragraph (a) in Parliament within 21 days after the notice has appeared in the *Gazette*, if Parliament is then in session, or, if Parliament is in recess, within 21 days after the commencement of the first ensuing session of Parliament.

[S. 41F inserted by s. 10 of Act 25 of 2010.]
41G. Monitoring and evaluation of further education and training

(1) The Minister shall direct that the standards of further education and training provision, delivery and performance throughout the Republic be monitored and evaluated by the Department annually or at other specified intervals, with the object of assessing progress in complying with the provisions of the Constitution and with national further education and training policy, particularly as determined in terms of section 41B.

(2) Each directive issued in terms of subsection (1) shall comply with the provisions of any law establishing a national qualifications framework.

[Sub-s. (2) substituted by s. 24 (a) of Act 3 of 2012.]

(3) The Department shall undertake the monitoring and evaluation contemplated in subsection (1) by analysis of data gathered by means of continuing education and training management information systems, or by other suitable means.

[Sub-s. (3) substituted by s. 24 (a) of Act 3 of 2012.]

(4) The Department shall fulfil its responsibilities in terms of subsections (1) to (3) in a reasonable manner, with a view to enhancing professional capacities in monitoring and evaluation throughout the national education system, and assisting the competent authorities by all practical means within the limits of available public resources to raise the standards of further education and training provision and performance.

(5) The Department shall prepare and publish a report on the results of each investigation undertaken in terms of subsection (3).

[Sub-s. (5) substituted by s. 24 (b) of Act 3 of 2012.]

(6) ......

[Sub-s. (6) deleted by s. 24 (c) of Act 3 of 2012.]
(7) A plan in compliance with the Public Finance Management Act, 1999 (Act 1 of 1999) shall be prepared by the Minister, and the Minister shall table the plan in Parliament, if Parliament is then in session, or, if Parliament is in recess, within 21 days after the commencement of the first ensuing session of Parliament.

[Sub-s. (7) substituted by s. 24 (d) of Act 3 of 2012.]
[Sub-s. (7) substituted by s. 24 (d) of Act 3 of 2012.]

[S. 41G inserted by s. 10 of Act 25 of 2010.]

41H to 41K inclusive ..... 

[S. 41H to 41K inclusive inserted by s. 10 of Act 25 of 2010 and repealed by s. 25 of Act 3 of 2012.]

41L. Consultative bodies

(1) The Minister may by regulation establish a body to be known as the National Education and Training Council and other bodies to advise him or her on any matter contemplated in section 41B or any matter identified by the Minister.

(2) The composition, qualifications for membership, duties, powers and functions of a body established in terms of subsection (1), and the term of office of its members, shall be as prescribed by regulation.

[S. 41L inserted by s. 10 of Act 25 of 2010.]

41M. Traditional arrangements regarding policy

Any policy determined in terms of the National Education Policy Act, 1996 (Act 27 of 1996), up to 31 December 2010 and applicable to Further Education and Training Colleges remains in force and effect until amended or repealed by the Minister in terms of this Act.

[S. 41M inserted by s. 10 of Act 25 of 2010.]
CHAPTER 7

PROMOTION OF QUALITY (ss 42-43)

42. Promotion of quality in continuing education and training

[Heading substituted by s. 13 (a) of Act 1 of 2013.]

(1) Subject to the norms and standards set by the Minister in terms of section 41B, the Director-General must-

(a) promote quality in continuing education and training; and

[Para. (a) substituted by s. 13 (b) of Act 1 of 2013.]

(b) Assess and report on the quality of education and training provided at colleges.

[Sub-s. (1) amended by s. 11 of Act 25 of 2010.]

(2) ....

[Sub-s. (2) deleted by s. 26 of Act 3 of 2012.]

43. Continuing education and training qualifications or part-qualifications

[Heading substituted by s. 14 (a) of Act 1 of 2013.]

(1) The Minister may prescribe minimum norms and standards for continuing education and training qualifications or part-qualifications that are offered at colleges.

[Subs. (1) substituted by s. 12 (a) of Act 25 of 2010 and by S. 14 (b) of Act 1 of 2013.]


(3) A public college may only provide higher education programmes under the authority of a higher education institution.

(4) A public college intending to offer the higher education programmes contemplated in subsection (3)-
must apply to the Minister for permission to offer such programmes after the commencement of this Act; and

(b) may offer such programmes only after the permission contemplated in paragraph (a) is published by the Minister in the Gazette.

(5) A college may apply to the Quality Council for Trades and Occupations established in terms of section 26G of the Skills Development Act, 1998 (Act 97 of 1998), for accreditation as a Skills Development Provider in order to offer qualifications registered on the sub-framework for Trades and Occupations contemplated in section 7(c) of the National Qualifications Framework Act, 2008 (Act 67 of 2008).

[Subs. (5) added by s. 12 of Act 25 of 2010.]

[NB: A chapter 7A (ss. 43A to 43K inclusive) has been inserted by s. 15 of the Further Education and Training Colleges Amendment Act 1 of 2013, a provision will be put into operation by proclamation se PENDLEX.]

CHAPTER 8

GENERAL (ss 44-52)

44. Strategic plan and annual report

(1) A public college must prepare a strategic plan contemplated in the norms and standards for each financial year, which must be approved by the council and submitted to the Minister at least 30 days before the commencement of the financial year.

(2) A public college must prepare and submit to the Minister an annual report in respect of-

(a) its performance; and

(b) its use of available resources.
(3) The Minister must publish the reports in a manner determined by the Minister.

[S. 44 substituted by s. 27 of Act 3 of 2012.]

45. Duty of colleges to provide information

(1) A college must make information available for inspection by any person in so far as such information is required for the exercise and protection of the rights of such person.

(2) Every college must provide such information about the college as is required by the Director-General.

[Sub-s. (2) substituted by s. 28 of Act 25 of 2010.]

(3) .......

[Sub-s. (3) deleted by s. 16 of Act 1 of 2013.]

Prior to this deletion sub s. (3) was to be substituted by s. 28 of the Further Education and Training College Amendment Act 3 of 2012, a provision which was to come into operation to the extent that it substitutes sub-s. (3) on 1 April 2015 see PENDLEX.

46. Investigation at public college and appointment of administrator

(1) The Minister may appoint a person to conduct an investigation at a public college if the council of the college requests the appointment of such a person or if-

(a) circumstances arise at the college that-

(i) involve financial or other maladministration of a serious nature; or

(ii) seriously undermine the effective functioning of the college; and

(b) the council of the college has failed to resolve such circumstances; and
(c) the appointment is in the interests of continuing education and training in an open and democratic society,
[Para. (c) substituted s. 17 of Act 1 of 2013.]
[Sub-s. (1) amended by s. 29 (a) of Act 3 of 2012.]

(2) The person appointed in terms of subsection (1) must, in terms of the terms of reference specified by the Minister-
(a) within 30 days of his or her appointment, conduct an investigation at the public college in question; and
(b) within 60 days after his or her appointment-
   (i) report in writing to the Minister the findings of his or her investigation; and
   [Sub-para. (i) substituted by s. 29 (c) of Act 3 of 2012.]
   (ii) suggest appropriate measures to resolve the matter.
   [Sub-s. (2) amended by s. 29 (b) of Act 3 of 2012.]

(3) The Minister must as soon as practicable furnish a copy of the report referred to in subsection (2) to the council concerned.
[Sub-s. (3) substituted by s. 29 (d) of Act 3 of 2012.]

(4) If an audit of the financial records of a public college, or an investigation by the person as contemplated in subsection (1), reveals financial or other maladministration of a serious nature at a public college or the serious undermining of the effective functioning of a public college, the Minister may, after consultation with the council of the public college concerned, if practicable, and despite any other provision of this Act, appoint a person as administrator to take over the authority of the council or the management of the college and such person may perform all the functions relating to governance or management on behalf of the college for a period determined by the Minister, which period may not exceed two years.
[Sub-s. (4) substituted by s. 29 (d) of Act 3 of 2012.]
(5) The Minister may extend the period referred to in subsection (4) once for a further period not exceeding six months.

[Sub-s. (5) substituted by s. 29 (d) of Act 3 of 2012.]

(6) If an administrator is appointed in terms of subsection (4), the council is deemed to have resigned and the administrator must -

(a) take over the authority of the council;

(b) perform the council’s functions relating to governance; and

(c) ensure that a new council is constituted.

47. **Name change of public college**

(1) The council of a public college may, after consultation with interested parties and with the approval of the Minister, change the name of the public college.

(2) The Minister must, by notice in the Gazette, publish the change of name of such college,

[S. 47 substituted by s. 30 of Act 3 of 2012.]

48. **Offences**

(1) Any person other than a college or organ of state who, without the authority of a college-

(a) offers or pretends to offer any continuing education and training qualification or part-qualification;

[Para. (a) substituted by s. 18 (a) of Act 1 of 2013.]

(b) confers a continuing education and training qualification or part qualification that purports to have been granted by a college or in collaboration with a college; or

[Para. (b) substituted by s. 18 (a) of Act 1 of 2013.]
(c) purports to perform an act on behalf of a college, is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.

(2) Any person who pretends that a continuing education and training qualification or part-qualification has been awarded to him or her by a college whereas in fact no such qualification or part-qualification has been so awarded is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.

[Sub s. (2) substituted by s. 18 (b) of Act 1 of 2013.]

(3) Any person who contravenes section 28 is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(4) Any private college that contravenes or fails to comply with section 32 is guilty of an offence and is liable on conviction to a fine not exceeding R250 000.

(5) Any person who claims that he or she is offering a continuing education and training qualification or part-qualification that is registered with the National Qualifications Framework whereas such qualification or part-qualification is not so registered is guilty of an offence and is liable on conviction to any sentence that may be imposed for fraud.

[Sub s. (5) substituted by s. 18 (c) of Act 1 of 2013.]

49. Limitation of liability

(1) Neither the State, the NBFET nor any person appointed in terms of this Act is liable for any loss or damage suffered by any person as a result of any act performed or omitted in good faith in the course of performing any function for which that person was appointed in terms of this Act.
(2) The State is not liable for any act or omission by a public college relating to its contractual responsibility as the employer in respect of staff employed in terms of section 20(3).

(3)

(a) The State is liable for any damage or loss caused as a result of any act or omission in connection with any educational activity conducted by a public college for which such public college would have been liable but for the provisions of this section;

(b) The State Liability Act, 1957 (Act 20 of 1957), applies to any claim under paragraph (a);

(c) Any claim for damage or loss contemplated in paragraph (a) must be instituted against the Minister;

[Para. (c) substituted by s. 31 of Act 3 of 2013.]

(d) Despite paragraph (a), the State is not liable for any damage or loss caused as a result of any act or omission in connection with any enterprise or business operated under the authority of a public college for the purposes of supplementing the resources of the college, including the offering of practical educational activities relating to that enterprise or business.

(e) Any legal proceedings against a public college for any damage or loss contemplated in paragraph (d), or in respect of any act or omission relating to its contractual responsibility as employer, may only be instituted after written notice of the intention to institute proceedings against the college has been given to the Head of Department for his or her information.
50. Delegation of functions

(1) The Minister may, on such conditions as he or she may determine, delegate the performance of any of his or her functions under this Act, except the power to make regulations, to-

(a) any employee of the Department; or

(b) any public college.

[Para. (b) substituted by 32 (a) of Act 3 of 2012.]

(2) The Member of the Executive Council may, on such conditions as he or she may determine, delegate the performance of any of his or her functions under this Act, to-

(a) any employee in a provincial department responsible for education and training; or

(b) any organ of state.

[NB: Sub-s. (2) has been deleted by s. 32 (b) of the Further Education and Training Colleges Amendment Act 3 of 2012, a provision which will come into operation on 1 April 2015.]

(3) The Director-General may, on such conditions as he or she may determine, delegate the performance of any of his or her functions under this Act to any employee in the Department.

(4) The council of a public college may, on such conditions as it may determine, delegate the performance of any of its functions under this Act to any other internal structure, lecturer or support staff of such college.

51. Regulations

The Minister may make regulations consistent with this Act on-

(a) any matter which may or must be prescribed;
(b) safety measures at public and private colleges;

(c) a national process and procedures for the assessment of student achievement at public and private colleges;

(d) a national process for the assessment, monitoring and evaluation of the quality of education in public and private colleges;

(e) initiation practices at public and private colleges; and

(f) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

52. **Application of Act when in conflict with other laws**

This Act prevails over any other law dealing with continuing education and training other than the Constitution of the Republic of South Africa, 1996.

[S. 52 substituted by s. 19 of Act 1 of 2013.]

**CHAPTER 9**

**TRANSITIONAL AND OTHER ARRANGEMENTS (ss 53-59)**

53. **Existing public further education and training institutions, structures and bodies**

(1) The public further education and training institutions listed in Schedule 2 continue to exist and are deemed to be public colleges for the purposes of this Act.

(2) Members of the council, academic board and student representative council of the institutions referred to in subsection (1) continue to hold office until they are replaced in terms of this Act.
54. **Staff**

(1) The principal, vice-principal, lecturers and support staff employed by the State continue to be so employed until appointed in terms of this Act.

(2) Section 197 of the Labour Relations Act applies to the appointment or transfer as contemplated in subclause (1).

(3) The Education Labour Relations Council and the PSCBC continue to be the bargaining council to determine salaries and conditions of employment until the parties agree to establish a new structure relevant to public colleges.

55. **Application for registration by private colleges**

Application for registration by private colleges made in terms of the Further Education and Training Act, 1998 (Act 98 of 1998), before the commencement of this Act must be deemed to be applications made in terms of this Act.

56. **National Board For Further Education and Training (NBFET)**

The NBFET continues to exist until replaced by an advisory body in terms of section 11 of the National Education Policy Act, 1996 (Act 27 of 1996).

57. **Disciplinary measures**

The existing code of conduct, disciplinary measures and procedures of colleges referred to in section 53 (1) must continue to operate until new measures are determined in terms of this Act.

58. **Repeal or amendment of laws**

(2) Any regulations made or anything done under any provision of any law repealed by this Act must be regarded as having been made or done under the corresponding provision of this Act.


59.  **Short title**

This Act is called the Continiung Education and Training Act, 2006.

[S. 59 substituted by s. 20 of Act 1 of 2013.]
STANDARD COLLEGE STATUTE

CONTENTS

DEFINITIONS AND APPLICATION

1. Definitions
2. Application

INSTITUTION

3. Name, seat and powers
4. Constitution of College

COUNCIL

5. Functions of council
6. Composition of council
7. Termination of membership and filling of vacancies
8. Election and term of office of chairperson, vice-chairperson and secretary of council
9. Meetings of council
10. Council meeting procedures
11. Conflict of interest of council members
12. Committees of council
13. Minutes of council and committee meetings
14. Drafting, amending or rescinding statute

ACADEMIC BOARD

15. Functions of academic board
16. Termination of membership of academic board
17. Composition of academic board
18. Term of office of members of academic board
19. Chairperson, vice-chairperson and secretary of academic board
20. Meeting procedure of academic board
21. Committees of academic board
22. Joint committees of council and academic board

STUDENT REPRESENTATIVE COUNCIL (SRC)

23. Functions of SRC
24. Composition of SRC
25. Office-bearers of SRC
26. Term of office of SRC members
27. Meetings of SRC
28. SRC committees
29. General meeting

MANAGEMENT STAFF

30. Management staff
31. Functions of principal
32. Vice-principal and financial officer
33. Appointment of staff employed by college
   [Para. 33 substituted by s. 33 (w) of Act 3 of 2012.]
34. Conditions of employment
35. Evaluation
36. Disciplinary code of staff
   [Para. 36 substituted by s. 33 (z) of Act 3 of 2012.]
37. Representative organisation of employees

STUDENTS

38. Admission and registration of students
39. Student disciplinary code

DONORS

40. Donors
1. Definitions

In this Statute, unless the context indicates otherwise, any word or expression to which a meaning has been ascribed in section 1 of the Act bears the meaning so ascribed, and-

In this Statute, unless the context indicates otherwise-

“academic board” means the body contemplated in section 11 of the Act;

“auditor” means any person registered in terms of the Auditing Professions Act, 2005 (Act 26 of 2005);

“college” means the college referred to in section 3;

“council” means the governing structure of the college;

“Department” means the department of Higher Education and Training

[Definition if ‘Department’ substituted by s. 33 (a) of Act 3 of 2012.]

“Director-General” means the Director-General of the Department;

“external person” means a person referred to in section 10 (8) of the Act;

“financial year” in respect of the college means a year commencing on the first day of January and ending on the 31st day of December of the same year;

“foreign juristic person” means a person-

(i) registered or established as a juristic person in terms of a law of a foreign country; and
(ii) recognised or registered as an external company in terms of the Companies Act, 1973 (Act 61 of 1973);

“further education and training” ……
[Definition of ‘further education and training’ deleted by s. 21 (b) of Act 1 of 2013.]

“further education and training college” ……
[Definition of ‘further education and training’ deleted by s. 21 (b) of Act 1 of 2013.]

“general education” means the compulsory school attendance phase referred to in section 3 of the South African Schools Act;

“Head of Department” ……
[Definition of ‘Head of department’ deleted by s. 33 (b) of Act 3 of 2012.]

“higher education” means higher education as defined in the Higher Education Act, 1997 (Act 101 of 1997);

“institutional statute” means policy, a code of ethics and any rules developed by the council consistent with the Act;

“Labour Relations Act” means the Labour Relations Act, 1995 (Act 66 of 1995);

“lecturer” ……
[Definition of ‘lecturer’ deleted by s. 33 (c) of Act 3 of 2012.]

“local juristic person” means a person established as a juristic person in South Africa in terms of the Companies Act, 1973 (Act 61 of 1973);

“management” means the principal and vice-principal of the college;

“MEC” ……
[Definition of ‘MEC’ deleted by s. 33 (d) of Act 3 of 2012.]
“Minister” means the Minister of Higher Education and Training;
[Definition of ‘Minister’ substituted by s. 33 (e) of Act 3 of 2012.]

“National Qualifications Framework” means the National Qualifications Framework contemplated in the National Qualifications Framework Act, 2008 (Act 67 of 2008);
[Definition of ‘National Qualifications Framework’ substituted by s. 33 (f) of Act 3 of 2012.]

“NBFET”......
[Definition of ‘NBFET’ deleted by s. 33 (g) of Act 3 of 2012 and by s. 21 (c) of Act 1 of 2013.]

“organ of state” means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;

“policy” means policy determined by the Minister in terms this Act;
[Definition of ‘policy’ substituted by s. 33 (h) of Act 3 of 2012.]

“prescribed” means prescribed by regulation;

“principal” means the chief executive and accounting officer of the college, and includes a rector;

“programmes” means a list of education programmes approved and promulgated by the Minister in the Gazette;

“public college” .........
[Definition of ‘Public college’ deleted by s. 21 (d) of Act 1 of 2013.]

“Public Service Act” means the Public Service Act, 1994 (Proclamation 103 of 1994);

“rules” means rules made by the council in terms of section 5 (2) (a);

“SAQA” means the South African Qualifications Authority established by section 10 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);
[Definition of ‘SAQA’ substituted by s. 33 (i) of Act 3 of 2012.]
“school”.....
[Definition of ‘School’ deleted by s. 33 (j) of Act 3 of 2012.]

“South African Schools Act” .......
[Definition of ‘South African S’ deleted by school Act’ deleted by s. 33 (k) of Act 3 of 2012.]

“staff” means persons employed at a public college;

“statute” means the standard college statute, which includes policy, code of conduct and any other rules developed by the council which are consistent with the Act;

“student” means any person registered as a student at the college;

“SRC” means the student representative council of the college;

“the Act” means the Continuing Education and Training Colleges Act, 2006;
[Definition of ‘The Act’ substituted by s. 21 (e) of Act 1 of 2013.]

“to provide further education and training” ...... 
[Definition of ‘to provide further education and training’ deleted by s. 21 (f) of Act 1 of 2013.]

“vice-principal” includes a vice-rector.
[Para. 1 amended by s. 21 (a) of Act 1 of 2013.]

2. Application

This statute applies to the college until a statute is developed in terms of section 10 of the Act.
INSTITUTION

3. Name, seat and powers

(1) The name of the college is ________________________________

(2) The seat of the college is at ________________________________

(3) Every public college is a juristic person with legal capacity to perform its functions in terms of this Statute and the Act.

4. Constitution of college

(1) The college consists of -

   (a) the council;

   (b) the academic board;

   (c) the staff;

      [Items (c) substituted by s. 33 (l) of Act 3 of 2012.]

   (d) The SRC;

   (e) ........

      [Item ‘e’ deleted by s. 33 (m) of Act 3 of 2012.]

   (f) The students of the college; and

   (g) Such other offices, bodies or structures as may be established by the council.

(2) No vacancy in any of the offices contemplated in subsection (1) nor any deficiency in the numbers or defect in the composition of the bodies or structures contemplated in subsection (1) impairs or affects the existence of the college as a juristic person or any function conferred by the Act or this Statute upon the college.
COUNCIL

5. Functions of council

(1) Subject to the Act and this statute the council governs the college.

(2) Without derogating from the generality of subsection (1), the council—

(a) makes rules for the college;

(b) establishes the council committees and determines the composition and functions of each committee;

(c) establishes, in consultation with the academic board, joint committees of the council and the academic board to perform functions which are common to the council and the academic board;

(d) subject to applicable policy and the approval of the Director-General, determines the student admission policy of the college, after consultation with the academic board;

   [Item ‘d’ substituted by s. 33 (n) of Act 3 of 2012.]

(e) determines and provides student support services after consultation with the SRC;

(f) subject to the approval of the Director-General, determines the language policy of the college, after consultation with the academic board;

   [Item ‘f’ substituted by s. 33 (o) of Act 3 of 2012.]

(g) determines tuition fees, accommodation fees and any other fees payable by students as well as accommodation fees payable by employees;
(h) approves the annual budget of the college; and

(i) may conclude a loan or overdraft agreement, with the approval of the Minister.

[Item ‘i’ substituted by s. 33 (p) of Act 3 of 2012.]

(3) Without derogating from the generality of subsection (1), the council-

(a) determines conditions of service, code of conduct and privileges and functions of its employees and may, in the manner set out in the code of conduct, suspend or dismiss employees of the college; and

(b) may order an employee of the college who has been suspended to refrain from being on any premises under the control of the college and to refrain from participating in any of the activities of the college, or issue such other conditions as it may consider necessary.

6. Composition of council

(1) The council, as contemplated in section 10 (4) of the Act, consists of-

(a) the principal;

(b) five external persons appointed by the Minister;

[Item ‘b’ substituted by s. 33 (q) of Act 3 of 2012.]

(c) one member of the academic board elected by the academic board;

(d) one lecturer elected by the lecturers at the college;

(e) two students of the college elected by the SRC;
(f) one member of the support staff elected by the support staff of the college;

(g) one external member representing donors; and

(h) four members contemplated in section 10 (6) of the Act with a broad spectrum of competencies in the fields of education, business, finance, law, marketing, information technology and human resource management appointed by the council in consultation with the Minister.

[Item 'h' substituted by s. 33 (r) of Act 3 of 2012.]

(2) At least 60 percent of the members of the council must be external persons who are not employed by the Minister or council, or are not students of the college.

[Sub-para. (2) substituted by s. 33 (s) of Act 3 of 2012.]

(3) The council members contemplated in section 10 (8) and (9) of the Act must have knowledge and experience relevant to the objects and governance of the college.

7. Termination of membership and filling of vacancies

(1) A member of the council’s term of office terminates if-

(a) he or she tenders a written resignation;

(b) the Minister or entity who appointed or elected the member to the council terminates the membership in writing;

[Item ‘b’ substituted by s. 33 (t) of Act 3 of 2012.]

(c) he or she is absent from three consecutive meetings without leave of the council;

(d) he or she is declared insolvent;
(e) he or she 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

(f) he or she is incapacitated to perform his or her functions.

(2) The council has the power to suspend and take disciplinary action against a member.

(3) If 75 percent or more of the members of the council resign, the council is deemed to have resigned.

(4) If the council resigns as contemplated in subsection (3) a new council must be constituted in terms of this statute and the Act.

(5) Whenever any vacancy occurs, section 10 of the Act must apply with the necessary changes thereto.

(6) Any member appointed in terms of subsection (5) must serve only the remainder of the term of office.

8. Election and term of office of chairperson, vice-chairperson and secretary of council

(1) The chairperson and vice-chairperson of the council must not be elected from members contemplated in section 6 (1) (a), (c), (d), (e) and (f) of the statute.

(2) The chairperson, vice-chairperson and secretary of the council are elected for a period not exceeding three years.

(3) The chairperson, vice-chairperson and secretary are eligible for re-election.

(4) Nominations for the office of the chairperson, vice-chairperson and secretary of the council must be in writing and directed to the electoral officer.
(5) If more than one candidate is nominated, voting is by secret ballot.

(6) Each member of the council has only one vote during a ballot and no proxy is allowed.

(7) Whenever a vacancy occurs in the office of the chairperson, vice-chairperson or secretary, subsections (4) to (6) apply with the necessary changes to the filling of such vacancy.

(8) A person who fills a vacancy in terms of subsection (7) holds office until the end of the term of his or her predecessor.

9. Meetings of council

(1) The council has at least four ordinary meetings during each academic year.

(2) Notice of any motion for consideration at the next ordinary meeting must be in writing and must be lodged with the secretary at least 21 days before the date determined by the council for such meeting, provided that any matter of an urgent nature may, without prior notice, by consent of the chairperson and a majority of the members present, be considered at such meeting.

(3) At least 14 days prior to the date of an ordinary meeting, the secretary gives due notice to each member of all the matters to be dealt with at such meeting and states the time and place of such meeting.

(4) A special meeting may be called at any time by the chairperson.

(5) A special meeting must be called by the chairperson at the request in writing of at least five members, if the objective of such meeting is clearly stated in the request, provided that at least seven days’ notice of a special meeting is given.
(6) No business other than that for which the special meeting was called may be transacted at such meeting.

(7) An emergency meeting may be called by the chairperson or, in his or her absence, by the principal at any time.

(8) Notice of an emergency meeting may be given in any manner convenient under the circumstances.

(9) The objective of an emergency meeting must be stated to members and no business other than that stated may be transacted at such meeting.

10. Council meeting procedures

(1) The council members must participate in the deliberations of the council in the best interest of the college.

(2) Except where otherwise provided in this statute, all acts or matters authorised or required to be done or decided by the council or its committees and all questions that may come before it are done or decided by the majority of the members present at any meeting, provided that the number present at any meeting is at least half plus one of the total number of members of the council or its committees holding office on the date of such meeting.

(3) In the absence of the chairperson and the vice-chairperson of the council, the members present must elect one of their members to preside at such meeting.

(4) The first act of an ordinary meeting, after being constituted, is to read and confirm by the signature of the chairperson the minutes of the last preceding ordinary meeting and of any special meeting subsequently held, provided that the meeting may consider the minutes as read if a copy thereof was previously sent to every member of the council, provided further that objections to the minutes of a meeting are raised and decided before confirmation of the minutes.
(5) A member of the council may not, without the consent of the meeting, speak more than once to a motion or to any amendment and the mover of any motion or any amendment has the right of reply.

(6) Every motion or amendment must be seconded and, if so directed by the chairperson, must be in writing.

(7) A motion or an amendment seconded as contemplated in subsection (6) may not be withdrawn except with the consent of the meeting.

(8) The chairperson has a deliberative vote on any matter and, in the event of an equality of votes, also a casting vote.

(9) If so decided by the meeting, the number of members voting for or against any motion must be recorded in the minutes or, if so requested by any member, the chairperson must direct that such votes be recorded.

(10) When a majority of the members of the council reach agreement on a matter referred to them by the chairperson by letter or electronic means, without a meeting having been convened, and convey such resolution by letter or electronic means, such resolution is equivalent to a resolution of the council and must be recorded in the minutes of the next succeeding ordinary meeting.

(11) The views of a member of the council who is unable to attend a meeting may be submitted to the meeting in writing but may not count as a vote of such member.

(12) The ruling of the chairperson on a point of order or procedure is binding unless immediately challenged by a member, in which event such ruling must be submitted without discussion to the meeting whose decision is final.
11. Conflict of interest of council members

(1) A member of the council may not have a conflict of interest with the college.

(2) A member of the council who has a direct or indirect financial, personal or other interest in any matter which is to be discussed at a meeting and which entails or may entail a conflict or possible conflict of interest must, before or during such meeting, declare the interest.

(3) Any person may, in writing, inform the chairperson of a meeting, before a meeting, of a conflict or possible conflict of interest of a member of the council of which such person may be aware.

(4) The council member referred to in subsections (2) and (3) is obliged to recuse himself or herself from the meeting during the discussion of the matter and the voting thereon.

12. Committees of council

(1) The council appoints-

(a) an executive committee;

(b) an audit committee;

(c) a finance committee;

(d) a conditions of employment committee;

(e) a planning and resource committee; and

(f) such other committees as may be required.
(2) The composition and functions of the committees are determined by the council.

(3) At least 50 percent of the members of a committee must be external persons, who are members of the council.

(4) The chairperson of a committee must be a member of the council.

13. **Minutes of council and committee meetings**

(1) The secretary of the council keeps the minutes of each meeting of the council and includes such minutes in the agenda of the next council meeting when the agenda is sent out in terms of section 9 (3).

(2) The minutes of all committee meetings must be included in the agenda of the next ordinary meeting of the council following the respective committee meetings.

(3) The members of the council must be provided with copies of the minutes referred to in subsection (2).

14. **Drafting, amending or rescinding statute**

No motion to draft, amend or rescind a statute or a rule is of force and effect unless adopted by at least 75 percent of all members of the council present at the meeting, provided that a quorum is present at such meeting.

**ACADEMIC BOARD**

15. **Functions of academic board**

(1) Subject to the Act, the academic board of the college-

(a) is accountable to the council for-
(i) all the teaching, learning, research and academic functions of the college;

(ii) the academic functions of the college and the promotion of the participation of women and the disabled in its learning programmes;

(iii) establishing internal academic monitoring and quality promotion mechanisms;

(iv) ensuring that the requirements of accreditation to provide learning against standards and qualifications registered in the National Qualifications Framework are met; and

(v) performing such other functions as may be delegated or assigned to it by the council;

b) must-

(i) advise the council on a code of conduct and rules concerning students;

(ii) determine, in accordance with any relevant deed or gift and after consultation with the principal, the conditions applicable to any scholarships and other academic prizes;

(iii) determine the persons to whom scholarships and academic prizes are awarded;

(iv) determine the functions of its committees as well as the procedure of meetings of these committees; and

(v) take note of any action taken by a committee in exercising its delegated powers or functions when such committee reports its actions to the next meeting of the academic board; and
(c) may -

(i) establish committees to perform any of its functions, and may for this purpose deem a single person to be a committee;

(ii) make standing orders on procedures and delegation of powers; and

(iii) delegate its functions to a committee.

(2) Without derogating from the generality of subsection (1) the organisation and supervision of instruction and examinations, and of lectures and classes, vest in the academic board.

(3) The academic board submits to the council-

(a) such reports upon its work as may be required by the council;

(b) recommendations on matters referred to it by the council; and

(c) recommendations on any other matter affecting the college that the academic board considers useful.

16. Termination of membership of academic board

(1) Members of the academic board must participate in the deliberations of the academic board in the best interest of the college.

(2) Failure to act in the best interest of the college or behaviour that brings the college into disrepute may result in the removal of a member from the academic board by the council following due process.
17. **Composition of academic board**

(1) The academic board of the college must consist of -

(a) the principal;
(b) the vice-principal or vice-principals;
(c) lecturers at the college;
(d) members of the council;
(e) members of the SRC; and
(f) such additional persons as may be determined by the council.

(2) The majority of members of the academic board must be lecturers.

(3) The manner of election and appointment of members must be determined by the council.

(4) The number of persons contemplated in subsection (1) (c) to (f) must be determined by the council.

18. **Term of office of members of academic board**

(1) Members appointed in terms of section 17 (1) (a), (b) and (c) may hold office for as long as they are employed by the college in that capacity.

(2) The term of office for student members automatically lapses when a student ceases to be a registered student or a member of the SRC.
19. **Chairperson, vice-chairperson and secretary of academic board**

(1) The principal is the chairperson of the academic board and shall preside at meetings of the academic board.

(2) The vice-principal is the vice-chairperson of the academic board and shall preside at meetings of the academic board in the absence of the chairperson.

(3) The secretary of the academic board is elected by the academic board and he or she must perform functions as the board may decide.

(4) The chairperson presides at the meetings of the subcommittees of the academic board if the academic board considers it appropriate for him or her to do so.

(5) The chairperson and vice-chairperson shall perform such other functions as the academic board may determine.

(6) If both the chairperson and the vice-chairperson are absent, the academic board must elect from among its members a chairperson for the meeting concerned.

20. **Meeting procedure of academic board**

The procedure applicable to council meetings is applicable with the necessary changes to meetings of the academic board.

21. **Committees of the academic board**

(1) The academic board appoints-

   (a) an executive committee; and

   (b) such other committees as may be required.
(2) The composition and functions of the committees are determined by the academic board.

22. **Joint committees of council and academic board**

The council, in consultation with the academic board, appoints such joint committees of the council and the academic board as may be necessary for the performance of particular tasks.

**STUDENT REPRESENTATIVE COUNCIL**

23. **Functions of SRC**

(1) The students of the college are represented by the SRC in all matters that may affect them.

(2) The matters contemplated in subsection (1) include-

(a) liaison with management, the general public, other colleges, student representative councils of other colleges, national or international student organisations, unions and news media;

(b) being the umbrella organisation for all student committees, clubs, councils and societies, granting or withdrawing recognition of such student committees, clubs, councils and societies as it considers appropriate;

(c) coordination and supervision of the use of students’ facilities and all matters pertaining thereto, in conjunction with management;

(d) convening and conducting of all authorised meetings of the student body and being the managing body in all general referenda and petitions organised by the students within the rules;
(e) the election of office-bearers and establishing committees as the SRC considers necessary;

(f) the organisation and promotion of extramural activities among students;

(g) keeping account of all moneys allocated to the SRC by the council and any other moneys which may accrue to the SRC in its capacity as representative of the students;

(h) allocating or disbursing such funds for use by students, and making grants to approved student clubs, committees, societies and councils;

(i) the responsibility for preserving order at student functions and ensuring good conduct at other approved meetings of students;

(j) coordination of student involvement in all community projects initiated by the SRC;

(k) responsibility for all student publications;

(l) final decision making in all matters falling within the jurisdiction of the SRC; and

(m) such additional functions and privileges as may be specifically conferred upon the SRC in writing by the council.

24. Composition of SRC

(1) Only registered students are eligible to serve on the SRC.

(2) The SRC must be representative of the student body.

(3) The election of SRC members must be democratic and transparent.
(4) The SRCs of colleges that are to be merged must have a meeting before the merger to constitute a single interim SRC comprising all members of the SRC concerned for a period not exceeding six months.

25. **Office-bearers of SRC**

(1) The SRC elects from among its members a president to act as chairperson and a deputy president to act as deputy chairperson.

(2) The functions of other office-bearers and the election of such office-bearers are determined by the SRC.

26. **Term of office of SRC members**

(1) The term of office of the members of the SRC must be one academic year.

(2) A member of the SRC may serve more than one term of office.

27. **Meetings of SRC**

The number of meetings, the quorum at a meeting and the meeting procedures are determined by the constitution of the SRC as approved by the council, provided that four ordinary meetings are held during an academic year.

28. **SRC committees**

(1) The SRC must establish a disciplinary committee responsible for the discipline of any members of the SRC and members of the student structures affiliated to the SRC.

(2) The SRC may establish such other committees as may be required.
29. **General meeting**

(1) The SRC must convene at least one general meeting of students per semester.

(2) If a majority of students sign a petition to the SRC requesting a general meeting, the SRC must comply with such a request.

(3) Meetings of the SRC may not disrupt academic activities.

**MANAGEMENT**

30. **Management**

(1) Management consists of the principal, vice-principal or vice-principals of the college.

[Sub-para. (1) substituted by s. 33 (u) of Act 3 of 2012.]

(2) The principal is the chief executive and accounting officer of the college.

31. **Functions of principal**

(1) The principal is responsible for the day-to-day management and administration of the college and has all the powers necessary to perform these functions.

(2) By virtue of his or her office the principal is a member of all the committees of the council and the academic board.

(3) The council may assign additional functions and grant additional powers to the principal.

[Sub-para. (3) substituted by s. 33 (v) of Act 3 of 2012.]
(4) When the principal is absent or unable to carry out his or her duties, the vice-principal must act as principal, or the Minister may appoint an acting principal.

[Sub-para. (4) substituted by s. 33 (v) of Act 3 of 2012.]

32. **Vice-principal and financial officer**

(1) The vice-principal or vice-principals are responsible for assisting the principal in the management and administration of the college.

(2) The council of a public college must appoint a financial officer.

33. **Appointment of staff employed by college**

The advertising of the post, the invitation for nomination of candidates, the search for suitable candidates, the criteria for the short-listing of candidates and the interviewing and appointment processes for staff must be in the manner determined by the council.

[Para. 33 substituted by s. 33 (w) of Act 3 of 2012.]

34. **Conditions of employment**

The council must approve conditions of employment, including the determination and review of salaries of staff employed in terms of section 20 (4) (a) and all other forms of remuneration in accordance with the rules.

[Para. 34 substituted by s. 33 (x) of Act 3 of 2012.]

35. **Evaluation**

(1) The management of the college are subject to evaluation by the Minister in the performance of its duties.

(2) The staff are subject to continuous evaluation in the performance of its duties.

[Para. 35 substituted by s. 33 (y) of Act 3 of 2012.]
36. Disciplinary code of staff

(1) A member of staff employment in terms of section 20 (4) (a) is subjected to a code of conduct and disciplinary procedures, as approved by the council and determined in the rules, which serve as an integral part of their conditions of service.

(2) Every member of staff employed in terms of the Public Service Act is subject to a code of conduct of public servants and disciplinary procedures provided for in terms of the Public Service Act and its Regulations.

[Para. 36 substituted by s. 33 (z) of Act 3 of 2012.]

37. Representative organisation of employees

Agreements with representative organisations of employees may, with reference to salary and related negotiations and according to the relevant labour legislation, be entered into by the representatives of lecturers and support staff and recommended to the council for approval.

STUDENTS

38. Admission and registration of students

A person may register as a student only if he or she satisfies the legal requirements for admission to study at the college and satisfies any other requirements for admission that may be determined by the council and laid down in the rules.

39. Student disciplinary code

The disciplinary measures and disciplinary provisions applicable to students are set out in the disciplinary code determined by the council after consultation with the SRC.
DONORS

40. Donors

(1) The college may receive moneys and equipment of any sort from donors to assist the college in providing quality education.

(2) The college may recognise and register certain donors as determined in the rules.
# SCHEDULE 2

**EXISTING PUBLIC FURTHER EDUCATION AND TRAINING INSTITUTIONS, STRUCTURES AND BODIES**  
*(Section 53)*

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**SCHEDULE 3**

**AMENDMENT OF EMPLOYMENT OF EDUCATORS ACT 76 OF 1998**
*(Section 58 (3))*

1. Amends section 1 of the Employment of Educators Act 76 of 1998, as follows: paragraph (a) substitutes the definition of ‘departmental office’; paragraph (b) substitutes the definition of ‘educator’; and paragraph (c) deletes the definition of ‘further education and training institution’.

2. Amends section 2 of the Employment of Educators Act 76 of 1998 by deleting paragraph (b).

3. Amends section 3 of the Employment of Educators Act 76 of 1998 by deleting subsection (5).
4. Amends section 6 (3) of the Employment of Educators Act 76 of 1998, as follows: Paragraph (a) substitutes paragraph (a); paragraph (b) substitutes paragraph (b) (v); Paragraph (c) substitutes in paragraph (c) the words preceding subparagraph (i); paragraph (d) substitutes paragraph (d) and (e); paragraph (e) substitutes paragraph (h); paragraph (f) substitutes paragraph (l); paragraph (g) substitutes in paragraph (m) the words preceding subparagraph (i) and paragraph (h) repeals paragraph (m) (ii).


6. Amends of section 8 of the Employment of Educators Act 76 of 1998, as follows: paragraph (a) substitutes subsection (2); paragraph (b) substitutes section (5); and paragraph (c) substitutes subsection (7).

7. Amends section 18 (1) of the Employment of Educators Act 76 of 1998, as follows: paragraph (a) substitutes paragraph (b), (c) and (d); and paragraph (b) substitutes paragraph (f) and (g).

PENDLEX: Further Education and Training Colleges Act 16 of 2006 after amendment by the Further Education and Training Colleges Amendment Act 3 of 2012

Section 21 (1) - words preceding para. (a)

If a dispute arises about the payment or employment conditions of the member of staff, employed in terms of the section 20 (4), any party to the dispute may refer the dispute in writing to-

Section 50 (2) - deleted

PENDLEX: Further Education and Training colleges Act 16 of 2006 after amendment by the Further Education and Training Colleges Amendment Act 1 of 2013
Chapter 7A - SOUTH AFRICAN INSTITUTE FOR VOCATIONAL AND CONTINUING EDUCATION AND TRAINING

43A - Establishment of Institute

The Minister must establish a South African Institute for Vocational and Continuing Education and Training juristic person.

43B - Functions of Institute

(1) The Institute must-

(a) assist and support the Minister, SAQA, the relevant Quality Council and colleges in the provision of opportunities for and encouraging life long learning;

(b) assist and support the Minister in the development of distance education and training, including open learning;

(c) assist and support colleges in the development of learning, teaching and assessment materials;

(d) assist and support the development of public colleges and the development of a skills system;

(e) assist in the development of the curriculum for every public college and ensure the curriculum development is institutionalised within a technical and vocational education and training college or a community education and training college, as the case may be, with long term capacity;

(f) conduct research and contribute to innovate development in continuing education and training;

(g) undertake and promote research in the areas of teaching and learning in vocational and occupational programmes that would lead to qualifications or part-qualification;
(h) advise the Minister on any matter in respect of vocational and continuing education and training;

(i) develop material for career guidance;

(j) develop capacity and upgrade teaching staff skills in vocational and continuing education and training;

(k) provide management training in every college;

(l) provide management, leadership and operational training at all levels for Services Education and Training Authorities established in terms of section 9 of the Skills Development Act 1998, (Act 97 of 1998);

(m) provide management, leadership and operational training for operational training for officials of the Department;

(n) promote dialogue between colleges and between employers and Sector Education and Training Authority;

(o) interact with professional councils and promote dialogue between those councils and education and training institutions and the Department;

(p) publish the journal containing information in respect of continuing education and training skills development;

(q) establish and maintain a library information service in order to support the Institute and the institutions served by the Institute; and

(r) conduct and promote labour market research.

43C - Board of Institute

(1) The Institute performs its functions through, and is governed, managed and administered by, a board.
(2) The board of the Institute consists of-

(a) a chairperson; and

(b) not less than nine ordinary members and not more than 15 ordinary members.

(3) The chairperson and members contemplated in subsection (2) are appointed by the Minister from nominations received in the manner prescribed for the term of the office not exceeding a period of five years.

(4) The Minister may renew the term of office of members contemplated in subsection (2) for one additional period not exceeding five years.

43D - Vacation of office and filling of vacancies

(1) A person ceases to be a member of the board if he or she-

(a) resigns by giving written notice to the chairperson or, in the case of chairperson, to the Minister;

(b) is absent from three consecutive meetings of the board without the leave of the board;

(c) is declared insolvent, removed from office of trust by a court of law, convicted of an offence involving dishonesty or an offence for which the sentence is imprisonment without the option of a fine; or

(d) is declared unfit to attend to his or her personal affair by a court of law.

(2) Notwithstanding subsection (1), the Minister may terminate a person’s membership of the board on good cause shown and in accordance with the Promotion of Administrative Justice Act, 2000 (Act 3 of 2004).
(3) A vacancy as a result of subsection (2) must be filled by the Minister in accordance with section 43C (3).

(4) A person appointed to fill a vacancy in terms of this section holds office for the unexpired period of the term of office of his or her predecessor.

43E - Funds and accountability of Institute

(1) The funds of the Institute consists of-

(a) money appropriated by Parliament;

(b) fees or charges for the services rendered;

(c) interest on fees or charges for services rendered;

(d) donations or contributions; and

(e) any other income accruing to or received by the Institute.

(2) The Institute-

(a) must keep record of all-

(i) funds received and spent;

(ii) assets and liabilities; and

(iii) financial transactions;

(b) must, in each financial year, submit to the Minister by not later than 31 August of each year, and in such manner the Minister may determine, a statement of estimated income and expenditure for the ensuing financial year, for approval by the Minister with the concurrence of the Minister of Finance;
(c) may, in any financial year, submit an adjusted statement of its estimated income and expenditure to the Minister, for approval by the Minister with the concurrence of the Minister of Finance; and

(d) may not incur any expenses which exceed the total amount approved in terms of paragraph (b) and (c).

(3) If the Minister does not approve of the Institute’s statement of estimate income and expenditure or adjusted statement of estimated income and expenditure, the Institute must submit a revised statement to the Minister within a period by the Minister.

(4)

(a) The money contemplated in subsection (1) must be used in accordance with the approved statement referred to in subsection (2) or (3).

(b) Any balance not spent within the financial year in question must be carried over as a credit to the next financial year.

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

(6) Subject to the Public Finance Management Act, 1999 (Act 1 of 1999), the board-

(a) is the accounting authority for the Institute;

(b) is charged with the responsibility of accounting for the monies received or payment made by the Institute;

(c) must cause the necessary accounting and other related records to be kept.
(7) The accounts, financial statements and records of the Institute must be audited annually.

43F - Intervention by Minister

(1) Minister may issue a directive to the board to take such action specified by the Minister if the Institute-

(a) is involved in financial impropriety or is being otherwise being mismanaged;

(b) is unable to perform its functions effectively due to dissension among board members;

(c) has acted unfairly or in a discriminatory or inequitable way towards a person to whom it owes a duty in terms of this Act;

(d) has failed to comply with any law;

(e) has failed to comply with any directive given by the Minister in terms of this Act; or

(f) has obstructed the Minister or a person authorised by the Minister from performing a function in terms of this Act.

(2) A directive contemplated in subsection (1) must state-

(a) a nature of the deficiency;

(b) the steps which must be taken to remedy the situation; and

(c) a reasonable period within which the steps contemplated in paragraph (b) must be taken.
(3) Before making a decision in terms of subsection (1), the Minister must, subject to the Promotion of Administrative Justice Act, 2000 (Act 3 of 2002)-

(a) give notice to the board of the intention to issue a directive;

(b) give the board a reasonable opportunity to make representations;

(c) consider the representation contemplated in paragraph (b).

(4)

(a) if the board fails to comply with a directive within the stated period, the Minister must dissolve the board and appoint an administrator to take over the finances of the board;

(b) for the purpose of the paragraph (a) section 43G, 43H, 43I apply with the changes required by the context.

(5) If the Minister appoints an administrator in terms of subsection (4), the administrator may perform all the functions of the Institute and an employee of the Institute must comply with the directive given by the administrator.

(6) The costs associated with the appointment of an administrator shall be for the account of the Institute.

43G - Appointment of administrator

(1) Notwithstanding any other provision of this Act, the Minister may, after consultation with the board if practicable, appoint a person as administrator to take over the governance, management and administration of the Institute and to perform the functions of the Institute if any one of or if any combination of or if all of the following circumstances occur;
(a) an audit of accounts, financial statements and records of the Institute or a report by Ministerial Committee reveals financial or other maladministration of a serious nature or the serious undermining of the effective functioning of the Institute; or

(b) any other circumstances arise that reveals financial or other maladministration of a serious nature or the serious undermining of the effective functioning of the Institute; or

(c) the board requests such appointment.

(2) The Minister may act in terms of subsection (1) (a) or (b) only if the appointment of an administrator is in the interest of the Institute and continuing education and training in an open and democratic society.

(3)

(a) The Minister appoints an administrator in terms of subsection (1) for such a period as may be determined by the Minister but such period may not exceed two years.

(b) The Minister may extend the period contemplated in paragraph (a) once for a period not to exceed six months.

43H - Assistance to administrator

An administrator appointed in terms of the section 43G may, with the approval of the Minister, appoint any other person with suitable knowledge and experience to assist him or her in the performance of his or her functions.

43I - Remuneration and allowances

The Minister, with the approval of the Minister of Finance may determine the remuneration and allowances to be paid to the administrator and any other person and any other person appointed in section.
43J - Dissolution of board

The board is dissolved from the date on which the Minister appoints the administrator in terms of section 43G (3) (a).

43K - Closure and disestablishment of Institute

(1) The Minister may, by notice in the Gazette, close and disestablish the Institute.

(2) Before making a decision under subsection (1) the Minister must, subject to the Promotion of Administrative Justice Act 2000 (Act 3 of 2000).

(a) give notice to the board of the intention to issue a directive;

(b) give the board a reasonable opportunity to make representations;

(c) consider those representations.

(3) If the Institute is closed and disestablished in terms of the subsection (1), all assets and liabilities must, after such closure and disestablishment, be dealt with by the Minister according to the law and any assets remaining after payment of all liabilities vest in the State.

(4) Any immovable property belonging to the Institute must be transferred to the State.
FUTHER EDUCATION AND TRAINING COLLEGE
AMENDED ACT 3 OF 2012

[Assented To: 25 April 2012]
[Date of Commencement: 25 April 2012]
(Unless otherwise indicated)

ACT

To amend the Further Education and Training College Act, 2006, so as to remove all references to provisional authority; to assign functions previously assigned to the Member of Executive Council to the Minister; to remove all references to ‘Head of Department’ and replace them with ‘Director-General’; to regulate the conduct of members of council, members of committee of the council and staff of a public further education and training college engaging in business with the relevant public college; to provide afresh for the appointment of staff; and to provide for transitional arrangements; and to provide for matters connected therewith.

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

1. Amends section 1 of the Further Education and Training Colleges Act 16 of 2006, as follows: paragraph (a) deletes the definition of ‘Head of Department’; paragraph (b) deletes the definition of ‘Member of the Executive Council’; paragraph (c) deletes paragraph (b) of the definition of ‘policy’; and paragraph (d) substitutes the definition of ‘SAQA’.

2. Amends section 3 of the Further Education and Training Colleges Act 16 of 2006, as follows: paragraph (a) substitutes subsection (1); paragraph (b) substitutes subsection (3); paragraph (c) substitutes in subsection (4) the words preceding paragraph (a); and paragraph (d) substitutes subsection (5).
3. Amends section 4 of the Further Education and Training college Act 16 of 2006, as follows; paragraph (a) substitutes subsection (1); paragraph (b) substitutes in subsection (3) the words preceding paragraph (a); and paragraph (c) substitutes subsection (3) (a).

4. Amends section 5 of the Further Education and Training college Act 16 of 2006 by substituting subsections (6) and (7).

5. Amends section 6 of the Further Education and Training Colleges Act 16 of 2006, as follows: paragraph (a) substitutes subsection (1); paragraph (b) substitutes in subsection (2) the words preceding paragraph (a); paragraph (c) substitutes in subsection (5) the words preceding paragraph (a); and paragraph (d) substitutes subsection (7).

6. Amends section 7 of the Further Education and Training Colleges Act 6 of 2006, as follows: paragraph (a) substitutes in subsection (1) the words preceding paragraph (a); paragraph (b) substitutes in subsection (2) the words preceding paragraph (a); and paragraph (c) substitutes in subsection (3) the words preceding paragraph (a).

7. Amends section 8 of the Further Education and Training Colleges Act 16 of 2006, as follows: paragraph (a) substitutes subsection (1); paragraph (b) substitutes in subsection (2) the words preceding paragraph (a); paragraph (c) deletes subsection (2) (a); and (d) paragraph (d) substitutes subsection (3) (a) and (b).

8. Amends section 10 of the Further Education and Training Colleges Act 16 of 2006, as follows: paragraph (a) substitutes subsection (2) (a) (iv); paragraph (b) substitutes subsection (2) (b); paragraph (c) substitutes subsection (4) (b); paragraph (d) substitutes subsection (6); paragraph (e) substitutes subsection (7) the words preceding paragraph (a); paragraph (f) substitutes subsection (8) (b); paragraph (g) substitutes subsection (9); paragraph (h) inserts subsections (9A) to (9E) inclusive; paragraph (i) substitutes in subsection (10) the words preceding paragraph (a); and paragraph (j) adds subsection (11).

10. Amends section 17 of the Further Education and Training Colleges Act 16 of 2006, as follows: paragraph (a) substitutes subsection (1); and paragraph (b) substitutes in subsection (3) the words preceding paragraph (a).


   [Date of commencement of s. 11: 1 April 2013.]


   [Date of commencement of s. 12: 1 April 2013 (insofar as it applies to management staff) and 1 April 2015 (insofar as it relates to staff other than management staff).]

13. Amends section 21 (1) of the Further Education and Training Colleges Act 16 of 2006 by substituting the words preceding paragraph (a).

   [Date of commencement of s. 13: 1 April 2015.]


   [Date of commencement of s. 14: 1 April 2013.]


16. Amends section 24 of the Further Education and Training Colleges Act 16 of 2006, as follows: paragraph (a) substitutes subsection (1) (d); paragraph (b) substitutes subsection (2); and paragraph (c) substitutes subsection (3).

17. Amends section 25 the Further Education and Training Colleges Act 16 of 2006, as follows: paragraph (a) substitutes in subsection (1) the words preceding paragraph (a); paragraph (b) substitutes subsection (3) the words preceding paragraph (a); and paragraph (c) substitutes subsection (4).


20. Amends section 31 (2) of the Further Education and Training Colleges Act 16 of 2006 by deleting paragraph (b).

21. Amends section 41B of the Further Education and Training Colleges Act 16 of 2006 by deleting subsections (2) and (3).

22. Amends section 41D of the Further Education and Training Colleges Act 16 of 2006 by substituting subsection (1).


24. Amends section 41G of the Further Education and Training Colleges Act 16 of 2006, as follows: paragraph (a) substitutes subsections (2) and (3); paragraph (b) substitutes subsection (5); paragraph (c) deletes subsection (6); and paragraph (d) substitutes subsection 7.


28. Amends section 45 of the Further Education and Training College Act 16 of 2006 by substituting sections (2) and (3)

   [Date of commencement of sub-s. (3): 1 April 2015.]
29. Amends section 46 of the Further Education and Training Colleges Act 16 of 2006, as follows: paragraph (a) substitutes in subsection (1) the words preceding paragraph (a); paragraph (b) substitutes subsection in subsection (2) the words preceding paragraph (a); paragraph (c) substitutes subsection (2)(b)(i); and paragraph (d) substitutes subsections (3) to (5) inclusive.


31. Amends section 49 (3) of the Further Education and Training Colleges Act 16 of 2006 by substituting paragraph (c).

32. Amends section 50 of the Further Education and Training Colleges Act 16 of 2006, as follows: paragraph (a) substitutes subsection (1)(b); and paragraph (b) deletes subsection (2)

[Date of commencement of para. (b): 1 April 2015.]

33. Amends Schedule 1 of the Further Education and Training Colleges Act 16 of 2006, as follows: paragraph (a) substitutes in paragraph 1 the definition of “Department”; paragraph (b) deletes in paragraph 1 the definition of “Head of Department”; paragraph (c) deletes in paragraph 1 the definition of “lecturer”; paragraph (d) deletes in paragraph 1 the definition of “MEC”; paragraph (e) substitutes in paragraph 1 the definition of “Minister”; paragraph (f) substitutes in paragraph 1 the definition of “National Qualifications Framework”; paragraph (g) deletes in paragraph 1 the definition of “NBFET”; paragraph (h) substitutes in paragraph 1 the definition of “policy”; paragraph (i) substitutes in paragraph 1 the definition of “SAQA”; paragraph (j) deletes in paragraph 1 the definition of “school”; paragraph (k) deletes in paragraph 1 the definition of “South African Schools Act”; paragraph (l) substitutes paragraph 4 (1)(c); paragraph (m) deletes paragraph 4 (1)(e); paragraph (n) substitutes paragraph 5 (2)(d); paragraph (o) substitutes paragraph 5 (2)(f); paragraph (p) substitutes paragraph 5 (2)(i); paragraph (q) substitutes paragraph 6 (1)(b); paragraph (r) substitutes paragraph 6 (1)(h); paragraph (s)
substitutes paragraph 6 (2); paragraph (t) substitutes paragraph 7 (1); paragraph (u) substitutes paragraph 30 (1); paragraph (v) substitutes paragraph 31 (3) and (4); paragraph (w) substitutes paragraph 33; paragraph (x) substitutes paragraph 34; paragraph (y) substitutes paragraph 35; and paragraph (z) substitutes paragraph 36.

34. Transitional provisions

(1) For the purposes of this section, any word or expression to which a meaning has been ascribed in the principal Act bears the meaning so ascribed, and ‘norms and standards’ means the minimum norms and standards for the funding of public colleges contemplated in section 23 of the principal Act as amended by this Act.

(2) Any principal or vice-principal employed in terms of the Public Service Act immediately before section 11 of this Act takes effect, remain so employed.

(3) Any lecturer or member of the support staff employed by a public college immediately before section 12 of this Act takes effect and who occupies a post either than a post contemplated in subsection (4), remains so employed and must be regarded as staff appointed in terms of section 20 (4) of the principle Act as amended by this Act.

(4) Any lecturer or member of the support staff employed by a public college in a post that is fully funded in terms of the norms and standards on 1 January 2012, must be verified by the Minister as fully funded posts, and the Minister must, subject to section 197 of the Labour Relations Act, transfer those posts to the organisational structure of the Department in accordance with the Public Service Act.
(5) Subject to section 197 of the Labour Relations Act, staff who, immediately before section 12 of this Act takes effect, renders support services to public colleges situated in provinces, both at district and head office, even if such a staff member is appointed as an educator in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), must be transferred to the organisational structure of the Department of Higher Education and Training in accordance with the Public Service Act.

(6) If any discrepancy exists between a condition of service relating to an educator’s post and public services post to which he or she is transferred, the conditions of service in terms of the Public Service Act prevail.

(7) During the translation of the post in terms of this section, any condition attached to a lecturer’s post that is more beneficial to the incumbent continues to exist as a benefit personal to that incumbent until the condition of the public service equivalent to that post is similar or better.

(8) Any disciplinary measure relating to employment of a staff member contemplated in subsection (4) which is pending when section 12 of this Act takes effect, must be finalised in terms of the law that authorised the commencement of that measure.

(9) The General Public Service Sector Bargaining Council or the PSCBC, as the case may be, continues to be the bargaining council to determine salaries and conditions of employment of staff employed by a public college in accordance with section 20 (2) (b) of the principal Act as amended by this Act until the parties agree to establish a new structure relevant to a public college.
(10) The Education Labour Relations Council, through its Further Education and Training Colleges Bargaining Unit, continues to be the Bargaining Council to determine salaries and conditions of employment of lecturers employed by a public college in accordance with section 20 (4) (b) of the principal Act as amended by this Act until the parties agree to establish a new structure relevant to staff or public colleges employed under that section.

(11) The General Public Services Sector Bargaining Council or the PSCBC, as the case may be, continues to be the Bargaining Council to determine salaries and conditions of employment of support staff employed by a public college in accordance with section 20 (4) (b) of the principal Act as amended by this Act until the parties agree to establish a new structure relevant to support staff of public colleges employed under that section.

35. Short title and commencement

(1) This Act is called The Further Education and Training Colleges Amendment Act, 2012, and comes into operation on a date determined by the Minister by notice in the Gazette.

(2) Different dates may be determined under subsection 1 in respect of different provisions of this Act.
To amend the Further Education and Training Colleges Act, 2006, so as to amend certain definitions; to amend the provisions relating to the establishment of a public college; to establish the South African Institute for Vocational and Continuing Education and Training; to provide for the composition, functions and functioning of the Institute; to provide for transitional arrangements, the repeal of the Adult Education and Training Act, 2000 and the amendment of certain other laws; and to provide for matters connected therewith.

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

1. Amends section 1 of the Further Education and Training Colleges Act 16 of 2006, as follows: paragraph (a) substitutes the definition of ‘college’; paragraph (b) inserts the definition of ‘continuing education and training’; paragraph (c) deletes the definition of ‘further education and training’ and ‘general education’; paragraph (d) inserts the definition of ‘Institute’; paragraph (e) substitutes the definition of ‘National Qualifications Framework’; paragraph (f) substitutes the definition of ‘private college’; paragraph (g) substitutes the definition of ‘public college’; and paragraph (h) substitutes the definition of ‘to provide further education and training’.

2. Amends section 3 of the Further Education and Training Colleges Act 16 of 2006, as follows: paragraph (a) substitutes subsection (1); paragraph (b) inserts subsection (1A); paragraph (c) substitutes subsection (2).
3. Amends section 4 of the Education and Training Colleges Act 16 of 2006, as follows: paragraph (a) substitutes subsection (1); paragraph (b) substitutes subsection (3) (b) (i).

4. Amends section 10 (7) of the Further Education and Training Colleges Act 16 of 2006 by substituting paragraphs (b), (c) and (d).

5. Amends section 11 of the Further Education and Training Colleges Act 16 of 2006 by adding subsections (6) and (7).

6. Amends section 17 (3) of the Further Education and Training Colleges Act 16 of 2006 by substituting paragraphs (a) and (b).

7. Amends section 22 (2) of the Further Education and Training Colleges Act 16 of 2006 by substituting paragraph (b).

8. Amends section 24 (1) of the Further Education and Training Colleges Act 16 of 2006 by substituting paragraph (g).

9. Amends section 28 of the Further Education and Training Colleges Act 16 of 2006 by substituting the words preceding paragraph (a).

10. Amends section 30 (1) (b) of the Further Education and Training Colleges Act 16 of 2006 by substituting the words preceding subparagraph (i).


13. Amends section 42 of the Further Education and Training Colleges Act 16 of 2006 as follows: paragraph (a) substitutes the heading; paragraph (b) substitutes subsection (1) (a).
14. Amends section 43 of the Further Education and Training Colleges Act 16 of 2006, as follows: paragraph (a) substitutes the heading; paragraph (b) substitutes subsection (1).

15. Inserts Chapter 7A (sections 43A to 43K inclusive) in the Further Education and Training Colleges Act 16 of 2006.

   [Date of commencement of s. 15: to be proclaimed]


17. Amends section 46 (1) of the Further Education and Training Colleges Act 16 of 2006 by substituting paragraph (c).

18. Amends section 48 of the Further Education and Training Colleges Act 16 of 2006, as follows: paragraph (a) substitutes subsection (1) (a) and (b); paragraph (b) substitutes subsection (2); and paragraph (c) substitutes subsection (5).


21. Amends Schedule 1 of the Further Education and Training Colleges Act 16 of 2006, as follows; paragraph (a) substitutes in paragraph 1 the words preceding the definition of “academic board”; paragraph (b) deletes in paragraph 1 the definition of “further education training” and “further education and training colleges”; paragraph (c) deletes in paragraph 1 the definition of “NBFET”; paragraph (d) deletes in paragraph 1 the definition of “public college”; paragraph (e) substitutes in paragraph 1 the definition of “the Act”; and paragraph (f) deletes in paragraph 1 the definition of “to provide further education and training”.


24. Repeal or amendment of laws

The laws mentioned in the Schedule are hereby repealed or amended to the extent set out in the third column thereof.

[Date of commencement of s. 24: to be proclaimed]

25. Transitional provisions

(1)

(a) For the purposes of this subsection “college” has the meaning ascribed to it in the definition of “public college” in the principal Act as it existed immediately before this Act took effect.

(b) Any college that is in existence immediately before the commencement of this Act continues to exist as a vocational and continuing education and training college is deemed to have been established as a technical and vocational education and training college in terms of section 3 (1) (a) of the principal Act as amended by this Act.

(c) Any member of a council, academic board and student representatives council of a college appointed in terms of the principal Act as it existed immediately before this Act took effect and who is in office immediately before the commencement of this Act, continues to be a member of such council or board and continues to perform the functions of the council or board of the technical and vocational education and training college, deemed to have been established in terms of section 3 (1) (a) of the principal Act as amended by this Act, until the term of office of such member expires.
(d) Any regulation, policy or college statute made in terms of the principal Act and that was applicable to a college immediately before the commencement of this Act, continues to exist to the extent that such regulation, policy or college statute is applicable to the technical and vocational education and training college deemed to have been established in terms of section 3 (1) (a) of the principal Act as amended by this Act.

(e) Any process or action which was started by a college before the commencement of this Act is deemed to be a process or an action which was started by the technical and vocational education and training college deemed to have been established in terms of section 3 (1) (a) of the principal Act as amended by this Act.

(f) Any employee of a college who was employed by the State or a college immediately before the commencement of this Act continues to be employed by the State or the technical and vocational education and training college deemed to have been established in terms of section 3 (1) (a) of the principal Act as amended by this Act.

(g) All assets, rights, liabilities and obligations of a college that vested in the college immediately before the commencement of this Act continue to vest in the technical and vocational education and training college deemed to have been established in terms of section 3 (1) (a) of the principal Act as amended by this Act.

(2)

(a) For the purposes of this subsection and subsection (3)-

(i) ‘AET Act’ means the Adult Education and Training Act, 2000 (Act 52 of 2000);
(ii) ‘AET’ Centre’ means a Public Adult Education and Training Centre that is in existence immediately before the commencement of this Act and that was established as a public Adult Education and Training Center in terms of sections 3 (1) (b) of the AET Act.

(b) An AET Centre continues to exist and is deemed to have been established as a community education and training college in terms of section 3 (1) (b) of the principal Act as amended by this Act.

(c) Any member of a governing body of an AET Centre appointed in terms of the AET Act and who are in office immediately before the commencement of this Act, is deemed to be a member of and must perform the functions of the council of the community education and training college deemed to have been established in terms of section 3 (1) (b) of the principal Act as amended by this Act, until the term of office of such member expires.

(d) Any regulation or policy made or deemed to have been made in terms of the AET Act and that was applicable to an AET Centre immediate before the commencement of this Act continues to exist to the extend that such regulation or policy is applicable to the community education and training college deemed to have been established in terms of section 3 (1) (b) of the principal Act as amended by this Act.

(e) Any process or action which was started by an AET Centre before the commencement of this Act is deemed to be a process or an action which was started by the community education and training college deemed to have been established in terms of section 3 (1) (b) of the principal Act as amended by this Act.
(f) Any employee who worked at an AET Centre and who was employed by the State or the AET Centre immediately before the commencement of this Act continues to be employed by the State or the community education and training college deemed to have been established in terms of section 3 (1) (b) of the principal Act as amended by this Act.

(g) All assets, rights, liabilities and obligations that vested in an AET Centre immediately before the commencement of this Act, continue to vest in the community education and training college deemed to have been established in terms of section 3 (1) (b) of the principal Act as amended by this Act.

[Date of commencement of sub-s (2): to be proclaimed]

(3)

(a) Subject to paragraph (b), a private AET Centre registered in terms of section 26 and 27 of the AET Act, the registration of which is still valid immediately before the commencement of this Act, is deemed to be provisionally registered in terms of the principal Act as amended by this Act for the duration of the registration period set in terms of the AET Act.

(b) A private adult education and training centre referred to in paragraph (a) must, within 12 months from the date of commencement of this Act or such extended period as the Minister may determine by notice in the Gazette, apply to be registered in terms of the principal Act as amended by this Act.

[Date of commencement of sub-s (3): to be proclaimed.]

26. **Short title and commencement**

This Act is called the Further Education and Training Colleges Amended Act, 2013, and comes into operation on the date determined by the President by notice in Gazette.
# SCHEDULE

## LAWS AMENDED OR REPEALED

(Section 24)

<table>
<thead>
<tr>
<th>No. and year of Act [sic]</th>
<th>Short title [sic]</th>
<th>Extended of repeal or amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult Education and Training Act, 2000</td>
<td>Act 52 of 2000</td>
<td>The whole</td>
</tr>
<tr>
<td>Educational Laws Amendment Act, 2002</td>
<td>Act 50 of 2002</td>
<td>Sections 27, 28, 29 and 30</td>
</tr>
<tr>
<td>Educational Laws Amendment Act, 2007</td>
<td>Act 31 of 2007</td>
<td>Sections 22, 23 and 24</td>
</tr>
<tr>
<td>Higher Education and Training Laws Amendment Act, 2010</td>
<td>Act 25 of 2010</td>
<td>Sections 1, 2, 3, 4, 5, 6, 7, and 8</td>
</tr>
</tbody>
</table>
EDUCATION LAWS AMENDMENT ACT

EDUCATION LAWS AMENDMENT
ACT 31 OF 2007

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.

ACT

To amend the National Education Policy Act, 1996, so as to substitute the provision relating to consultation on the national education policy; and to amend the provision for the establishment of consultative bodies; to amend the South African Schools Act, 1996, so as to insert certain definitions; to provide for minimum norms and standards for infrastructure and capacity in public schools; to provide for random search and seizure and drug testing at schools; to provide for the functions and responsibilities of a principal; to substitute a reference to obsolete legislation; and to regulate the identification of underperforming schools; to amend the National Student Financial Aid Scheme Act, 1999, so as to effect certain technical adjustments; and to extend the functions of the
board to cover eligible students at public further education and training colleges; to amend the South African Council of Educators Act, 2000, the Adult Basic Education and Training Act, 2000, and the General and Further Education and Training Quality Assurance Act, 2001, so as to effect certain technical adjustments; and to provide for matters connected therewith.

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

**Amendment of section 5 of Act 27 of 1996, as amended by section 5 of Act 48 of 1999**

1. Section 5 of the National Education Policy Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

   "(1) Policy contemplated in section 3 shall be determined by the Minister after consultation with such appropriate consultative bodies as have been established for that purpose in terms of section 11 or any other applicable law, and with the Council.".

**Amendment of section 6 of Act 27 of 1996**

2. Section 6 of the National Education Policy Act, 1996, is hereby amended by the substitution for paragraph (b) of the following paragraph:

   "(b) all the parties in the Education Labour Relations Council established by section 6 of the Education Labour Relations Act, 1993 (Act No. 146 of 1993) section 40 of the Labour Relations Act, 1995 (Act No. 66 of 1995), in respect of any matter falling within the objectives of that Act.".
Amendment of section 11 of Act 27 of 1996

3. Section 11 of the National Education Policy Act, 1996, is hereby amended by-

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

"(1) The Minister may by regulation establish a body to be known as the National Education and Training Council (NETC) and other bodies to advise him or her on any matter contemplated in section 3 or any matter identified by the Minister."; and

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

"(2) The composition, qualifications for membership, duties, powers and functions of a body established in terms of subsection (1), and the term of office of its members, shall be as prescribed by regulation[Provided that the bodies referred to in section 5(l)(c), shall be invited to nominate representatives to any such consultative body within their respective spheres of interest]."

Amendment of section 1 of Act 84 of 1996 as amended by section 1 of Act 100 of 1997, section 6 of Act 48 of 1999, section 1 of Act 50 of 2002 and section 1 of Act 24 of 2005

4. Section 1 of the South African Schools Act, 1996, is hereby amended by-
(a) the insertion after the definition of "Council of Education Ministers" of the following definition:

"'dangerous object' means-

(a) any explosive material or device;

(b) any firearm or gas weapon;

(c) any article, object or instrument that may be employed to cause bodily harm to a person or damage to property, or to render a person temporarily paralysed or unconscious; or

(d) any object that the Minister may, by notice in the Gazette, declare to be a dangerous object for the purpose of this Act;"

(b) the insertion after the definition of "Head of Department" of the following definition:

"'illegal drug' means-

(a) any unlawful substance that has a psychological or physiological effect; or

(b) any substance having such effect that is possessed unlawfully;"; and

(c) the insertion after the definition of "school" of the following definition:

"'school activity' means any official educational, cultural,
recreational or social activity of the school within or outside the school premises;"

Insertion of section 5A in Act 84 of 1996

5. The South African Schools Act, 1996, is hereby amended by the insertion after section 5 of the following section:

"Norms and standards for basic infrastructure and capacity in public schools

5A. (1) The Minister may, after consultation with the Council of Education Ministers, by regulation prescribe minimum uniform norms and standards for-

(a) school infrastructure;

(b) capacity of a school in respect of the number of learners a school can admit; and

(c) the provision of learning and teaching support material.

(2) The norms and standards contemplated in subsection (1) must provide for, but not be limited to, the following:

(a) In respect of school infrastructure, the availability of-

(i) classrooms;

(ii) electricity;

(iii) water;"
(iv) sanitation;

(v) a library;

(vi) laboratories for science, technology, mathematics and life sciences;

(vii) sport and recreational facilities;

(viii) electronic connectivity at a school; and

(ix) perimeter security;

(b) in respect of the capacity of a school -

(i) the number of teachers and the class size;

(ii) quality of performance of a school;

(iii) curriculum and extra-curricular choices;

(iv) classroom size; and

(v) utilisation of available classrooms of a school;

(c) in respect of provision of learning and teaching support material, the availability of-

(i) stationery and supplies;

(ii) learning material;

(iii) teaching material and equipment;
(iv) science, technology, mathematics and life sciences apparatus;

(v) electronic equipment; and

(vi) school furniture and other school equipment.

(3) When determining policy in terms of sections 5(5) and 6(2) a governing body must comply with the norms and standards contemplated in subsection (1).

(4) A governing body must, within a period of 12 months after the Minister has prescribed the norms and standards contemplated in subsection (1), review any policy that it has determined in terms of sections 5(5) and 6(2) to ensure that such policy complies with the norms and standards."

Amendment of section 8 of Act 84 of 1996 as amended by section 4 of Act No. 50 of 2002

6. Section 8 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) (a) A code of conduct must contain provisions of due process safe-guarding the interests of the learner and any other party involved in disciplinary proceedings.

(b) The code of conduct must also provide for support measures or structures for counselling a learner involved in disciplinary proceedings.".
Insertion of section 8A in Act 84 of 1996

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

"Random search and seizure and drug testing at schools

8A. (1) Unless authorised by the principal for legitimate educational purposes, no person may bring a dangerous object or illegal drug onto school premises or have such object or drug in his or her possession on school premises or during any school activity.

(2) Subject to subsection (3), the principal or his or her delegate may, at random, search any group of learners, or the property of a group of learners, for any dangerous object or illegal drug, if a fair and reasonable suspicion has been established-

(a) that a dangerous object or an illegal drug may be found on school premises or during a school activity; or

(b) that one or more learners on school premises or during a school activity are in possession of dangerous objects or illegal drugs.

(3) (a) A search contemplated in subsection (2) may only be conducted after taking into account all relevant factors, including -

(i) the best interest of the learners in question or of any other learner at the school;
(ii) the safety and health of the learners in question or of any other learner at the school;

(iii) reasonable evidence of illegal activity; and

(iv) all relevant evidence received.

(b) When conducting a search contemplated in subsection (2), the principal or his or her delegate must do so in a manner that is reasonable and proportional to the suspected illegal activity.

(4) Where a search contemplated in subsection (2) entails a body search of the learners in question, such search may only-

(a) be conducted by-

(i) the principal, if he or she is of the same gender as the learner; or

(ii) by the principal's delegate, who must be of the same gender as the learner;

(b) be done in a private area, and not in view of another learner;

(c) be done if one adult witness, of the same gender as the learner, is present; and

(d) be done if it does not extend to a search of a body cavity of the learner.
(5) Any *dangerous object* or *illegal drug* that has been seized must be-

(a) clearly and correctly labelled with full particulars, including-

(i) the name of *learner* in whose possession it was found;

(ii) the time and date of search and seizure;

(iii) an incident reference number;

(iv) the name of person who searched the *learner*;

(v) the name of the witness; and

(vi) any other details that may be necessary to identify the item and incident;

(b) recorded in the school record book; and

(c) handed over to the police immediately to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(6) If the police cannot collect the *dangerous object* or *illegal drug* from the *school* immediately, the *principal* or his or her delegate must-

(a) take the *dangerous object* or *illegal drug* to the nearest police station; and
(b) hand the *dangerous object* or *illegal drug* over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(7) The police officer who receives the *dangerous object* or *illegal drug* must issue an official receipt for it to the *principal* or to his or her delegate.

(8) The *principal* or his or her delegate may at *random* administer a urine or other non-invasive test to any group of learners that is on fair and reasonable grounds suspected of using *illegal drugs*, after taking into account all relevant factors contemplated in subsection (3).

(9) A *learner* contemplated in subsection (8) may be subjected to a urine or other non-invasive test for *illegal drugs* only if-

(a) the test is conducted by a person of the same gender;

(b) it is done in a private area and not in view of another *learner*;

(c) one adult witness, of the same gender as the *learner*, is present;

(d) the sample is clearly and correctly labelled with full particulars as contemplated in subsection (5), with the necessary changes; and

(e) a device contemplated in subsection (11) is used.
(10) The principal or his or her delegate must-

(a) within one working day, if practicable, inform the parent that a random test or search and seizure was done in respect of his or her child; and

(b) inform the learner and his or her parent of the result of the test immediately after it becomes available.

(11) The Minister must-

(a) identify the device with which the test contemplated in subsection (8) is to be done and the procedure to be followed; and

(b) publish the name of this device, and any other relevant information about it, in the Gazette.

(12) A learner may be subjected to disciplinary proceedings if-

(a) a dangerous object or illegal drug is found in his or her possession; or

(b) his or her sample tested positive for an illegal drug.

(13) Any disciplinary proceedings in respect of a learner must be conducted in terms of the code of conduct contemplated in section 8.

(14) No criminal proceedings may be instituted by the school against a learner in respect of whom-
(a) a search contemplated in subsection (2) was conducted and a dangerous object or illegal drug was found; or

(b) a test contemplated in subsection (8) was conducted, which proved to be positive.”.

Insertion of section 16A in Act 84 of 1996

8. The South African Schools Act, 1996, is hereby amended by the insertion after section 16 of the following section:

“Functions and responsibilities of principal of public school

16A.(1) (a) The principal of a public school represents the Head of Department in the governing body when acting in an official capacity as contemplated in sections 23(1)(b) and 24(1)(j).

(b) The principal must prepare and submit to the Head of Department an annual report in respect of-

(i) the academic performance of that school in relation to minimum outcomes and standards and procedures for assessment determined by the Minister in terms of section 6A; and

(ii) the effective use of available resources.

(c) (i) The principal of a public school identified by the Head of Department in terms of section 58B must annually, at the beginning of the year, prepare a plan setting out how academic performance at the school will be improved.
(ii) The academic performance improvement plan must be-

(aa) presented to the Head of Department on a date determined by him or her; and

(bb) tabled at a governing body meeting.

(iii) The Head of Department may approve the academic performance improvement plan or return it to the principal with such recommendations as may be necessary in the circumstances.

(iv) If the Head of Department approves the academic performance improvement plan the principal must, by 30 June, report to the Head of Department and the governing body on progress made in implementing that plan.

(v) The Head of Department may extend the date contemplated subparagraph (iv) on good cause shown.

(2) The principal must-

(a) in undertaking the professional management of a public school as contemplated in section 16(3), carry out duties which include, but are not limited to-

(i) the implementation of all the educational programmes and curriculum activities;
(ii) the management of all *educators* and support staff;

(iii) the management of the use of learning support material and other equipment;

(iv) the performance of functions delegated to him or her by the *Head of Department* in terms of this Act;

(v) the safekeeping of all *school* records; and

(vi) the implementation of policy and legislation;

(b) attend and participate in all meetings of the *governing body*;

(c) provide the *governing body* with a report about the professional management relating to the *public school*;

(d) assist the *governing body* in handling disciplinary matters pertaining to *learners*;

(e) assist the *Head of Department* in handling disciplinary matters pertaining to *educators* and support staff employed by the *Head of Department*;

(f) inform the *governing body* about policy and legislation; and

(g) provide accurate data to the *Head of Department* when requested to do so.
(3) The principal must assist the governing body in the performance of its functions and responsibilities, but such assistance or participation may not be in conflict with-

(a) instructions of the Head of Department;

(b) legislation or policy;

(c) an obligation that he or she has towards the Head of Department, the Member of the Executive Council or the Minister, or

(d) a provision of the Employment of Educators Act, 1998 (Act No. 76 of 1998), and the Personnel Administration Measures determined in terms thereof.

Amendment of section 20 of Act 84 of 1996

9. Section 20 of the South African Schools Act, 1996, is hereby amended by-

(a) the insertion in subsection (1) after paragraph (e) of the following paragraph:

"(eA) adhere to any actions taken by the Head of Department in terms of section 16 of the Employment of Educators Act, 1998 (Act No. 76 of 1998), to address the incapacity of a principal or educator to carry out his or her duties effectively;"

(b) the substitution in subsection (1) for paragraph (g) of the following paragraph:
“(g) administer and control the school’s property, and buildings and grounds occupied by the school, including school hostels, [if applicable;] but the exercise of this power must not in any manner interfere with or otherwise hamper the implementation of a decision made by the Member of the Executive Council or Head of Department in terms of any law or policy;”; and

(c) the insertion in subsection (1) after paragraph (j) of the following paragraph:

"(jA) make the recommendation contemplated in paragraph (j) within the time frames contemplated in section 6(3)(l) of the Employment of Educators Act, 1998 (Act No. 76 of 1998)."

Amendment of section 43 of Act 84 of 1996

10. Section 43 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The governing body of a public school must appoint a person registered as an [accountant and] auditor in terms of the [Public Accountants and Auditors Act, 1991 (Act No. 80 of 1991)] Auditing Profession Act, 2005 (Act No. 26 of 2005), to audit the records and financial statements referred to in section 42."

Insertion of sections 58B and 58C in Act 84 of 1996

11. The South African Schools Act, 1996 is hereby amended by the insertion after section 58A of the following sections:
Identification of underperforming public schools

58B. (1) The Head of Department must, annually, from the report contemplated in section 16A (1)(b) and from other relevant reports, identify any public school that is underperforming in relation to any matter referred to in subsection (2)(a), (b) or (c).

(2) The Head of Department must issue a written notice to the school contemplated in subsection (1), if he or she is satisfied that-

(a) the standard of performance of learners is below the standards prescribed by the National Curriculum Statement and is likely to remain so unless the Head of Department exercises his or her power in terms of this Act;

(b) there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, the standards of performance; or

(c) the safety of learners or staff is threatened.

(3) The written notice contemplated in subsection (2) must inform the school that it must-

(a) within 14 days after delivery of the notice, respond to the notice; and

(b) as soon as possible after that response, provide the Head of Department with a plan for correcting the situation.
(4) The Head of Department must take all reasonable steps to assist a school identified in terms of subsection (1) in addressing the underperformance.

(5) Without limiting the nature and extent of the steps contemplated in subsection (4), the Head of Department must consider-

(a) implementing the incapacity code and procedures for poor work performance referred to in section 16 of the Employment of Educators Act, 1998 (Act No. 76 of 1998);

(b) withdrawing the functions of the governing body in terms of section 22; or

(c) appointing persons in terms of section 25 to perform the functions or specified functions of the governing body.

(6) The counselling of the principal as contemplated in Item 2(5)(b)(ii) of Schedule 1 to the Employment of Educators Act, 1998 (Act No. 76 of 1998), may include the appointment of an academic mentor to take over the functions and responsibilities of the principal for the period determined by the Head of Department.

(7) In order to assist the Minister in carrying out his or her duties referred to in section 8 of the National Education Policy Act, 1996 (Act No. 27 of 1996), the Member of the Executive Council must report to the Minister within three months after the end of a school year on the action taken by the Head of Department in regard to an underperforming public school.
Compliance with norms and standards

58C. (1) The Member of the Executive Council must, in accordance with an implementation protocol contemplated in section 35 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), ensure compliance with-

(a) norms and standards determined in terms of sections 5 A, 6(1), 20(11), 35 and 48(1);

(b) minimum outcomes and standards set in terms of section 6A; and

(c) performance standards contemplated in Item 2(2) of Schedule 1 to the Employment of Educators Act, 1998 (Act No. 76 of 1998), (in this section jointly referred to as 'norms and standards').

(2) The Member of the Executive Council must ensure that the policy determined by a governing body in terms of sections 5(5) and 6(2) complies with the norms and standards.

(3) The Member of the Executive Council must, annually, report to the Minister the extent to which the norms and standards have been complied with or, if they have not been complied with, indicate the measures that will be taken to comply.

(4) Any dispute between the Minister and a Member of the Executive Council in respect of non-compliance with the norms and standards contemplated in subsection (1) must-
(a) be dealt with in accordance with the principles of co-operative governance referred to in section 41(1) of the Constitution and the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005); and

(b) whenever necessary, be settled in accordance with Chapter 4 of the Intergovernmental Relations Framework Act, 2005.

(5) The Head of Department must comply with all norms and standards contemplated in subsection (1) within a specific public school year by-

(a) identifying resources with which to comply with such norms and standards;

(b) identifying the risk areas for compliance;

(c) developing a compliance plan for the province, in which all norms and standards and the extent of compliance must be reflected;

(d) developing protocols with the Ion how to comply with norms and standards and manage the risk areas; and

(e) reporting to the Member of the Executive Council on the state of compliance and on the measures contemplated in paragraphs (a) to (d), before 30 September of each year.

(6) The Head of Department must-
(a) in accordance with the norms and standards contemplated in section 5A determine the minimum and maximum capacity of a public school in relation to the availability of classrooms and educators, as well as the curriculum programme of such school; and

(b) in respect of each public school in the province, communicate such determination to the chairperson of the governing body and the principal, in writing, by not later than 30 September of each year."

Amendment of section 60 of Act 84 of 1996

12. Section 60 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) (a) [The] Subject to paragraph (b), the State is liable for any damage or loss caused as a result of any act or omission in connection with any [educational] school activity conducted by a public school and for which such public school would have been liable but for the provisions of this section.

(b) Where a public school has taken out insurance and the school activity is an eventuality covered by the insurance policy, the liability of the State is limited to the extent that the damage or loss has not been compensated in terms of the policy.".
Section 1 of the National Student Financial Aid Scheme Act, 1999, is hereby amended by-

(a) the substitution for the definition of "designated higher education institution" of the following definition:

"'designated public college or designated higher education institution' means a public college or a higher education institution with which the NSFAS has entered into an agreement in terms of section 20;";

(b) the insertion after the definition of "financial year" of the following definition:

"'further education and training' has the meaning assigned to it in the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006);";

(c) the substitution for the definition of "loan" of the following definition:

"'loan' means a loan granted to a person by the NSFAS in order to enable the person to defray the costs connected with his or her education at a designated public college or designated higher education institution, and those connected with the board and lodging of that person for purposes of attending the institution;";

(d) the insertion after the definition of "NSFAS" of the following definition:
"'public college' means a public college as defined in the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006);"; and

(e) the substitution for the definition of "student" of the following definition:

"'student' means any person registered as a student at a public college or at a higher education institution;".

Amendment of section 2 of Act 56 of 1999

14. The following section is hereby substituted for section 2 of the National Student Financial Aid Scheme Act, 1999:

"Purpose of Act

2. (1) The purpose of this Act is to establish a financial aid scheme for students at public colleges or at higher education institutions.

(2) The aim of the NSFAS is to provide financial aid to eligible students who meet the criteria for admission to a further education and training programme or to a higher education programme.".

Amendment of section 5 of Act 56 of 1999

15. Section 5 of the National Student Financial Aid Scheme Act, 1999, is hereby amended by-

(a) the substitution in subsection (2) for paragraph (b) of the following paragraph:
"(b) the membership taken as a whole-

(i) is broadly representative of the further education and training system, the higher education system and related interests;

(ii) has deep knowledge and understanding of further education and training and higher education;

(iii) has financial expertise and experience;

(iv) appreciates the role of the further education and training and higher education system in reconstruction and development; and

(v) has known and attested commitment to the interests of further education and training and higher education; and"

(b) the substitution in subsection (3)(c) for subparagraphs (v) and (vi) of the following subparagraphs:

"(v) [technikon] university of technology principals;
(vi) [higher education] further education and training college principals;".

Amendment of section 20 of Act 56 of 1999

16. Section 20 of the National Student Financial Aid Scheme Act, 1999, is hereby amended by-

(a) the substitution for the heading to that section of the following heading:
"Designated public college and designated higher education institution";

(b) the substitution for subsection (1) of the following subsection:

"(1) The board may enter into an agreement with a public college or a higher education institution which agrees to become a designated public college or designated higher education institution for purposes of administering loans and bursaries to students of that institution on behalf of the NSFAS."; And

(c) the substitution for subsection (3) of the following subsection:

"(3) A designated public college or designated higher education institution must-

(a) at such intervals as are agreed on by the college or institution and the board, report to the board on the progress made by a borrower or a bursar with regard to the course of study followed by him or her; and

(b) immediately notify the board if a borrower or bursar discontinues his or her studies."

Amendment of section 25 of Act 56 of 1999

17. Section 25 of the National Student Financial Aid Scheme Act, 1999, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:
"(1) Every science, research and professional council, every public college and higher education institution, and any other person or body who grants loans or bursaries to students must provide the NSFAS with such information as the NSFAS may reasonably require for the performance of its functions in terms of this Act;

(2) The NSFAS must on request provide such information as may be reasonably required by the science, research and professional councils, public colleges and higher education institutions and any other persons or bodies who grant loans or bursaries to students."

Substitution of long title of Act 56 of 1999

18. The following long title is hereby substituted for the long title of the National Student Financial Aid Scheme Act, 1999:

"To establish the National Student Financial Aid Scheme [[(NSFAS)]]; to provide for the management, governance and administration of the [NSFAS] scheme; to provide for the granting of loans and bursaries to eligible students at public colleges and public higher education institutions and for the administration of such loans and bursaries; to provide for the recovery of loans; to provide for the repeal of the Provision of Special Funds for Tertiary Education and Training Act, 1993; and to provide for matters connected therewith.".

Amendment of section 1 of Act 31 of 2000

19. Section 1 of the South African Council for Educators Act, 2000, is hereby amended by the deletion of the definition of "further education and training institution".
Amendment of section 3 of Act 31 of 2000

20. Section 3 of the South African Council for Educators Act, 2000, is hereby amended by the substitution for section 3 of the following section:

"Application of Act

3. This Act applies to all educators, lecturers and management staff of colleges appointed-

(a) in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998);

(b) in terms of the South African Schools Act, 1996 (Act No. 84 of 1996);

(c) [at an independent school] in terms of the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006);

(d) [in terms of the Further Education and Training Act, 1998 (Act No. 98 of 1998)] in terms of the Public Service Act, 1994 (Proclamation 103 of 1994);

(e) [at a further education and training institution;] at an independent school; or

(f) at an adult learning centre.".
Amendment of section 6 of Act 31 of 2000

21. Section 6 of the South African Council for Educators Act, 2000, is hereby amended by-

(a) the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) [18] 14 educators and 4 lecturers collectively nominated by the organised profession;";

(b) the substitution in subsection (1) for paragraph (f) of the following paragraph:

"(f) one person nominated by the councils [of further education and training institutions] contemplated in [section 8] section 9 of the [Further Education and Training Act, 1998 (Act No. 98 of 1998)] Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006);"; and

(c) the substitution for subsection (2) of the following subsection:

"(2) The members referred to in subsection (1)(b) must [consist of] be educators, lecturers[, including] and principals[,] employed at or in [each of] the following institutions or sectors:

(a) A public ordinary school;

(b) an independent school;"
(c) a public further education and training [institution] college;

(d) a private further education and training [institution] college;

(e) early childhood development sector;

(f) an adult learning centre; or

(g) the learners with special education needs sector."

Amendment of section 1 of Act 52 of 2000

22. Section 1 of the Adult Basic Education and Training Act, 2000, is hereby amended by the deletion of the definition of "auditor".

Amendment of section 8 of Act 52 of 2000

23. Section 8 of the Adult Basic Education and Training Act, 2000, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Every public centre [must establish a governing body], except a public centre contemplated in section 2\(\)\(\)\(\)\(\)\(d\) of the South African Schools Act, 1996 (Act No. 84 of 1996),[or section 9 of the Further Education and Training Act, 1998 (Act No. 98 of 1998)] must establish a governing body.".
Amendment of section 24 of Act 52 of 2000

24. Section 24 of the Adult Basic Education and Training Act, 2000, is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) The governing body of a public centre must appoint a person registered as an accountant and auditor in terms of the [Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991)] Auditing Profession Act, 2005 (Act No. 26 of 2005), to audit the records and financial statements referred to in subsection (1).".

Substitution of section 2 of Act 58 of 2001

25. The following section is hereby substituted for section 2 of the General and Further Education and Training Quality Assurance Act, 2001:

"Application of Act

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)] Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006); or

(c) Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000)."."


Amendment of section 15 of Act 58 of 2001

26. Section 15 of the General and Further Education and Training Quality Assurance Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The statements of account and balance sheet of the Council must be audited at the end of each financial year by a person registered as an [accountant and] auditor in terms of the [Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991)] Auditing Profession Act, 2005 (Act No. 26 of 2005), and appointed by the Council with the approval of the Auditor-General."

Short Title

27. This Act is called the Education Laws Amendment Act, 2007.
SKILLS DEVELOPMENT ACT

SKILLS DEVELOPMENT ACT 97 OF 1998

[Assented To: 20 October 1998]
[Commencement Date: 2 February 1999 - unless otherwise indicated]

as amended by:

Skills Development Levies Act 9 of 1999
[with effect from 1 September 1999]
Skills Development Amendment Act 31 of 2003
[with effect from 14 November 2003]
Skills Development Amendment Act 37 of 2008
[with effect from 6 April 2009]
Higher Education Laws Amendment Acts 26 of 2010
[with effect from 7 December 2010]

ACT

To provide an institutional framework to devise and implement national, sector and workplace strategies to develop and improve the skills of the South African workforce; to integrate those strategies within the National Qualifications Framework contemplated in the South African Qualifications Authority Act, 1995; to provide for learnerships that lead to recognised occupational qualifications; to provide for the financing of skills development by means of a levy-financing scheme and a National
Skills Fund; to provide for and regulate employment services; and to provide for matters connected therewith.

[Long title amended by s. 23 of Act 9/99]

ARRANGEMENT OF SECTIONS

[Arrangement of sections amended by s. 18 of Act 37/2008]

CHAPTER 1

DEFINITIONS, PURPOSE AND INTERPRETATION OF ACT

1. Definitions
2. Purposes of Act
3. Interpretation

CHAPTER 2

NATIONAL SKILLS AUTHORITY

4. Establishment of National Skills Authority
5. Functions of National Skills Authority
6. Composition of National Skills Authority and term and vacation of office
7. Constitution of National Skills Authority
8. Remuneration and administration of National Skills Authority

CHAPTER 3

SECTOR EDUCATION AND TRAINING AUTHORITIES

9. Establishment of SETA
9A. Amalgamation and dissolution of SETAs
10. Functions of SETA
10A. SETAs to conclude service level agreements
11. Composition of SETA
12. Chambers of SETA
13. Constitution of SETA
14. Finances of SETA
14A. Minister may issue written instructions to SETAs
15. Taking over administration of SETA

CHAPTER 4
LEARnerships

16. Learnerships
17. Learnership agreements
18. Contract of employment with learner
19. Disputes about learnerships

CHAPTER 5
SKILLS PROGRAMMES

20. Skills programmes
21. Disputes

CHAPTER 6
INSTITUTION IN DEPARTMENT OF LABOUR AND
EMPLOYMENT SERVICES

22. Administration of Act by Department
23. Employment services
24. Registration of persons that provide employment services
25. Cancellation of registration of private employment services agency
26. Appeal against Director-General's decision

CHAPTER 6A
ARTISAN DEVELOPMENT

26A. National artisan moderation body
26B. Listing of trades
26C. National register of artisans
26D. Trade tests

CHAPTER 6B
SKILLS DEVELOPMENT INSTITUTES

26E. Skills development institutes

CHAPTER 6C
QUALITY COUNCIL FOR TRADES AND OCCUPATIONS

26F. Policy on occupational standards and qualifications
26G. Establishment of QCTO
26H. Functions of QCTO
26I. Delegation of functions
26J. Regulations regarding occupational standards and qualifications

CHAPTER 6D
WORKPLACE PRODUCTIVITY AND COMPETITIVENESS

26K. Establishment of Productivity South Africa
26L. Functions of Productivity South Africa
26M. Finances of Productivity South Africa
26N. Regulations regarding workplace productivity and competitiveness

CHAPTER 7
FINANCING SKILLS DEVELOPMENT

27. National Skills Fund
28. Use of money in Fund
29. Control and administration of Fund
30. Budget for training by public service employers
30A. Budget for training by national and provincial public entities
30B. National standard of good practice in skills development
CHAPTER 8
GENERAL

31. Jurisdiction of Labour Court
32. Monitoring, enforcement and legal proceedings
33. Offences
34. Penalties
35. Delegation
36. Regulations
37. Repeal of laws and transitional provisions
38. Act binds State
39. Short title and commencement

Schedule 1 - Repeal of laws
Schedule 2 - Transitional provisions
Schedule 3 - Composition and constitution of QCTO
Schedule 4 - Composition and constitution of Productivity South Africa
CHAPTER 1

DEFINITIONS, PURPOSE AND APPLICATION OF ACT

1. Definitions

In this Act, unless the context otherwise indicates -

“apprenticeship” means a learnership in respect of a listed trade, and includes a trade-test in respect of that trade;  
[Definition of “apprenticeship” inserted by s. 1 of Act 37/2008]

“artisan” means a person that has been certified as competent to perform a listed trade in accordance with this Act;  
[Definition of “artisan” inserted by s. 1 of Act 37/2008]

“Basic Conditions of Employment Act” means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

“Department” means the Department of Higher Education and Training, except in-

(a) sections 2(1)(g) and (h), 2(2)(a)(v), (vi) and (xii), 5(4) (only with respect to Productivity South Africa established by section 26K), 22(1), 23(1)(a) and (d), (2) and (3), 24, 25, 26, 26K, 26L, 26M, 26N, 32(2), 36(o), (p) and (q), item 7 of Schedule 2A and Schedule 4; and

(b) sections 32(1), 33 and 36(a) and (s) and any other provision to the extent that these provisions apply to “employment services” defined in section 1 or to Productivity South Africa established by section 26K, but excluding section 23(l)(b) and (c), where it means the Department of Labour;  
[Definition of “Department” substituted by s. 4 of Act 26/2010]
“designated groups” means black people, women and people with disabilities;
[Definition of “designated groups” inserted by s. 1 of Act 31/2003]

“Director-General” means the Director-General of Higher Education and Training;
[Definition of “Director-General” substituted by s. 4 of Act 26/2010]

“employee” means -

(a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; or

(b) any other person who in any manner assists in carrying on or conducting the business of an employer, and “employed” and “employment” have corresponding meanings;

“employment services” means the provision of the service of -

(a) advising or counselling of workers on career choices either by the provision of information or other approaches;

(b) assessment of work-seekers for -

(i) entry or re-entry into the labour market; or

(ii) education and training;

(c) the reference of work-seekers -

(i) to employers to apply for vacancies; or

(ii) to training providers for education and training;
(d) assistance of employers by -

(i) providing recruitment and placement services;

(ii) advising them on the availability of work-seekers with skills that match their needs;

(iii) advising them on the retrenchment of employees and the development of social plans;

(dA) procuring for or providing to a client other persons to render services to or perform work for the client, irrespective of by whom those persons are remunerated; or

[Para. (dA) inserted by s. 1 of Act 31/2003]

(e) any other prescribed employment service;

“government department” means any department or organisational component referred to in Schedule 1 or 2 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“Labour Court” means the Labour Court established by section 151 of the Labour Relations Act, 1995 (Act No. 66 of 1995);

“learner” includes an apprentice;

[Definition of “learner” by s. 1 of Act 37/2008]

“learnership” includes an apprenticeship;

[Definition of “learnership” inserted by s. 1 of Act 37/2008]

“learning” means the acquisition of knowledge, understanding, values, skill, competence or experience;

[Definition of “learning” inserted by s. 1 of Act 37/2008]

“learning programme” includes a learnership, an apprenticeship,
a skills programme and any other prescribed learning programme which includes a structured work experience component;

[Definition of “learning programme” inserted by s. 1 of Act 37/2008]

“Minister” means the Minister of Higher Education and Training, except in-

(a) sections 2(1)(g) and (h), 2(2)(a)(v), (vi) and (xii), 5(4) (only with respect to Productivity South Africa established by section 26K), 22(1), 23(1)(a) and (d), (2) and (3), 24, 25, 26, 26K, 26L, 26M, 26N, 32(2), 36(o), (p) and (q), item 7 of Schedule 2A and Schedule 4; and

(b) sections 32(1), 33 and 36(a) and (s) and any other provision to the extent that these provisions apply to “employment services” defined in section 1 or to Productivity South Africa established by section 26K, but excluding section 23(1)(b) and (c), where it means the Minister of Labour;

[Definition of “Minister” substituted by s. 4 of Act 26/2010]

“National Qualifications Framework” means the National Qualifications Framework contemplated by the National Qualifications Framework Act, 2008;

[Definition of “National Qualifications Framework” inserted by s. 1 of Act 37/2008]

“National Skills Authority” means the National Skills Authority established by section 4;

“national skills development policy” means the national skills development policy referred to in section 5(1)(a)(i);

“national skills development strategy” means the national skills development strategy referred to in section 5(1)(a)(ii);
“National Skills Fund” means the National Skills Fund established by section 27;

“NEDLAC” means the National Economic Development and Labour Council established by section 2 of the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994);

“occupational qualification” means a qualification associated with a trade, occupation or profession resulting from work-based learning and consisting of knowledge unit standards, practical unit standards and work experience unit standards;
[Definition of “occupational qualification” inserted by s. 1 of Act 37/2008]

“Occupational Qualifications Framework” means the sub-framework for occupational qualifications which forms an integral part of the National Qualifications Framework;
[Definition of “Occupational Qualifications Framework” inserted by s. 1 of Act 37/2008]

“Placement” means placing an individual in a placement opportunity, with due regard to the Code of Good Practice on the Integration of Employment Equity in Human Resources Policies and Practices in terms of the Employment Equity Act, 1998 (Act No. 55 of 1998);
[Definition of “placement” inserted by s. 1 of Act 37/2008]

“placement opportunity” means any opportunity for work or learning that could be offered to an individual and includes a vacancy for employment, an opportunity for selfemployment, a learning programme and community service;
[Definition of “placement opportunity” inserted by s. 1 of Act 37/2008]

“prescribed” means prescribed by regulation;
“private employment services agency” means any person that provides employment services for gain;  
[Definition of “private employment services agency” inserted by s. 1 of Act 31/2003]

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);  
[Definition of “Public Finance Management Act” inserted by s. 1 of Act 31/2003]

“QCTO” means the Quality Council for Trades and Occupations established in terms of section 26G;  
[Definition of “QCTO” inserted by s. 1 of Act 37/2008]

“regulation” means a regulation made and in force in terms of this Act;  
[Definition of “regulation” substituted by s. 1 of Act 31/2003]

“repealed Act” means-

(i) the Manpower Training Act, 1981 (Act No. 56 of 1981);  

(ii) any law repealed by the Manpower Training Act, 1981, and any law repealed by such an Act; and

(iii) any law listed in Schedule 1 to the Integration of Labour Laws Act, 1994 (Act No. 49 of 1994), dealing with training or skills development;  
[Definition of “repealed Act” inserted by s. 1 of Act 37/2008]

“service level agreement” means a service level agreement concluded in terms of section 10A;  
[Definition of “service level agreement” inserted by s. 1 of Act 31/2003]

“SETA” means a sector education and training authority established in terms of section 9(1);
“Skills Development Levies Act” means the Skills Development Levies Act, 1999;  
[Definition of “Skills Development Levies Act” substituted by s. 23 of Act 9/99]

“skills development levies” means a levy as defined in section 1 of the Skills Development Levies Act;  
[Definition of “skills development levies” substituted by s. 23 of Act 9/99]

“skills development provider” means a provider of an occupational learning; and  
[Definition of “skills development provider” inserted by s. 1 of Act 37/2008]

“South African Qualifications Authority” means the South African Qualification Authority established by section 3 of the South African Qualifications Authority Act;

“South African Qualifications Authority Act” means the South Africa Qualifications Authority Act, 1995 (Act No. 58 of 1995);

“this Act” includes any regulations but does not include the footnotes; and

“trade” means an occupation for which an artisan qualification is required in terms of section 26B;  
[Definition of “trade” inserted by s. 1 of Act 37/2008]

“worker” includes an employee, an unemployed person and a work-seeker.

2. Purposes of Act

(1) The purposes of this Act are -

(a) to develop the skills of the South African workforce -
(i) to improve the quality of life of workers, their prospects of work and labour mobility;

(ii) to improve productivity in the workplace and the competitiveness of employers;

(iii) to promote self-employment; and

(iv) to improve the delivery of social services;

(b) to increase the levels of investment in education and training in the labour market and to improve the return on that investment;

(c) to encourage employers -

(i) to use the workplace as an active learning environment;

(ii) to provide employees with the opportunities to acquire new skills;

(iii) to provide opportunities for new entrants to the labour market to gain work experience; and

(iv) to employ persons who find it difficult to be employed;

(d) to encourage workers to participate in learning programmes;

[Para. (d) substituted by s. 2 of Act 37/2008]

(e) to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to
redress those disadvantages through training and education;

(f) to ensure the quality of learning in and for the workplace;
   [Para. (f) substituted by s. 2 of Act 37/2008]

(g) to assist -

(i) work-seekers to find work;

(ii) retrenched workers to re-enter the labour market;

(iii) employers to find qualified employees; and

(h) to provide and regulate employment services.

(2) Those purposes are to be achieved through-

(a) an institutional and financial framework comprising-

   (i) the National Skills Authority;

   (ii) the National Skills Fund;

   (iii) a skills development levy-financing scheme as contemplated in the Skills Development Levies Act;

   (iv) SETAs;

   (v) provincial offices of the Department;

   (vi) labour centres of the Department;
(vii) accredited trade test centres;

(viii) skills development institutes;

(ix) the Quality Council for Trades and Occupations;

(x) a skills development forum for each province;

(xi) a national artisan moderation body; and

(xii) Productivity South Africa;

(b) encouraging partnerships between the public and private sectors of the economy to provide learning in and for the workplace; and

(c) co-operating with the South African Qualifications Authority.

[Subs. (2) amended by s. 23 of Act 9/99 and substituted by s. 2 of Act 37/2008]

3. **Interpretation**

Any person applying this Act must interpret its provisions to give effect to -

(a) its purposes; and

(b) the objects of the South African Qualifications Authority Act.
CHAPTER 2

NATIONAL SKILLS AUTHORITY

4. Establishment of National Skills Authority

The National Skills Authority is hereby established.

5. Functions of National Skills Authority

(1) The functions of the National Skills Authority are-

(a) to advise the Minister on-

   (i) a national skills development policy;

   (ii) a national skills development strategy;

   (iii) guidelines on the implementation of the national skills development strategy;

   (iv) the strategic framework and criteria for allocation of funds from the National Skills Fund; and

   (v) any regulations to be made;

(b) to liaise with SETAs on-

   (i) the national skills development policy;

   (ii) the national skills development strategy; and

   (iii) sector skills plans;
(c) to report to the Minister on the progress made in the implementation of the national skills development strategy;

(d) to conduct investigations on any matter arising out of the application of this Act;

(dA) to liaise with the QCTO on occupational standards and qualifications; and

(e) to exercise any other powers and perform any other duties conferred or imposed on the Authority by this Act.

[Subs. (1) amended by s. 2 of Act 31/2003 and substituted by s. 3 of Act 37/2008]

(2) For the purposes of investigations referred to in subsection (1)(d), the Authority has the prescribed powers of entry and to question and inspect.

(3) The Authority must perform its functions in accordance with this Act and its constitution.

(4) Subsection (1)(a)(iv) does not apply to regulations in respect of which the Minister is required to consult with the QCTO or Productivity South Africa.

[Subs. (4) added by s. 3 of Act 37/2008]

6. **Composition of National Skills Authority and term and vacation of office**

(1) The National Skills Authority consists of -

(a) a voting chairperson appointed by the Minister;
(b) 24 voting and six non-voting members appointed by the Minister; and

[Para. (b) substituted by s. 3 of Act 31/2003 and s. 4 of Act 37/2008]

(c) its non-voting executive officer appointed in terms of section 8(2)(a).

(2) The members referred to in subsection (1)(b) are -

(a) five voting members nominated by NEDLAC and appointed by the Minister to represent organised labour;

(b) five voting members nominated by NEDLAC and appointed by the Minister to represent organised business;

(c) five voting members nominated by NEDLAC and appointed by the Minister to represent organisations of community and development interests, which must include -

(i) a woman who represents the interests of women;

(ii) a person who represents the interests of the youth; and

(iii) a disabled person who represents the interests of people with disabilities;

(d) five voting members appointed by the Minister to represent the interests of the State;
(e) four voting members appointed by the Minister to represent the interests of education and skills development providers;
   [Para. (e) substituted by s. 4 of Act 37/2008]

(eA)two non-voting members, who have expertise in skills development, appointed by the Minister after consultation with the National Skills Authority;
   [Para. (eA) inserted by s. 3 of Act 31/2003]

(f) two non-voting members, who have expertise in the provision of employment services, appointed by the Minister;
   [Para. (f) substituted by s. 4 of Act 37/2008]

(g) a non-voting member nominated by the South African Qualifications Authority and appointed by the Minister;
   [Para. (g) substituted by s. 4 of Act 37/2008]

(h) a non-voting member nominated by the QCTO and appointed by the Minister.
   [Para. (h) added by s. 4 of Act 37/2008]

(3) The Minister must designate five members as deputy chairpersons, one deputy chairperson each from the members to be appointed to represent -

(a) organised labour;

(b) organised business;

(c) organisations of community and development interests;

(d) the interests of the State; and
(e) education and skills development providers.
   [Subs. (3) substituted by s. 4 of Act 37/2008]

(4) A member of the Authority holds office for a period of five years and is eligible for re-appointment on expiry of his or her term of office, but may not serve more than two consecutive terms of office.
   [Subs. (4) substituted by s. 4 of Act 37/2008]

(5) A member of the Authority vacates office if that member -

   (a) is removed from office by the Minister as contemplated in subsection (6); or

   (b) resigns by written notice addressed to the Minister.

(6) The Minister may remove a member of the Authority -

   (a) on the written request of the body that nominated that member in terms of subsection (2);

   (b) for serious misconduct;

   (c) for permanent incapacity;

   (d) for absence from three consecutive meetings of the Authority -

     (i) without the prior permission of the Authority; or

     (ii) unless the member shows good cause; or

   (e) for engaging in any activity that may undermine the functions of the Authority.
(7) If the chairperson or a member of the Authority vacates office before the expiry of the period of office, the Minister must, in terms of subsection (1)(a) or (2), respectively, appoint a new chairperson or member, as the case may be, for the unexpired portion of that period within 90 days.

[Subs. (7) substituted by s. 4 of Act 37/2008]

7. Constitution of National Skills Authority

(1) The National Skills Authority must, as soon as possible after the appointment of its members, adopt its constitution.

(2) Subject to this Act, the constitution of the Authority -

(a) must provide for -

   (i) procedures for the nominations of members of the Authority referred to in section 6(2)(a), (b), (c) and (g);

   (ii) the establishment and functioning of committees, including an executive committee;

   (iii) subject to subsection (3), the rules for convening and conducting of meetings of the Authority and its committees, including the quorum required for and the minutes to be kept of those meetings;

   (iv) the voting rights of the different members and the manner in which decisions are to be taken by the Authority and its committees;

   (v) a code of conduct for the members of the Authority;
(vi) the determination through arbitration of any dispute concerning the interpretation or application of the constitution; and

(vii) subject to subsections (4) and (5), a procedure for amending the constitution and advising the Minister on regulations to be made; and

(b) may provide for -

(i) the delegation of powers and duties of the Authority to its members, committees and employees, provided that the Authority may impose conditions for the delegation, may not be divested of any power or duty by virtue of the delegation and may vary or set aside any decision made under any delegation; and

(ii) any other matter necessary for the performance of the functions of the Authority.

(3) At least 30 days notice must be given for a meeting of the Authority at which an amendment of the constitution or a regulation to be made is to be considered.

(4) A supporting vote of at least two thirds of the Authority's members and the approval of the Minister is required for an amendment to its constitution.

(5) A supporting vote of at least two-thirds of the Authority's members is required for advising the Minister on regulations to be made.
(6) Despite subsection (2)(a)(i), the Minister must determine the procedure for the nominations for the first appointment of members of the Authority referred to in section 6(2)(a), (b), (c) and (g).

8. Remuneration and administration of National Skills Authority

(1) A member of the National Skills Authority who is not in the full-time employment of the State may be paid the remuneration and allowances determined by the Minister with the approval of the Minister of Finance.

(2) Subject to the laws governing the public service, the Director-General must -

(a) appoint a person to be the executive officer of the National Skills Authority who will, upon such appointment, be in the employ of the public service; and

(b) provide the Authority with the personnel and financial resources that the Minister considers necessary for the performance of its functions.

CHAPTER 3

SECTOR EDUCATION AND TRAINING AUTHORITIES

9. Establishment of SETA

(1) The Minister may, in the prescribed manner, establish a sector education and training authority with a constitution for any national economic sector.
(2) The Minister must determine a discrete sector for the purposes of subsection (1) by reference to categories of employers and for the purposes of that determination take into account -

(a) the education and training needs of employers and employees that -

   (i) use similar materials, processes and technologies;

   (ii) make similar products; or

   (iii) render similar services;

(b) the potential of the proposed sector for coherent occupational structures and career pathing;

(c) the scope of any national strategies for economic growth and development;

(d) the organisational structures of the trade unions, employer organisations and government in closely related sectors;

(e) any consensus that there may be between organised labour, organised employers and relevant government departments as to the definition of any sector; and

(f) the financial and organisational ability of the proposed sector to support a SETA.

(3) On the establishment of a SETA, the Minister may provide assistance to the SETA to enable it to perform its functions.
(4) The Minister may, after consulting the National Skills Authority and the SETAs in question and subject to subsection (2), change the sector of a SETA and must publish a notice in the Gazette reflecting such change.

[Subs. (4) added by s. 4 of Act 31/2003]

(Commencement date of s. 9: 10 September 1999)

9A. **Amalgamation and dissolution of SETAs**

(1) The Minister may, after consulting the National Skills Authority and the SETAs in question and subject to section 9(2), amalgamate two or more SETAs.

(2) The Minister must approve a constitution for the amalgamated SETA.

(3) The Minister must publish a notice in the Gazette containing:-

(a) the date of the amalgamation;

(b) the sector for which the amalgamated SETA is established; and

(c) any other matter necessary to prescribe in order to establish the amalgamation.

(4) On the establishment of the amalgamated SETA, all assets, rights, liabilities and obligations of the amalgamating SETAs devolve upon and vest in the amalgamated SETA.

(5) The Minister may, after consulting the National Skills Authority and the SETA in question, dissolve a SETA if the SETA is unable to continue to perform its functions.
(6) The Minister must publish a notice in the Gazette-

(a) containing the date of the dissolution of the SETA;

(b) setting out the manner in which, and by whom, the SETA is to be wound-up;

(c) setting out how any assets remaining after the winding-up of the SETA must be distributed; and

(d) providing for any other matter necessary for the dissolution and winding-up of the SETA in question.

(7) No transfer duty, stamp duty, fee or costs are payable in respect of the transfer of any assets, rights, liabilities or obligations between SETAs as contemplated in this section.

(8) The Registrar of Deeds on presentation of proof of any transfer of immovable property contemplated in this section must endorse the title deeds accordingly and make the entries in the relevant register that are necessary to register the transfer.

[S. 9A inserted by s. 5 of Act 31/2003]

10. **Functions of SETA**

(1) A SETA must, in accordance with any requirements that may be prescribed-

(a) develop a sector skills plan within the framework of the national skills development strategy;

(b) implement its sector skills plan by-
(i) establishing learning programmes;

(ii) approving workplace skills plans and annual training reports;

(iii) allocating grants in the prescribed manner and in accordance with any prescribed standards and criteria to employers, education and skills development providers and workers; and

(iv) monitoring education and skills development provision in the sector;

(c) promote learning programmes by-

(i) identifying workplaces for practical work experience;

(ii) supporting the development of learning materials;

(iii) improving the facilitation of learning; and

(iv) assisting in the conclusion of agreements for learning programmes, to the extent that it is required;

(d) register agreements for learning programmes, to the extent that it is required;

(e) perform any functions delegated to it by the QCTO in terms of section 26I;
(f) when required to do so as contemplated in section 7(1) of the Skills Development Levies Act, collect the skills development levies, and must disburse the levies, allocated to it in terms of sections 8(3)(b) and 9(b), in its sector;

(g) liaise with the National Skills Authority on-
   (i) the national skills development policy;
   (ii) the national skills development strategy; and
   (iii) its sector skills plan;

(h) submit to the Director-General-
   (i) any budgets, reports and financial statements on its income and expenditure that it is required to prepare in terms of the Public Finance Management Act; and
   (ii) strategic plans and reports on the implementation of its service level agreement;

(i) liaise with the provincial offices and labour centres of the Department and any education body established under any law regulating education in the Republic to improve information-
   (i) about placement opportunities; and
   (ii) between education and skills development providers and the labour market;
(iA) liaise with the skills development forums established in each province in such manner and on such issues as may be prescribed;

(j) subject to section 14, appoint staff necessary for the performance of its functions;

(jA) promote the national standard established in terms of section 30B;

(jB) liaise with the QCTO regarding occupational qualifications; and

(k) perform any other duties imposed by this Act or the Skills Development Levies Act or consistent with the purposes of this Act.

[Subs. (1) amended by s. 23 of Act 9/99 and s. 6 of Act 31/2003 and Substituted by s. 5 of Act 37/2008]

(2) A SETA has -

(a) all such powers as are necessary to enable it to perform its duties referred to in subsection (1); and

(b) the other powers conferred on the SETA by this Act or the Skills Development Levies Act.

[Para. (b) substituted by s. 23 of Act 9/99]

(3) A SETA must perform its functions in accordance with this Act, the Skills Development Levies Act and its constitution.

[Subs. (3) substituted by s. 23 of Act 9/99] (Commencement date of s. 10: 10 September 1999)
10A. SETAs to conclude service level agreements

(1) For each financial year, every SETA must conclude with the Director-General a service level agreement concerning-

(a) the SETA's performance of its functions in terms of this Act and the national skills development strategy;

(b) the SETA's annual business plan; and

(c) any assistance that the Director-General is to provide to the SETA in order to enable it to perform its functions.

(2) If the Director-General and a SETA cannot agree on the contents of a service level agreement within the prescribed period, the Minister must determine the contents of the service level agreement after consulting the National Skills Authority.

(3) The determination by the Minister in respect of a service level agreement is final and binding.

(4) The Minister must, after consultation with the National Skills Authority, make regulations concerning-

(a) the procedure for negotiating a service level agreement, including the periods within which negotiations must be conducted;

(b) the matters which may be dealt with in a service level agreement and which may include-
(i) standards, criteria and targets for measuring and evaluating the SETA's performance of its functions in terms of the Act and its obligations in terms of the national skills development strategy; and

(ii) the timetable, number, format, contents and information requirements of plans and reports to be submitted to the Director-General.

[S. 10A inserted by s. 7 of Act 31/2003]

11. Composition of SETA

A SETA may consist only of members representing -

(a) organised labour;

(b) organised employers, including small business;

(c) relevant government departments; and

(d) if the Minister, after consultation with the members referred to in paragraph (a), (b) and (c), considers it appropriate for the sector -

(i) any interested professional body;

(ii) any bargaining council with jurisdiction in the sector.
(Commencement date of s. 11: 10 September 1999)

12. Chambers of SETA

(1) A SETA may, with the Minister's approval, establish in its sector chambers.
(2) A chamber so established must consist of an equal number of members representing employees and employers and may include such additional members as the SETA determines.

(3) That chamber must perform those functions of the SETA as delegated to it in terms of the constitution of the SETA.

(4) A chamber of a SETA is entitled to such percentage of the skills development levies collected in its jurisdiction as the Minister after consultation with the SETA determines.

(Commencement date of s. 12: 10 September 1999)

13. Constitution of SETA

(1) For the purpose of the establishment of a SETA, the Minister must approve the constitution of the SETA.

(2) The Minister may, after consultation with the SETA, amend its constitution in the prescribed manner.

(3) Subject to this Act, the constitution of a SETA -

(a) must specify -

(i) the trade unions, employer organisations and relevant government departments in the sector;

(ii) the circumstances and manner in which a member of SETA may be replaced;

(iii) the number of members to be appointed to the SETA, provided that the SETA must consist of an
equal number of members representing employees and employers;

(iv) the procedure for the replacement of a member of the SETA by the organisation that nominated that member;

(v) the circumstances and manner in which a member may be replaced by the SETA;

(vi) the election of office-bearers by the members of the SETA and of persons to act during their absence or incapacity, their term of office and functions and the circumstances and manner in which they may be replaced;

(vii) the establishment and functioning of committees, including an executive committee;

(viii) the rules for convening and conducting of meetings of the SETA and its chambers and committees, including the quorum required for and the minutes to be kept of those meetings;

(ix) the voting rights of the different members and the manner in which decisions are to be taken by the SETA and its chambers and committees;

(x) a code of conduct for members of the SETA and its chambers;

(xi) the appointment of an executive officer, and such other employees necessary for the effective
performance of the functions of the SETA, by its members, including the determination of their terms and conditions of employment; and

(xii) the determination through arbitration of any dispute concerning the interpretation or application of the constitution; and

(b) may provide for -

(i) the delegation of powers and duties of the SETA to its members, chambers, committees and employees, provided that the SETA may impose conditions for the delegation, may not be divested of any power or duty by virtue of the delegation and may vary or set aside any decision made under any delegation; and

(ii) any other matter necessary for the performance of the functions of the SETA.

(4) In order to ensure that its membership is representative of designated groups, every SETA must-

(a) provide in its constitution that each constituency contemplated in section 11 represented on the SETA in question is represented by members who are sufficiently representative of such designated groups; and

(b) take the necessary steps to ensure that the constituencies in question comply with the provision in the SETA's constitution contemplated in paragraph (a).

[Subs. (4) added by s. 8 of Act 31/2003]

(Commencement date of s. 13: 10 September 1999)
14. **Finances of SETA**

(1) A SETA is financed from -

   (a) 80 per cent of the skills development levies, interest and penalties collected in respect of the SETA, as allocated in terms of sections 8(3)(b) and 9(b) of the Skills Development Levies Act;
   [Para. (a) substituted by s. 23 of Act 9/99]

   (b) moneys paid to it from the National Skills Fund;

   (c) grants, donations and bequests made to it;

   (d) income earned on surplus moneys deposited or invested;

   (e) income earned on services rendered in the prescribed manner; and

   (f) money received from any other source.

(2) The money received by a SETA must be paid into a banking account at any registered bank and may be invested only in -

   (a) savings accounts, permanent shares or fixed deposits in any registered bank or other financial institution;

   (b) internal registered stock contemplated in section 21(1) of the Exchequer Act, 1975 (Act No. 66 of 1975);

   (c) ..........
   [Para. (c) deleted by s. 23 of Act 9/99]
(d) any other manner approved by the Minister.

(3) The moneys received by a SETA may be used only in the prescribed manner and in accordance with any prescribed standards or criteria to-

(a) fund the performance of its functions; and

(b) pay for its administration within the prescribed limit.

[Subs. (3) amended by s. 9 of Act 31/2003]

(3A) For the purposes of subsection (3)(b), the Minister-

(a) must prescribe the total expenditure that a SETA may make on its administration; and

(b) may prescribe-

(i) the amount that a SETA may spend on any aspect of its administration;

(ii) salary bands within which categories of employees must be remunerated;

(iii) the conditions under which employees may receive performance-related payments and the maximum payment that may be made to an employee in this regard;

(iv) the allowances that may be paid to members and office-bearers of SETAs or any other persons who serve on a committee or other structure of a SETA.

[Subs. (3A) inserted by s. 9 of Act 31/2003]
(3B) For the purposes of subsections (3) and (3A), the administration of a SETA includes any aspect of the administration or management of a SETA, irrespective of who performs it.

[Subs. (3B) inserted by s. 9 of Act 31/2003]

(4) A SETA must be managed in accordance with the Public Finance Management Act.

[Subs. (4) substituted by s. 9 of Act 31/2003]

(5) Every SETA must-

a) prepare annual budgets, annual reports and financial statements in accordance with Chapter 6 of the Public Finance Management Act; and

(b) furnish the Director-General with copies of all budgets, reports and statements contemplated in paragraph (a) and any other information that it is required to submit in terms of the Public Finance Management Act.

[Subs. (5) substituted by s. 9 of Act 31/2003]

(6) The Auditor-General must -

a) audit the accounts, financial statements and financial management of a SETA; and

(b) report on that audit to the SETA and to the Minister and in that report express an opinion as to whether the SETA has complied with the provisions of this Act, and its constitution, relating to financial matters.

(Commencement date of s. 14: 10 September 1999)
14A. **Minister may issue written instructions to SETAs**

(1) The Minister may issue a written instruction to a SETA if-

(a) the SETA is not performing any of its functions or not complying with its service level agreement;

(b) the SETA is not managing its finances in accordance with this Act;

(c) the SETA's membership is not representative of the constituencies contemplated in section 11; or

(d) the SETA has not prepared and implemented an employment equity plan as contemplated in section 20 of the Employment Equity Act, 1998 (Act No. 55 of 1998).

(2) An instruction issued under subsection (1) must set out-

(a) the reason for issuing the instruction;

(b) any provision of the Act that the SETA has not complied with; and

(c) the steps that the SETA is required to take and the period within which such steps must be taken.

(3) At the request of a SETA, the Minister may-

(a) extend the period for complying with an instruction; or

(b) revise the terms of the instruction.
(4) If a SETA has not complied with an instruction issued in terms of this section within the specified period, the Minister may-

(a) direct the Director-General to withhold all or part of the allocation to the SETA in terms of section 8(3)(b) of the Skills Development Levies Act for such period and on such conditions as the Director-General may determine;

(b) invoke section 15 without further notice to the SETA;

(c) order an investigation into the management and administration of the SETA; or

(d) take any other steps necessary to ensure that the SETA performs its functions or manages its finances in accordance with this Act.

(5) If a SETA has unreasonably failed to institute disciplinary proceedings for misconduct against any employee of the SETA, the Minister may direct the SETA to institute disciplinary proceedings against that employee.

[S. 14A inserted by s. 10 of Act 31/2003]

15. Taking over administration of SETA

(1) The Minister may, after consultation with the National Skills Authority and the SETA in question, direct the Director-General to appoint an administrator to take over the administration of a SETA or to perform the functions of a SETA if -

(a) the SETA fails to perform its functions;
(b) there is mismanagement of its finances;

(c) its membership no longer substantially represents the composition contemplated in section 11;

(d) the SETA has failed to comply with its service level agreement; or

(e) the SETA has failed to comply with an instruction issued by the Minister in terms of section 14A.

[Subs. (1) substituted by s. 11 of Act 31/2003]

(2) The Director-General must publish a notice in the Gazette appointing an administrator and in that notice the Director-General -

(a) must determine the powers and duties of the administrator, which may include the performance by the administrator of the SETA's functions in terms of the Public Finance Management Act;

(b) may suspend or replace one or more members of the SETA for a reason contemplated in subsection (1)(a) to (e);

(c) may suspend the operation of the constitution of the SETA; and

(d) may direct the transfer of all or some of the funds in the SETA's bank account to the National Skills Fund.

[Subs. (2) substituted by s. 11 of Act 31/2003]
(3) If a notice is published in terms of subsection (1), the Minister may, to ensure that the SETA resumes the performance of its functions -

(a) amend its constitution;

(b) reinstate any of its members; and

(c) withdraw or amend any provision of the notice contemplated in subsection (2) on such conditions as the Minister considers appropriate.

(4) The Minister may act in terms of subsection (1) without consulting the National Skills Authority and the SETA in question if there is financial mismanagement of the SETA and the delay caused by the consultation would be detrimental to the SETA’s capacity to perform its functions.

[Subs. (4) added by s. 11 of Act 31/2003]

(Commencement date of s. 15: 10 September 1999)

CHAPTER 4

LEARNERSHIPS

16. Learnerships

A SETA may establish a learnership if-

(a) the learnership includes a structured learning component;

(b) the learnership includes a structured work experience component;

(c) the learnership would lead to a qualification registered by
the South African Qualifications Authority associated with a trade, occupation or profession; and (d) the intended learnership is registered with the Director-General in the prescribed manner.

[S. 16 substituted by s. 6 of Act 37/2008]

(Commencement date of s. 16: 1 April 2001)

17. Learnership agreements

(1) For the purposes of this Chapter, a 'learnership agreement' means an agreement entered into for a specified period between-

(a) a learner;

(b) an employer or a group of employers (in this section referred to as 'the employer'); and

(c) a skills development provider accredited by the QCTO or group of such skills development providers;

[Subs. (1) substituted by s. 7 of Act 37/2008]

(2) The terms of a learnership agreement must oblige -

(a) the employer to -

(i) employ the learner for the period specified in the agreement;

(ii) provide the learner with the specified practical work experience; and

(iii) release the learner to attend the education and training specified in the agreement;
(b) the learner to -

(i) work for the employer; and

(ii) attend the specified education and training; and

(c) the skills development provider to provide -

(i) the education and training specified in the agreement; and

(ii) the learner support specified in the agreement.

[Para. (c) amended by s. 7 of Act 37/2008]

(3) A learnership agreement must be in the prescribed form and registered with a SETA in the prescribed manner.

(4) A learnership agreement may not be terminated before the expiry of the period of duration specified in the agreement unless -

(a) the learner meets the requirements for the successful completion of the learnership;

(b) the SETA which registered the agreement approves of such termination; or

(c) the learner is fairly dismissed for a reason related to the learner's conduct or capacity as an employee.

(5) The employer or skills development provider that is party to a learnership agreement may be substituted with -
(a) the consent of the learner; and

(b) the approval of the SETA which registered the agreement.

[Subs. (5) amended by s. 7 of Act 37/2008]

(6) A SETA must, in the prescribed manner, provide the Director-General with a record of learnership agreements registered by the SETA.

(7) The Minister may make regulations -

(a) permitting an employer to enter into an agreement with an agency to perform the employer's obligations and exercise the employer's rights in respect of a learnership agreement or, in respect of a learner contemplated in section 18(2), a contract of employment;

[Para. (a) amended by s. 7 of Act 37/2008]

(b) prescribing the relationship between the employer and the agency contemplated in paragraph (a).

(c) prescribing the requirements for registering an agency contemplated in paragraph (a); and

[Para. (c) added by s. 7 of Act 37/2008]

(d) making it an offence to operate an agency contemplated in paragraph (a) except in accordance with such regulations.

[Para. (d) added by s. 7 of Act 37/2008]

[Subs. (7) added by s. 12 of Act 31/2003]

(Commencement date of s. 17: 1 April 2001)
18. **Contract of employment with learner**

(1) If a learner was in the employment of the employer party to the learnership agreement concerned when the agreement was concluded, the learner's contract of employment is not affected by the agreement.

(2) If the learner was not in the employment of the employer party to the learnership agreement concerned when the agreement was concluded, the employer and learner must enter into a contract of employment.

(3) The contract of employment with a learner contemplated in subsection (2) is subject to any terms and conditions that may be determined by the Minister on the recommendation of the Employment Conditions Commission established by section 59(1) of the Basic Conditions of Employment Act.

(4) Chapters Eight and Nine of the Basic Conditions of Employment Act apply, with the changes required by the

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1 Chapters Eight and Nine of the Basic Conditions of Employment Act ("BCEA"), provide for the publication of sector determinations by the Minister on basic conditions of employment on the advice of the Employment Conditions Commission. Before the Commission advises the Minister on the publication of a determination:

(a) the Department of Labour conducts an investigation and prepares a report;

(b) the Commission then considers the report in the light of a number of factors set out in section 54(3) of the BCEA and in this process may hold public hearings, and then

(c) gives its advice in a report to the Minister. The effect of this section is to allow for the setting of terms and conditions of employment for learners in a similar way to the setting of conditions of apprenticeship under the Manpower Training Act, 1981 (Act No. 56 of 1981), in so far as conditions of employment are concerned - see section 13(2)(c) and (k) to (p). The provisions of the BCEA are sufficiently flexible to allow for sector and crosssector determinations for learnerships.
context, to a determination made in terms of subsection (3) except that -

(a) for the purposes of section 54(3) of that Act, the Employment Conditions Commission must also consider the likely impact that any proposed condition of employment may have on the employment of learners and the achievement of the purposes of this Act; and (b) section 55(7) of that Act does not apply.

(5) The contract of employment of a learner may not be terminated before the expiry of the period of duration specified in the learnership agreement unless the learnership agreement is terminated in terms of section 17(4).

(6) The contract of employment of a learner terminates at the expiry of the period of duration specified in the learnership agreement unless the agreement was concluded with a person who was already in the employment of the employer party to the agreement when the agreement was concluded.

(Commencement date of s. 18: 1 April 2001)

19. **Disputes about learnerships**

(1) For the purposes of this section a “dispute” means a dispute about -

(a) the interpretation or application of any provision of -

(i) a learnership agreement;
(ii) a contract of employment of a learner contemplated in section 18(2); or
[Subpara. (ii) substituted by s. 13 of Act 31/2003]

(iii) a determination made in terms of section 18(3);

(b) this Chapter; or

(c) the termination of -

(i) a learnership agreement; or

(ii) a contract of employment of a learner contemplated in section 18(2).
[Subpara. (ii) substituted by s. 13 of Act 31/2003]

(2) Any party to a dispute may in writing refer the dispute to the Commission for Conciliation, Mediation and Arbitration established by section 112 of the Labour Relations Act, 1995 (Act No. 66 of 1995).

(3) The party who so refers the dispute must satisfy that Commission that a copy of the referral has been served on all the other parties to the dispute.

(4) The Commission must attempt to resolve the dispute through conciliation.

(5) If the dispute remains unresolved, any party may request that the dispute be resolved through arbitration as soon as possible.
(6) The law that applies to the lawfulness² and fairness³ of a dismissal for a reason related to an employee's capacity or conduct applies to a dispute contemplated in subsection (1)(c)(ii).

(7) Notwithstanding section 210 of the Labour Relations Act, 1995 (Act No. 66 of 1995), this section must be regarded as expressly amending any contrary provision in that Act.  
[Subs. (7) added by s. 13 of Act 31/2003]  
(Commencement date of s. 19: 1 April 2001)

CHAPTER 5

SKILLS PROGRAMMES

20. Skills programmes

(1) For the purposes of this Chapter, a “skills programme” means a skills programme that -

(a) is occupationally based;

(b) when completed, will constitute a credit towards a qualification registered in terms of the National Qualifications Framework as defined in section 1 of the South African Qualifications Authority Act;

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² The lawfulness of a dismissal is governed by the provisions of this Act, the Basic Conditions of Employment Act and the common law.

³ The fairness of a dismissal is governed by the Labour Relations Act, 1995 (Act No. 66 of 1995), the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the common law (administrative law in respect of public sector employees).
(c) uses training providers referred to in section 17(1)(c); and
[Para. (c) substituted by s. 14 of Act 31/2003]

(d) complies with any requirements that may be prescribed.
[Para. (d) substituted by s. 14 of Act 31/2003]

(2) Any person that has developed a skills programme may apply to -

(a) a SETA with jurisdiction for a grant; or

(b) the Director-General for a subsidy.

(3) The SETA or the Director-General may fund the skills programme if -

(a) it complies with -

(i) subsection (1);

(ii) any requirements imposed by the SETA or the Director-General; and

(iii) any prescribed requirements; and

(b) it is in accordance with -

(i) the sector skills development plan of the SETA; or

(ii) the national skills development strategy; and

(c) there are funds available.
(4) A SETA or the Director-General may set any terms and conditions for funding in terms of subsection (3) that the SETA or the Director-General, as the case may be, considers necessary.

(5) The SETA or the Director-General must monitor the skills programmes funded by the SETA or the Director-General, as the case may be.

(6) A SETA or the Director-General that has made funds available for a skills programme may withhold funds or recover any funds paid if the SETA or the Director-General, as the case may be, is of the opinion that -

(a) the funds are not being used for the purpose for which they were made available;

(b) any term or condition of the funding is not complied with; or

(c) the SETA or the Director-General, as the case may be, is not satisfied that the training is up to standard.

(Commencement date of s. 20: 10 September 1999)

21. Disputes

Any party to a dispute about the application or interpretation of -

(a) any term or condition of funding referred to in section 20(4); or

(b) any provision of this Chapter, may refer the dispute to the Labour Court for adjudication.

(Commencement date of s. 21: 10 September 1999)
22. Administration of Act by Department

(1) Subject to the laws governing the public service, the Director-General must ensure that the Department, including its provincial offices and labour centres, has the personnel and financial resources necessary for the performance of its functions in terms of this Act.

(2) The functions of the Department in terms of this Act are—

(a) to research and analyse the labour market in order to determine skills development needs for—

(i) South Africa as a whole;

(ii) each sector of the economy; and

(iii) organs of state;

(b) to assist in the formulation of—

(i) the national skills development strategy; and

(ii) sector skills development plans; and

(c) to provide information on skills to—

(i) the Minister;
(ii) the National Skills Authority;

(iii) SETAs;

(iv) education and skills development providers;

(v) organs of the state;

(vi) the skills development forums in each province;

(vii) the QCTO; and

(viii) any other interested party; and

(d) to perform any other function assigned or delegated to the Department in terms of this Act.

[S. 22 substituted by s. 9 of Act 37/2008]

(Commencement date of s. 22: 10 September 1999)

23. Employment services

(1) The functions of provincial offices of the Department in respect of employment services are-

(a) to plan, coordinate, support, monitor and report on all activities occurring at all labour centres;

(b) to establish a skills development forum as prescribed;

(c) to maintain a data-base of skills development providers within their jurisdiction; and

(d) to perform any other prescribed or delegated function.

[Subs. (1) substituted by s. 10 of Act 37/2008]
(2) The functions of the labour centres of the Department in respect of employment services are-

(a) to provide information to workers, employers and skills development providers, including the unemployed;

(b) to register work-seekers;

(c) to register placement opportunities;

(d) to assist workers and other prescribed categories of persons-

(i) to enter learning programmes;

(ii) to find placement opportunities;

(iii) to start income-generating projects; and

(iv) to participate in placement programmes;

(e) to develop plans, programmes and coherent strategies to extend services to rural communities; and

(f) to perform any other prescribed function related to the functions referred to in paragraphs (a) to (e).

[Subs. (2) substituted by s. 10 of Act 37/2008]

(3) The Minister may, after consulting the National Skills Authority, by notice in the Gazette, require each employer to notify a labour centre in the prescribed manner of -

(a) any vacancy that employer has; and
(b) the employment of any work-seeker referred by that labour centre.

(Commencement date of s. 23: 10 September 1999)

24. **Registration of persons that provide employment services**

(1) Any person who wishes to provide employment services for gain must apply for registration as a private employment services agency to the Director-General in the prescribed manner.

[Subs. (1) substituted by s. 16 of Act 31/2003]

(2) The Director-General must register the applicant if satisfied that the prescribed criteria have been met.

(3) If the Director-General -

   (a) registers an applicant, the prescribed certificate must be issued to that person; or

   (b) refuses to register an applicant, the Director-General must give written notice of that decision to the applicant.

(4) A registered private employment services agency must comply with the prescribed criteria.

[Subs. (4) substituted by s. 16 of Act 31/2003]

(5) The Director-General may withdraw the registration of any private employment services agency that fails to comply with this Act or any prescribed requirements or criteria.

[Subs. (5) added by s. 16 of Act 31/2003]

(Commencement date of s. 24: 10 September 1999)
25. **Cancellation of registration of private employment services agency**

(1) Subject to this section, the Director-General may cancel the registration of a private employment services agency if the private employment services agency is not complying with the prescribed criteria.

(2) If the Director-General has reason to believe that a private employment services agency is not complying with the prescribed criteria and accordingly that its registration should be cancelled, the Director-General must, before cancelling its registration-

(a) notify the agency of the intention to cancel registration and the reasons for doing so;

(b) give the agency 30 days from the date of the notice to make representations on why its registration should not be cancelled; and

(c) take those representations into account in reaching a decision.

(3) If the Director-General cancels the registration of a private employment services agency, the Director-General must give written notice of that decision to the private employment services agency.

[S. 25 substituted by s. 17 of Act 31/2003]

(Commencement date of s. 25: 10 September 1999)

26. **Appeal against Director-General's decision**

(1) Any person aggrieved by a decision of the Director-General...
in terms of section 24(3) (b) or 25(3) may, within 30 days of the written notice of that decision, in writing, request the Director-General to give that person written reasons for the decision.

(2) The Director-General must give that person written reasons for the decision within 30 days of receiving that request.

(3) Any person aggrieved by a decision of the Director-General in terms of section 24(3) (b) or 25(3) may appeal to the Labour Court against that decision within 60 days of -

(a) the date of the Director-General's decision; or

(b) if written reasons for the decision are requested, the date of those reasons.

(4) The Labour Court may, on good cause shown, extend the period within which a person may note that appeal.

(Commencement date of s. 26: 10 September 1999)

CHAPTER 6A

ARTISAN DEVELOPMENT

26A. National artisan moderation body

(1) The Director-General must-

(a) establish a national artisan moderation body in the Department; and
(b) provide the body contemplated in paragraph (a) with the personnel and financial resources that are necessary to coordinate artisan development in the Republic.

(2) The functions of the national artisan moderation body are to-

(a) monitor the performance of accredited artisan trade lest centres;

(b) moderate artisan trade tests;

(c) develop, maintain and apply a national data-bank of instruments for assessment and moderation of artisan trade tests;

(d) develop and maintain a national data-base of registered artisan trade assessors and moderators;

(e) record artisan achievements;

(f) determine appeals against assessment decisions;

(g) recommend the certification of artisans to the QCTO; and

(h) perform any other prescribed function.

[S. 26A inserted by s. 11 of Act 37/2008]

26B. Listing of trades

The Minister may, on application by one or more SETAs in the prescribed form, by notice in the Gazette-
(a) list any occupation as a trade for which an artisan qualification is required;

(b) remove any trade from the list contemplated in subparagraph (a) if an artisan qualification is no longer required for that trade.

[S. 26B inserted by s. 11 of Act 37/2008]

26C. National register of artisans

(1) The Director-General must maintain a register of persons-

(a) who have obtained an artisan qualification in terms of this Act or any repealed Act; and

(b) who are practicing that trade.

(2)

(a) No person, whether employed or self-employed, may hold themselves out to be qualified as an artisan in a listed trade unless that person is registered as an artisan in terms of subsection (1).

(b) Paragraph (a) does not affect any requirement that any professional or regulatory body regulating any listed trade may require for the practice of that trade.

(3) For the purpose of this section, a person qualified to be an artisan in terms of any repealed Act includes any person who completed a contract of apprenticeship under a time-based apprenticeship system in terms of any conditions of apprenticeship published in terms of any repealed Act.
(4) The Minister may make regulations concerning-

(a) the criteria and procedure for the name of any person to be included on, or removed from, the register of artisans;

(b) any other matter necessary for maintaining the register of artisans.

[S. 26C inserted by s. 11 of Act 37/2008]

26D. Trade tests

(1) Subject to any regulation made in terms of subsection (5), no person may obtain an artisan qualification in terms of this Act unless they have successfully undergone a trade test administered by an accredited trade test centre.

(2) A person may apply to undergo a trade test in respect of a trade if-

(a) that person has completed a learnership relevant to that trade; or

(b) that person has satisfied the relevant requirements of an apprenticeship in respect of that trade; or

(c) an accredited trade test centre has certified that the person has acquired sufficient prior learning related to that trade; and

(d) that person has completed any other learning programme resulting in an occupational or vocational qualification inclusive of prescribed work experience.
that entitles such person to undergo the relevant trade test.

(3) An accredited trade test centre may require any person who applies to undergo a trade test to undergo a preliminary evaluation to determine whether that person has sufficient experience and knowledge in respect of the trade in question to undergo the trade test.

(4) The QCTO must issue any person who successfully completed a trade test with a trade certificate in the prescribed form, stating that that person is qualified to perform the trade specified in the certificate.

(5) The Minister, after consulting the QCTO, may make regulations concerning-

(a) the procedure for applying to undergo a trade test;

(b) the criteria for determining whether a learner should be required to undergo a preliminary trade test evaluation;

(c) the payment of fees for undergoing a trade test;

(d) the contents of a preliminary evaluation or trade test in respect of any trade;

(e) any matter related to conducting or moderating of trade tests;

(f) the criteria for granting exemptions from all or some of the requirements in respect of a trade test before being registered as an artisan;
(g) the form of certificate issued to artisans who successfully undergo a trade test;

(h) any other matter necessary for the conducting or moderating of trade tests.

[S. 26D inserted by s. 11 of Act 37/2008]

CHAPTER 6B

SKILLS DEVELOPMENT INSTITUTES

26E. Skills development institutes

(1) The Minister may, by notice in the Gazette, establish skills development institutes in accordance with the prescribed requirements and may contribute the resources that are necessary for the effective performance of their functions.

(2) A skills development institute may-

(a) provide advisory services on skills development, mentoring and the recognition of prior learning;

(b) provide learning programmes; and

(c) perform any other prescribed function necessary to promote skills development.

(3) The Minister may make regulations concerning-

(a) the establishment, functions, operation, legal status, governance and funding of skills development institutes;
(b) any other matter that it is necessary or expedient to
prescribe in order to enable skills development
institutes to perform their functions.

(4) The Minister may make different regulations under
subsection (2) with respect to different skills development
institutes.

[S. 26E inserted by s. 11 of Act 37/2008]

CHAPTER 6C

QUALITY COUNCIL FOR TRADES AND OCCUPATIONS

26F. Policy on occupational standards and qualifications

(1) The Minister, after consulting the QCTO, may by notice in the
Gazette determine policy on-

(a) an occupational qualifications sub-framework as an
integral part of the National Qualifications Framework;

(b) the sub-framework for quality assurance for
occupational qualifications; and

(c) any other matter concerning occupational standards or
occupational qualifications.

[S. 26F inserted by s. 11 of Act 37/2008]

26G. Establishment of QCTO

(1) The Quality Council for Trades and Occupations is hereby
established as a juristic person.
(2) The QCTO must be managed in accordance with the Public Finance Management Act.

(3) The QCTO consists of 16 members appointed by the Minister in accordance with Schedule 3.

(4) The Minister must approve a constitution for the QCTO which, subject to this Act, complies with the requirements set out in Schedule 3.

(5)

(a) The Minister must appoint the chief executive officer of the QCTO on the recommendation of the members of the QCTO.

(b) If the Minister does not agree with the recommendation of the members of the QCTO, they must make another recommendation for consideration by the Minister.

(c) The QCTO must appoint such number of employees to assist the QCTO in the performance of its functions as it may deem necessary.

(d) Despite paragraph (a), the QCTO is the employer of the executive officer and employees and must determine their remuneration, allowances, subsidies and other conditions of service.

(e) Staff identified in posts on the establishment of the Department who immediately before the commencement of the Higher Education Laws Amendment Act, 2010, performs functions relating to the administrative management of the QCTO may,
subject to section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995), be appointed or transferred to the QCTO.

[Subs. (5) substituted by s. 5 of Act 26/2010]

(6) The QCTO is financed from-

(a) money voted by Parliament for this purpose;

(b) income earned from services rendered by it;

(c) grants or donations made to it; and

(d) money received from any other source.

[S. 26G inserted by s. 11 of Act 37/2008]

26H. Functions of QCTO

(1) The QCTO must advise the Minister on all matters of policy concerning occupational standards and qualifications.

(2) The QCTO must perform its functions in terms of this Act and the National Qualifications Framework Act, 2008.

(3) Subject to any policy issued by the Minister in terms of section 26F, the QCTO is responsible for-

(a) establishing and maintaining occupational standards and qualifications;

(b) the quality assurance of occupational standards and qualifications and learning in and for the workplace;

(c) designing and developing occupational standards and
qualifications and submitting them to the South African Qualifications Authority for registration on the National Qualifications Framework;

(d) ensuring the quality of occupational standards and qualifications and learning in and for the workplace;

(e) promoting the objectives of the National Qualifications Framework;

(f) liaising with the National Skills Authority on the suitability and adequacy of occupational standards and qualifications and on the quality of learning in and for the workplace;

(g) liaising with the South African Qualifications Authority, other Quality Councils and professional bodies responsible for establishing standards and qualifications or the quality assurance of standards and qualifications; and

(h) performing any other prescribed function.

(4) The QCTO has all such powers as are necessary to enable it to perform its functions in terms of this section.

(5) The Minister may issue written instructions, which are not inconsistent with any policy made by the Minister in terms of section 26F, to the QCTO regarding the performance of its functions in terms of subsection (3).

(6) The QCTO must comply with-
(a) any policy determined by the Minister in terms of section 26F; and

(b) any written instruction issued by the Minister in terms of subsection (5).

[S. 26H inserted by s. 11 of Act 37/2008]

26I. Delegation of functions

(1) The QCTO may, in writing and subject to such conditions as it may determine, delegate any of its functions to-

(a) the executive officer of the QCTO;

(b) a committee of the QCTO;

(c) the national artisan moderation body established in terms of section 26A;

(d) a SETA; or

(e) any other suitable body.

(2) A delegation under subsection (1)-

(a) does not divest the QCTO of the function delegated and the QCTO may at any time review, amend or set aside any decision made under the delegation;

(b) does not prevent the performance of the function by the QCTO itself; and

(c) may be revoked by the QCTO at any time.

[S. 26I inserted by s. 11 of Act 37/2008]
26J. Regulations regarding occupational standards and qualifications

The Minister may, after consulting the QCTO, by notice in the Gazette make regulations regarding-

(a) the setting of occupational standards and qualifications;

(b) the recognition and registration of occupational curricula;

(c) the accreditation of occupational skills development providers;

(d) the approval of occupational learning programmes;

(e) the registration of occupational assessors and moderators;

(f) the certification for occupational standards and qualifications;

(g) the accreditation of occupational assessment centres;

(h) the approval of workplaces for occupational training and the monitoring of workplaces for occupational training;

(i) the provision of occupational foundational learning;

(j) the provision of internships;

(k) the appointment of occupational communities of expert practice;

(l) the organising framework for occupations;
(m) the recognition of prior learning in respect of occupational qualifications; and

(n) any other matter concerning occupational standards and qualifications or which it is necessary or expedient to prescribe in order to enable the QCTO to perform its functions under this Act.

[S. 26J inserted by s. 11 of Act 37/2008]

CHAPTER 6D

WORKPLACE PRODUCTIVITY AND COMPETITIVENESS

26K. Establishment of Productivity South Africa

(1) Productivity South Africa is hereby established as a juristic person.

(2) Productivity South Africa must be managed in accordance with the Public Finance Management Act.

(3) The Board of Productivity South Africa consists of seven members appointed by the Minister in accordance with Schedule 4.

(4) The Minister must approve a constitution for Productivity South Africa which, subject to this Act, complies with the requirements set out in Schedule 4.

[S. 26K inserted by s. 11 of Act 37/2008]

26L. Functions of Productivity South Africa

The functions of Productivity South Africa are-
(a) to promote a culture of productivity in workplaces;

(b) to develop relevant productivity competencies;

(c) to facilitate and evaluate productivity improvement and competitiveness in workplaces;

(d) to measure and evaluating productivity in the workplace;

(e) to maintain a data-base of productivity and competitiveness systems and publicising these systems;

(f) to undertake productivity-related research;

(g) to support initiatives aimed at preventing job losses; and

(h) to perform any other prescribed function.

[S. 26L inserted by s. 11 of Act 37/2008]

26M. **Finances of Productivity South Africa**

Productivity South Africa is financed from -

(a) money voted by Parliament for this purpose;

(b) income earned from services rendered by it;

(c) grants or donations made to it; and

(d) money received from any other source.

[S. 26M inserted by s. 11 of Act 37/2008]
26N. **Regulations regarding workplace productivity and competitiveness**

The Minister may, after consulting Productivity South Africa, by notice in the *Gazette* make regulations regarding any improvements in workplace productivity and competitiveness which it is necessary or expedient to prescribe in order to enable Productivity South Africa to perform its functions under this Act.

[S. 26N inserted by s. 11 of Act 37/2008]

**CHAPTER 7**

**FINANCING SKILLS DEVELOPMENT**

27. **National Skills Fund**

(1) The National Skills Fund is hereby established.

(2) The Fund must be credited with -

   (a) 20 per cent of the skills development levies, interest and penalties collected in respect of every SETA, as required by sections 8(3)(a) and 9(a) of the Skills Development Levies Act;

   [Para. (a) substituted by s. 23 of Act 9/99]

   (Commencement date of para. (a): 10 September 1999)

   (b) the skills development levies, interest and penalties collected by the Commissioner from employers which do not fall within the jurisdiction of a SETA, as required by sections 8(3)(c) of the Skills Development Levies Act.

   [Para. (b) substituted by s. 23 of Act 9/99]

   (Commencement date of para. (b): 10 September 1999)
(c) money appropriated by Parliament for the Fund;

(d) interest earned on investments contemplated in section 29(3);

(e) donations to the Fund; and

(f) money received from any other source.

28. Use of money in Fund

(1) The money in the Fund may be used only for the projects identified in the national skills development strategy as national priorities or for such other projects related to the achievement of the purposes of this Act as the Director-General determines.

(2) The money allocated to the Fund in terms of sections 8(3)(a) of the Skills Development Levies Act may be used to administer the Fund within a prescribed limit.

[S. 28 amended by s. 18 of Act 31/2003 and substituted by s. 12 of Act 37/2008]

29. Control and administration of Fund

(1) The Director-General is the accounting authority of the Fund as contemplated by section 49(2)(b) of the Public Finance Management Act and must-

(a) control the Fund;

(b) keep a proper record of all financial transactions, assets and liabilities of the Fund;
(c) annual financial statements for the Fund in the prescribed form; and

(d) subject to the laws governing the public service, appoint the executive officer of the Fund who will, upon such appointment, be in the employ of the public service.

(1A) The Fund must be managed in accordance with the Public Finance Management Act.

(2) Any money in the Fund not required for immediate use may be invested in accordance with an investment policy approved by the Director-General that complies with the requirements of the Public Finance Management Act and may be withdrawn when required.

(3) Any unexpended balance in the Fund at the end of the financial year must be carried forward to the next financial year as a credit to the Fund.

(4) The annual financial statements contemplated in subsection (1)(c) must be submitted by the Director-General to the National Skills Authority for information as soon as possible after they have been prepared.

[S.29 amended by s. 19 of Act 31/2003 and substituted s. 13 of Act 37/2008]

30. **Budget for training by public service employers**

Each public service employer in the national and provincial spheres of government -

(a) must budget for at least -

(i) 0,5 per cent of its payroll with effect from 1 April 2000;
(ii) one per cent of its payroll with effect from 1 April 2001, for the training and education of its employees; and

[Para. (a) substituted by s. 23 of Act 9/99]

(b) may contribute funds to a SETA.

(Commencement date of s. 30: 10 September 1999)

30A. **Budget for training by national and provincial public entities**

If 80 per cent or more of the expenditure of a national or provincial public entity is defrayed directly or indirectly from funds voted by Parliament, that entity -

(a) must annually budget at least one per cent of its payroll for the training and education of its employees; and

(b) may contribute funds to a SETA.

[S. 30A inserted by s. 23 of Act 9/99 and substituted by s. 20 of Act 31/2003]

30B. **National standard of good practice in skills development**

(1) In order to achieve the purposes of this Act, the Minister may, by notice in the Gazette, establish a national standard of good practice in skills development.

(2) The Minister may take any steps necessary to achieve the national standard contemplated in subsection (1) and may establish an agency or contract with an existing agency.

(3) The Director-General may allocate funds from the National Skills Fund to fund any activity undertaken in terms of this section.

[S. 30B inserted by s. 21 of Act 31/2003]
CHAPTER 8

GENERAL

31. Jurisdiction of Labour Court

(1) Subject to the jurisdiction of the Labour Appeal Court and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters arising from this Act.

(2) The Labour Court may review any act or omission of any person in connection with this Act on any grounds permissible in law.

(3) If proceedings concerning any matter contemplated in subsection (1) are instituted in a court that does not have jurisdiction in respect of that matter, that court may at any stage during proceedings refer the matter to the Labour Court.

(Commencement date of s. 31: 10 September 1999)

32. Monitoring, enforcement and legal proceedings

(1) Chapter Ten, and sections 90 to 93 of and Schedule Two to the Basic Conditions of Employment Act apply, with changes required by the context, to -

(a) the monitoring and enforcement of this Act; and

(b) any legal proceedings concerning a contravention of this Act.
(2) A labour inspector appointed in terms of section 63 of the Basic Conditions of Employment Act may issue an order in the prescribed form requiring any person to cease conducting the business of a private employment services agency in contravention of this Act.

[S. 32 substituted by s. 22 of Act 31/2003]

(Commencement date of s. 32: 10 September 1999)

33. **Offences**

It is an offence to -

(a) obstruct or attempt to influence improperly a person who is performing a function in terms of this Act;

(b) obtain or attempt to obtain any prescribed document by means of fraud, false pretences or by submitting a false or forged prescribed document;

(c) furnish false information in any prescribed document knowing that information to be false;

(d) provide employment services for gain without being registered in terms of section 24; or

(e) conduct the business of a private employment services agency in contravention of this Act or any prescribed requirement.

[Para. (e) added by s. 23 of Act 31/2003]

[S. 33 amended by s. 23 of Act 31/2003]

(Commencement date of s. 33: 10 September 1999)
34. Penalties

Any person convicted of an offence referred to in section 33 may be sentenced to a fine or imprisonment for a period not exceeding one year.

(Commencement date of s. 34: 10 September 1999)

35. Delegation

(1) The Minister may in writing delegate to the Director-General or any other officer of the Department any power or duty conferred or imposed on the Minister by this Act.

(2) The Director-General may, in writing, delegate to any officer of the Department any power or duty conferred or imposed on the Director-General by this Act.

(3) Any person to whom any power or duty has been delegated in terms of subsection (1) or (2) must exercise that power or perform that duty subject to the conditions that the person who made the delegation considers necessary.

(4) Any delegation in terms of subsection (1) or (2) -

(a) must be in writing;

(b) does not prevent the person who made the delegation from exercising the power or performing the duty so delegated; and

(c) may at any time be withdrawn in writing by that person.

(Commencement date of s. 35: 10 September 1999)
Regulations

The Minister may, after consultation with the National Skills Authority, by notice in the *Gazette*, make regulations regarding -

(a) any matter which may or must be prescribed under this Act;

(b) any procedure, period, criterion or standard for SETAs to perform any function in terms of section 10(1);

(c) categories and amounts of grants that may be allocated in terms of section 10(1)(b)(iii);

(d) the criteria or conditions that may be attached to grants allocated in terms of section 10(1)(b)(iii);

(e) the evaluation of applications for grants in terms of section 10(1)(b)(iii);

(f) the manner in which grants may be allocated in terms of section 10(1)(b)(iii);

(g) the exercise by a SETA of any power contemplated in section 10(2);

(h) the content, format and timeframe for submitting any report or plan that SETAs are required to submit in terms of this Act;

(i) the services in respect of which a SETA may earn income in terms of section 14(1)(e) and the fees, including maximum fees, that may be charged in respect of such services;

(j) the financial systems that SETAs are required to utilise;
(k) the submission by employers to SETAs of workplace skills plans and reports and the form and contents of such reports;

(l) the appointment by employers of workplace skills facilitators and the obligations of employers in respect of workplace skills facilitators;

(m) the rights and functions of workplace skills facilitators;

(n) the rights of registered trade unions, or other employee representatives, to consult with their employer over developing, implementing and reporting on workplace skills plans and on other matters dealt with in this Act;

(o) circumstances specified in the regulations under which a private employment services agency may charge fees in respect of any services provided by private employment services agencies and the maximum fees that may be charged;

(p) services for which private employment services agencies may not charge workseekers fees;

(q) a form for registering private employment services agencies;

(r) the administration, operation, functioning and obligations of the National Skills Fund; and

(rA) any matter concerning the administration of apprenticeships or other qualifications in terms of any repealed Act, including, but not limited to, issuing duplicate certificates; [Para. (rA) inserted by s. 14 of Act 37/2008]
(rB) providing for the establishment of skills development forums in respect of each provincial office and specifying the operation, composition and functions of the forums;

[Para. (rB) inserted by s. 14 of Act 37/2008]

(s) any other matter which it is necessary or expedient to prescribe in order to achieve the purposes of this Act.

[S. 36 substituted by s. 24 of Act 31/2003]

(Commencement date of s. 36: 10 September 1999)

37. Repeal of laws and transitional provisions

(1) The laws referred to Schedule 1 are hereby repealed to the extent specified.

(2) The repeal of those laws is subject to any transitional provision in Schedule 2.

(3) Schedule 2 to the principal Act is hereby repealed, except for item 4A.

[Subs. (3) added by s. 15 of Act 37/2008]

(Commencement date of s. 37: 10 September 1999)

38. Act binds State

This Act binds the State.

(Commencement date of s. 38: 10 September 1999)

39. Short title and commencement

(1) This Act is called the Skills Development Act, 1998.

(2) This Act takes effect on a date to be determined by the President by proclamation in the Gazette.

(Commencement date of s. 39: 10 September 1999)
## Schedule 1

### REPEAL OF LAWS

*(Section 37 (1))*

<table>
<thead>
<tr>
<th>No. and year of law</th>
<th>Short title</th>
<th>Extent of repeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Act No. 41 of 1985</td>
<td>Local Government Training Act, 1985</td>
<td>The whole.</td>
</tr>
</tbody>
</table>
Schedule 2

TRANSITIONAL PROVISIONS

(Section 37 (2))

1. .......... [Item 1 repealed by s. 37 of Act 37/2008]

2. .......... [Item 2 repealed by s. 37 of Act 37/2008]

3. .......... [Item 3 repealed by s. 37 of Act 37/2008]

4. .......... [Item 4 amended by s. 25 of Act 31/2003 and repealed by s. 37 of Act 37/2008]

4A. **Mining Qualifications Authority**

Despite anything to the contrary in either this Act or the Mine Health and Safety Act, 1996 (Act No. 29 of 1996)-

(a) and with effect from 20 March 2000-

(i) the Mining Qualifications Authority established in terms of section 41(3) of the Mine Health and Safety Act, 1996, must be regarded as having been established in terms of section 9(1) of this Act as SETA 16;

(ii) Schedule 7 to the Mine Health and Safety Act, 1996, must be regarded as the constitution of SETA 16; and

(iii) the Chief Inspector of Mines must be regarded as the chairperson of SETA 16;
(b) the Minister may, in consultation with the Minister of Minerals and Energy and after consulting the Mining Qualifications Authority-

(i) amend Schedule 7 to the Mine Health and Safety Act, 1996, in order to bring the constitution of SETA 16 into line with the constitutions of other SETAs; and

(ii) allow an interested professional body or a bargaining council with jurisdiction in the mining sector to be represented on the Mining Qualifications Authority; and

(c) the Minister must, in consultation with the Minister of Minerals and Energy, with regard to SETA 16, perform any function entrusted to the Minister in Chapter 3 of this Act.

[Item 4A inserted by s. 26 of Act 31/2003]

5. ..........

[Item 5 repealed by s. 37 of Act 37/2008]

6. ..........

[Item 6 repealed by s. 37 of Act 37/2008]

7. ..........

[Item 7 repealed by s. 37 of Act 37/2008]

8. ..........

[Item 8 repealed by s. 37 of Act 37/2008]

9. ..........

[Item 9 repealed by s. 37 of Act 37/2008]

10. ..........

[Item 10 amended by s. 23 of Act 9/99 and repealed by s. 37 of Act 37/2008]

11. ..........

[Item 11 repealed by s. 37 of Act 37/2008]
12. ..........  [Item 12 repealed by s. 37 of Act 37/2008]

13. ..........  [Item 13 repealed by s. 37 of Act 37/2008]

14. ..........  [Item 14 amended by s. 23 of Act 9/99 and repealed by s. 37 of Act 37/2008]

15. ..........  [Item 15 repealed by s. 37 of Act 37/2008]

16. ..........  [Item 16 repealed by s. 37 of Act 37/2008]
              [Schedule 2 amended by s. 23 of Act 9/99 and ss. 25 and 26 of Act 31/2003]
Schedule 2A

TRANSITIONAL PROVISIONS: SKILLS DEVELOPMENT AMENDMENT ACT, 2008

1. Definitions

In this Schedule-

"Amendment Act" means the Skills Development Amendment Act, 2008; "ETQA" means an Education and Training Quality Assurance Body accredited in terms of section 5(1)(a)(ii) of the South African Qualifications Authority Act, responsible for monitoring and auditing achievements in terms of national standards or qualifications, and to which specific functions relating to the monitoring and auditing of national standards or qualifications have been assigned in terms of section 5(1)(b)(i) of that Act;

"Manpower Training Act" means the Manpower Training Act, 1981 (Act No. 56 of 1981);

"SAQA" means the South African Qualifications Authority;


2. Contracts of apprenticeship in force immediately prior to commencement of Amendment Act

(1) Subject to the provisions of this Schedule, all sections of the Manpower Training Act, including any regulations and conditions of apprenticeship, that concern apprentices
remain in force insofar as they apply to any contract of apprenticeship in force immediately prior to the commencement of the Amendment Act, as if the Manpower Training Act had not been repealed.

(Commencement date of subitem (1): Publication date of regulations made in terms of s. 26J)

(2) For the purposes of this item-

(a) any function of the registrar must be performed by an official of the Department of Labour designated by the Minister for that purpose in writing;

(b) any function of a training board must be performed by the SETA to whom the assets, rights, liabilities and obligations of the training board were transferred;

(c) any function of the National Training Board must be dealt with by the National Skills Authority.

(3) Any dispute about a contract of apprenticeship or any conditions of apprenticeship applicable to that contract is deemed to be a dispute contemplated in section 19(1) of the Act and must be dealt with in terms of section 19 of the Act, read with the changes required by the context.

(4) Any outstanding matter concerning a contract of apprenticeship that had been completed prior to the commencement of the Amendment Act must be dealt with in terms of the prevailing law immediately prior to the commencement of the Amendment Act.
3. **Conversion of contracts of apprenticeship in force at commencement of Act**

(1) Despite item 2, an employer and an apprentice who are party to a contract of apprenticeship in force at the commencement of this Act may conclude a learnership agreement in accordance with the form prescribed in terms of section 17(3) of the Act, subject to the following:

(a) The training provider must be a party to the learnership agreement, unless the training element of the apprenticeship has been completed;

(b) the learnership agreement may only be terminated in terms of section 17(4);

(c) the employer and apprentice must, in addition, conclude a written contract of employment;

(d) the apprentice is deemed to be a learner contemplated in section 18(2) of the Act and must be employed on terms and conditions of employment that are no less favourable than those that are applicable in terms of section 18(1) of the Act;

(e) paragraphs (c) and (d) do not apply to an apprentice who was already employed by the employer prior to the commencement of the contract of apprenticeship.

(Commencement date of subitem (1): Publication date of regulations made in terms of s. 26J)
4. Trades deemed to be listed

Any trade which immediately prior to the commencement of this Act was designated, or deemed to have been designated, in terms of section 13(1) of the Manpower Training Act, is deemed to have been listed in terms of section 26B(a) of the Amendment Act.

5. Coming into operation of QCTO

The QCTO comes into operation on a date determined by the Minister in the Gazette.

6. SAQA accreditation of SETA ETQAs

(1) Until such time as the QCTO delegates powers and functions to a SETA in terms of Chapter 6B of the Act, a SETA ETQA will-

(a) remain accredited by SAQA;

(b) continue to perform all ETQA functions prescribed by the South African Qualifications Authority Act; and

(c) have any matter concerning the performance of ETQA functions by a SETA dealt with in terms of the South African Qualifications Authority Act.

(2) The accreditation of any education and skills development provider by a SETA ETQA remains in effect until the accreditation-

(a) lapses;

(b) is withdrawn by the SETA ETQA; or
(c) is withdrawn in terms of regulations made under section 26J of the Act.

7. National Productivity Institute

(1) On a date determined by the Minister by notice in the Gazette, all the assets, rights, liabilities and obligations of the National Productivity Institute, a company incorporated in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973), registration number 75/04742/08, are transferred to Productivity South Africa.

(2) The National Productivity Institute must thereafter be wound up in accordance with its articles of association.

[Schedule 2A inserted by s. 16 of Act 37/2008]
Schedule 3

COMPOSITION AND CONSTITUTION OF QCTO

1. Composition of QCTO

(1) The QCTO consists of 16 members appointed by the Minister, as follows:

(a) The chairperson;

(b) the chief executive officer of the SAQA;  
[Para. (b) substituted by s. 6 of Act 26/2010]

(c) the executive officer of the National Skills Authority;

(d) the chief executive officer of the QCTO;  
[Para. (d) substituted by s. 6 of Act 26/2010]

(e) the chief executive officer of the Council on Higher Education established in terms of section 4 of the Higher Education Act, 1997 (Act No. 101 of 1997);  
[Para. (e) substituted by s. 6 of Act 26/2010]

(F) the chief executive officer of Umalusi established in terms of section 4 of the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001);

(g) two members nominated by NEDLAC to represent organised labour;

(h) two members nominated by NEDLAC to represent organised business;
(i) two members nominated by NEDLAC to represent organisations of community and development interests;

(j) one member nominated by the Minister of Education to represent the interests of public education and training providers;

(k) one member nominated by the private providers of education and training to represent the interests of private education and training providers; and

(l) two additional members to represent the interests of the State.

(2) Members of the QCTO contemplated by sub-items (1)(a) and (g) to (l) hold office for a period of five years and are eligible for reappointment upon expiry of their terms of office, but may not serve more than two consecutive terms of office.

2. **Constitution of QCTO**

The Minister must approve the constitution of the QCTO, which subject to this Act-

(a) must provide for-

(i) the establishment and functioning of committees, including an executive committee;

(ii) rules for convening and conducting of meetings of the QCTO and its committees, including the quorum required for and the minutes to be kept of such meetings;
(iii) the voting rights of the different members and the manner in which decisions are to be taken by the QCTO and its committees;

(iv) the circumstances and manner in which a member of the QCTO may be removed from office;

(v) the procedure for the filling of vacancies on the QCTO;

(vi) a code of conduct for the members of the QCTO;

(vii) the circumstances and manner in which the Minister may dissolve the QCTO and appoint an administrator on a temporary basis to perform its functions;

(viii) the determination through arbitration of any dispute concerning the interpretation or application of the constitution;

(ix) the procedure for amending the constitution;

(x) the procedure for advising the Minister on regulations to be made in terms of section 26; and

(b) may provide for any other matter necessary for the performance of the functions of the QCTO.

[Schedule 3 inserted by s. 16 of Act 37/2008]
Schedule 4

COMPOSITION AND CONSTITUTION OF PRODUCTIVITY SOUTH AFRICA

1. Composition of Productivity South Africa

   (1) Productivity South Africa consists of seven members appointed by the Minister, as follows:

   (a) The chairperson;

   (b) two members nominated by NEDLAC to represent organised labour;

   (c) two members nominated by NEDLAC to represent organised business; and

   (d) two members to represent the government.

   (2) Members of Productivity South Africa hold office for a period of five years and are eligible for reappointment upon expiry of their terms of office, but may not serve more than two consecutive terms of office.

2. Constitution of Productivity South Africa

   The Minister must approve the constitution of Productivity South Africa, which subject to this Act -

   (a) must provide for-
i) the establishment and functioning of committees, including an executive committee;

(ii) rules for convening and conducting of meetings of Productivity South Africa and its committees, including the quorum required for and the minutes to be kept of those meetings;

(iii) the voting rights of the different members and the manner in which decisions are to be taken by Productivity South Africa and its committees;

(iv) the circumstances and manner in which a member of Productivity South Africa may be removed from office;

(v) the procedure for the filling of vacancies on Productivity South Africa;

(vi) a code of conduct for the members of Productivity South Africa;

(vii) the circumstances and manner in which the Minister may dissolve Productivity South Africa and appoint an administrator on a temporary basis to perform its functions;

(viii) the determination through arbitration of any dispute concerning the interpretation or application of the constitution;

(ix) the procedure for amending the constitution;
(x) financial arrangements, including bank accounts, investment of surplus money, annual budgets, annual reports, financial statements and annual audits;

(xi) the appointment of an executive officer and such other employees necessary for the effective performance of the functions of Productivity South Africa by its members, including the determination of their terms and conditions of employment; and

(b) may provide for any other matter necessary for the performance of the functions of Productivity South Africa.

[Schedule 4 inserted by s. 16 of Act 37/2008]
ADULT EDUCATION AND TRAINING

ACT 52 OF 2000

[Previous title: “Adult Basic Education and Training Act” substituted by s. 7 of Act 25/2010]

[Assented To: 5 December 2000]
[Commencement Date: 13 December 2000]

as amended by:

Education Laws Amendment Act 50 of 2002
Education Laws Amendment Act 31 of 2007
[with effect from 31 December 2007]
Higher Education and Training Laws Amendment Act 25 of 2010
[with effect from 7 December 2010]

NOTE:

The Act has been amended by s. 8 of Act 25/2010 by

(a) the substitution for the expression "NABAET", wherever it occurs, of the expression "NABAET";
(b) the substitution for the expression "adult basic education and training", wherever it occurs, of the expression "adult education and training"; and
(c) the substitution for the expression "provincial department of education", wherever it occurs, of the expression "provincial education department".
ACT

To regulate adult education and training; to provide for the establishment, governance and funding of public adult learning centres; to provide for the registration of private adult learning centres; to provide for quality assurance and quality promotion in adult education and training; to provide for transitional arrangements; and to provide for matters connected therewith.

PREAMBLE

WHEREAS IT IS DESIRABLE TO -

ESTABLISH a national co-ordinated adult education and training system which promotes co-operative governance and provides for programme-based adult education and training;

RESTRUCTURE AND TRANSFORM programmes and centres to respond better to the human resources, economic and development needs of the Republic;

REDRESS past discrimination and ensure representivity and equal access;

ENSURE access to adult education and training and the workplace by persons who have been marginalised in the past, such as women, the disabled and the disadvantaged;

PROVIDE optimal opportunities for adult learning and literacy, the creation of knowledge and development of skills in keeping with international standards of academic and technical quality;

PROMOTE the values which underline an open and democratic society based on human dignity, equality and freedom;
ADVANCE strategic priorities determined by national policy objectives at all levels of governance and management within the adult education and training sector;

RESPECT and encourage democracy and foster a culture which promotes fundamental human rights and creates an appropriate environment for adult teaching and learning;

PURSUE excellence and to promote the full realisation of the potential of every learner and member of staff, tolerance of ideas and appreciation of diversity;

RESPOND to the needs of the Republic and the labour market and of the communities served by the centres;

COMPLEMENT the Skills Development Strategy in co-operation with the Department of Labour.

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

CHAPTER 1
DEFINITIONS AND APPLICATION OF ACT

1. Definitions
2. Application of Act

CHAPTER 2
PUBLIC CENTRES

3. Establishment of public centre
4. Provision of facilities
5. Merger of public centres
6. Closure of public centre

CHAPTER 3
GOVERNANCE OF PUBLIC CENTRES

7. Governance and management of public centre
8. Governing body of public centre
9. Election of members to governing body
10. Single governing body for two or more public centres
11. Functions of governing body
12. ..........
13. Enhancement of capacity of governing bodies
14. Failure by governing body to perform functions
15. Recusal by members of governing body
16. Reimbursement of members of governing body
17. Committees of governing body
18. Admission to public centre
18A. Curriculum and assessment
19. Representative council of learners
20. Disciplinary measures
20A. Prohibition of corporal punishment and initiation practices

CHAPTER 3A

20B. Application of Chapter
20C. Employers of educators and other persons
20D. Salaries and other conditions of service of educators
20E. Educator establishment
20F. Powers of employers
20G. Appointments and filling of posts
20H. Transfer of educators
20I. Secondment of educators
20J. Retirement
20K. Discharge of educators
20L. Discharge on account of ill-health
20M. Discharge of educators appointed on probation
20N. Resignation
20O. Incapacity and misconduct
20P. Performance of other work by educators
20Q. Transitional arrangements in respect of public centres

CHAPTER 4
FUNDING OF PUBLIC CENTRES

21. Responsibility of State
22. Norms and standards for funding public centre
23. Funds of public centre
24. Financial records and statements of public centre
25. Failure of governing body to comply with Act
CHAPTER 4A

25A. Objectives of Chapter
25B. Determination of national education policy for centres
25C. Directive principles of national education policy
25D. Consultation on national education policy
25E. Consultation on legislation
25F. Publication of national education policy
25G. Monitoring and evaluation of adult education and training
25H. Functions of Council of Education Ministers in respect of adult education and training
25I. Functions of Heads of Education Departments Committee in respect of adult education and training
25J. Transitional arrangements regarding policy

CHAPTER 5
PRIVATE CENTRES

26. Establishment of private centre
27. Registration of private centre
28. Withdrawal of registration of private centre
29. Subsidies to registered private centre
30. Declaration of private centre as public centre
31. Functions of Member of Executive Council relating to private centre

CHAPTER 6
QUALITY ASSURANCE AND PROMOTION

32. Quality assurance of public and private centres
33. Advice by NABAET
34. Report on quality assurance
CHAPTER 7
GENERAL

35. Duty of centres to provide information
36. Investigation at public centre
37. Name change of public centre
38. Offences
39. Limitation of liability
40. Delegation of powers
41. Regulations

CHAPTER 8
TRANSITIONAL AND OTHER ARRANGEMENTS

42. Existing centres, structures and bodies
43. Exemption of existing private centre
44. Short title
1. Definitions

In this Act, unless the context indicates otherwise -

“adult” means a person who is sixteen years or older;

“adult education and training” means all learning and training programmes for adults on level 1 registered on the national qualifications framework contemplated in the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);

“centre” means a public or private centre;

“centre manager” means the head of a public centre appointed by the Head of Department in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998);


“Council of Education Ministers” means the Council established by section 41H of the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006);
“Department” means the Department of Higher Education and Training;
   [Definition of “Department” substituted by s. 1 of Act 25/2010]

“Director-General” means the Director-General of the Department;

“educator” means any person who teaches, educates or trains another person, or provides professional educational services, including professional therapy and education psychological services, at any public centre and who is appointed in a post on any educator establishment contemplated in section 20F;
   [Definition of “educator” substituted by s. 1 of Act 25/2010]

“employer”, in relation to any provision of Chapter 4, 5 or 7 of the Employment of Educators Act, 1998 (Act No. 76 of 1998), which applies to, or is connected with, an educator in the service of-

(a) the Department of Higher Education and Training, means the Director-General; and

(b) a provincial education department, means the Head of Department;
   [Definition of “employer” inserted by s. 1 of Act 25/2010]

“Employment Educators Act” means the Employment Educators Act, 1998 (Act No. 76 of 1998);

“governing body” means a governing body contemplated in section 8;

“grade” means a grade as defined in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996);
“Head of Department” means the head of a provincial education department;

“Labour Relations Act” means the Labour Relations Act, 1995 (Act No. 66 of 1995);

[lDefinition of “Labour Relations Act” inserted by s. 1 of Act 25/2010]

“learner” means any person receiving education in terms of this Act;

“Member of the Executive Council” means the member of the Executive Council of the province in question who is responsible for education in that province;

“Minister” means the Minister of Higher Education and Training;

[Definition of “Minister” substituted by s. 1 of Act 25/2010]

“NABAET” means the National Advisory Board for Adult Education and Training, established by regulation in terms of section 11 of the National Education Policy Act, 1996 (Act No. 27 of 1996);

[Definition of “NABAET” substituted by “NABAET” in s. 1 of Act 25/2010]

“organ of state” means an organ of state as defined in section 239 of the Constitution;

“policy” means policy determined by the -

(a) Minister in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996); or

(b) Member of the Executive Council in terms of a provincial law;
“prescribed” means prescribed by regulation made in terms of section 41;

[Definition of “prescribed” substituted by s. 1 of Act 25/2010]

“private centre” means a private centre registered in terms of section 27 which offers adult education and training;

“provincial legislature” means a provincial legislature contemplated in section 104 of the Constitution;

“public centre” means a public centre established in terms of section 3 which offers adult education and training;

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

2. Application of Act

(1) This Act applies to any adult education and training offered at any centre in the Republic of South Africa.

(2) A Member of the Executive Council and Head of Department must exercise any power conferred upon them by or under this Act, after taking full account of the applicable policy determined in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996).

CHAPTER 2

PUBLIC CENTRES

3. Establishment of public centre

(1) A Member of the Executive Council may, by notice in the Provincial Gazette and from money appropriated for that
purpose by the provincial legislature in question, establish a public centre.

(2) Every public centre contemplated in subsection (1) must be a juristic person.

(3) A public centre which occupies immovable property owned by the State, has the right, for the duration of the centre's existence, to occupy and use the immovable property to the benefit of the centre for educational purposes.

(4) In this section, immovable property owned by the State includes immovable property held in trust on behalf of a tribe by a trust created by statute.

(5) The right referred to in subsection (3) may be restricted by the Head of Department if the immovable property is not used by the centre for educational purposes.

(6) The Head of Department may not act under subsection (5) unless he or she has -

(a) informed the governing body of the centre of his or her intention and the reasons therefor;

(b) granted the governing body of the centre a reasonable opportunity to make representations to him or her in relation to such action; and

(c) duly considered any such representations received.

4. Provision of facilities

(1) The Head of Department must provide facilities for use by
the public centre to perform its functions in terms of this Act.

(2) If no facilities are available to be used by the public centre, the Head of Department must in terms of section 20(1)(k) of the South African Schools Act, 1996 (Act No. 84 of 1996), request the governing body of a public school to allow reasonable use of the facilities of the school by the public centre.

(3) After the request contemplated in subsection (2) has been made, the Head of Department and the school governing body must enter into an agreement providing among other things for the -

(a) amount of time, and the time of day or night that the school facilities may be used by the public centre;

(b) manner in which resources and the costs must be shared between the school and the public centre;

(c) responsible authority to be liable for payment of the costs referred to in paragraph (b);

(d) maintenance and improvement of the school facilities;

(e) access to school facilities by all interested persons;

(f) security of the facility; and

(g) relationship between the school governing body and the public centre governing body.
(4) The Head of Department must consult with the governing body of the public centre in question before entering into the agreement contemplated in subsection (3).

(5) The Minister may, after consultation with the Council of Education Ministers, make regulations regarding the minimum requirements for an agreement contemplated in subsection (3).

5. **Merger of public centres**

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

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

(a) give written notice to the centres in question of the intention to merge them;

(b) publish a notice giving reasons for the proposed merger in one or more newspapers circulating in the area in which the centres are situated;

(c) give the governing bodies of the centres in question and any other interested persons an opportunity to make representations within 90 days from the date of the notice referred to in paragraph (b);

(d) consider such representations; and

(e) be satisfied that the employers of staff at the public centres in question have complied with their obligations in terms of the applicable labour law.
(3) The assets, liabilities, rights and obligations of the centres that are merged vest in the single centre contemplated in subsection (1).

(4) The governing bodies of the centres referred to in subsection (1) must have a meeting before the merger to constitute a single interim governing body.

(5) The interim governing body must decide on the budget and differences in the code of conduct and fees, as well as any issue that is relevant to the merger or which is prescribed, until a new governing body is constituted in terms of section 8.

(6) The governing body of any public centre to be merged under subsection (1), may appeal to the Minister against the merger.

6. **Closure of public centre**

(1) The Member of the Executive Council may, by notice in the *Provincial Gazette*, close a public centre.

(2) Before closing a public centre, the Member of the Executive Council must -

(a) inform the governing body of the centre of his or her intention and his or her reasons therefor;

(b) grant the governing body of the centre a reasonable opportunity to make representations to him or her in relation to such actions;
(c) conduct a public hearing after 90 days from the date of the notice referred in subsection (1) to enable the community to make representations to him or her in relation to such actions; and

(d) give due consideration to any such representations received.

(3) If a public centre is closed down in terms of subsection (1), all assets and liabilities of such centre must be dealt with in accordance with the law by the Member of the Executive Council in consultation with the governing body, and any assets remaining after payment of all liabilities vest in the State.

CHAPTER 3

GOVERNANCE OF PUBLIC CENTRES

7. Governance and management of public centre

(1) A public centre is governed by a governing body.

(2) The governing body must stand in a position of trust towards the centre.

(3) The management of a public centre must be undertaken by the centre manager under the authority of the Head of Department.

8. Governing body of public centre

(1) Every public centre, except a public centre contemplated in section 21(1)(d) of the South African Schools Act, 1996 (Act
No. 84 of 1996), must establish a governing body.

[Subs. (1) substituted by s. 23 of Act 31/2007]

(2) The governing body of a public centre must consist of -

(a) elected members;

(b) the centre manager, in his or her official capacity;

(c) co-opted members;

(d) any representative of any sponsoring body;

(e) any representative of an organisation for disabled persons, where applicable; and

(f) any expert in the field of adult education and training, where applicable.

(3) The members of a governing body contemplated in subsection (2)(a) must be elected from -

(a) educators at the centre;

(b) members of staff who are not educators; and

(c) learners at the centre;

(4) A member contemplated in -

(a) subsection (3)(a) must be elected by the educators at the centre;
(b) subsection (3)(b) must be elected by members of the staff who are not educators at the centre; and
(c) subsection (3)(c) must be elected by the learners at the centre.

(5) The members contemplated in subsections (2)(a), (b), (d), (e) and (f) must co-opt members contemplated in subsection (2)(c) from the community which the centre serves and such co-opted members may vote at any meeting of the governing body.

(6) (a) The governing body contemplated in subsection (2) must co-opt as member of the governing body-
(i) the chairperson of the governing body or any member designated by him or her; or
(ii) the principal or any educator designated by him or her, of the public school from which the centre operates.

(b) The member contemplated in paragraph (a) may not vote at a meeting of the governing body.

(7) The governing body of a public centre functions in terms of a constitution which must comply with minimum requirements determined by the Member of the Executive Council by notice in the Provincial Gazette.

(8) A constitution contemplated in subsection (7) must provide for -
(a) a meeting of the governing body at least four times a year and the procedures to be followed at such meetings;

(b) recording and keeping minutes of governing body meetings; and

(c) the making available of such minutes for inspection by the Head of Department.

(9) The governing body must submit a copy of its constitution to the Head of Department within 90 days of its election.

(10) If a public centre is established in terms of section 3, the governance of that centre vests in the Head of Department until a governing body has been established in terms of this Act.

9. **Election of members to governing body**

The Member of the Executive Council must, by notice in the *Provincial Gazette*, determine -

(a) the term of office of members and office-bearers of a governing body;

(b) which officer must conduct the process for the nomination and election of members of the governing body;

(c) the procedure for the disqualification or removal of a member of the governing body or the dissolution of a governing body, for sufficient reason in each case;
(d) the procedure for the filling of a vacancy in the governing body;

(e) guidelines for the achievement of representivity of members of the governing body;

(f) a formula for the calculation of the number of members of the governing body in each of the categories referred to in section 8(3), and such formula must provide reasonable representation for each category and must be capable of application to the different sizes and circumstances of public centres; and

(g) any other matters necessary for the election, appointment or assumption of office of members of the governing body.

10. **Single governing body for two or more public centres**

(1) The Member of the Executive Council may determine that the governance of two or more public centres must vest in a single governing body if -

(a) it is in the best interest of education and the centres;

(b) it is in the public interest; or

(c) he or she was so requested by the governing bodies of such centres, if such governing bodies exist.

(2) Before making a determination under subsection (1), the Member of the Executive Council must -

(a) give notice in the *Provincial Gazette* of his or her intention so to act;
(b) give interested parties an opportunity to make written submissions within a period of not less than 30 days; and

(c) consider all such submissions.

(3) The Member of the Executive Council must, by notice in the Provincial Gazette, determine the composition of the single governing body in a manner that ensures that each centre is equitably represented.

(4) Any governing body which is the subject of a notice in terms of subsection (2) continues to exist until the first meeting of the governing body constituted in terms of this section.

11. **Functions of governing body**

(1) The governing body of a public centre must -

(a) promote the best interest of the public centre and strive to ensure its development through the provision of quality education for all learners at the public centre;

(b) develop a business plan for the public centre;

(c) provide any information pertaining to the public centre and its activities at the request of the Head of Department;

(d) be responsible for the budgeting and financial management systems of the public centre;

(e) promote the activities and the programmes of the public centre;
(f) supplement the procurement of the learning support material for the public centre;

(g) ensure that a conducive learning environment exists for learners;

(h) elicit public support for the public centre;

(i) keep proper records of all governing body meetings;

(j) develop the vision and mission statement of the public centre;

(k) subject to policy, determine the language policy of the public centre;

(l) recommend the appointment of educators of the public centre in terms of the Employment of Educators Act;

(m) establish and administer a public centre fund from voluntary contributions;

(n) adopt a constitution;

(o) adopt a code of conduct for learners at the public centre;

(p) discharge all other functions imposed upon a governing body by or under this Act; and

(q) discharge all other functions consistent with the Act as determined by the Minister by notice in the Government Gazette, or by the Member of the Executive Council by notice in the Provincial Gazette.
(2) A public centre may establish posts for-

(a) educators and employ educators additional to the establishment determined by the Member of the Executive Council in terms of Chapter 3A; and

[Para. (a) substituted by s. 2 of Act 25/2010]

(b) non-educators and employ non-educator staff additional to the establishment determined in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(3) A public centre may only employ an educator in a post referred to in subsection (2)(a) if such educator is registered as an educator with the South African Council for Educators.

(4) The staff contemplated in subsection (2) must be employed in compliance with the basic values and principles referred to in section 195 of the Constitution, and the factors to be taken into account when making appointments must at least include the-

(a) ability of the candidate;

(b) principle of equity;

(c) need to redress past injustices; and

(d) need for representivity.

(5) When presenting the annual budget contemplated in section 24 the governing body of a public centre must provide sufficient details of any posts envisaged in terms of subsection (2), including the estimated costs relating to the
employment of staff in such posts and the manner in which it is proposed that such costs will be met.

(6) The State is not liable for any act or omission by the public centre relating to its contractual responsibility as the employer in respect of staff employed in terms of subsection (2).

(7) The Minister may, by notice in the *Government Gazette*, determine norms and standards regarding the funds used for the employment of staff referred to in subsection (2), but such norms and standards may not be interpreted as making the State a joint employer of such staff.

[Subs. (7) substituted by s. 2 of Act 25/2010]

12. ..........  

[S. 12 repealed by s. 3 of Act 25/2010]

13. **Enhancement of capacity of governing bodies**

(1) Out of funds appropriated for this purpose by the provincial legislature, the Head of Department must establish a programme to provide -

(a) introductory training for newly elected governing bodies to enable them to perform their functions; and

(b) continuing training to governing bodies to promote the effective performance of their functions or to enable them to assume additional functions.

(2) The Head of Department must ensure that the centre manager and other officers of the education department
render all necessary assistance to governing bodies in the performance of their functions in terms of this Act.

14. **Failure by governing body to perform functions**

   (1) If a governing body has ceased or failed to perform its functions, the Head of Department must dissolve the governing body and appoint one or more persons to perform those functions for a period not exceeding three months.

   (2) The Head of Department may extend the period referred to in subsection (1) for further periods not exceeding three months at a time, but the total period may not exceed one year.

   (3) The Head of Department must ensure that a governing body is elected in terms of this Act within a year after the appointment of the person or persons contemplated in subsection (1).

15. **Recusal by members of governing body**

   A member of a governing body must withdraw from a meeting of the governing body for the duration of the discussion and decision-making on any issue in which the member has a personal interest.

16. **Reimbursement of members of governing body**

   (1) Necessary expenses incurred by a member of a governing body in the performance of his or her functions may be reimbursed by the governing body.
(2) No member of a governing body may be remunerated in any way for the performance of his or her functions.

17. Committees of governing body

(1) A governing body may -

(a) establish committees, including an executive committee; and

(b) appoint persons who are not members of the governing body to such committees on grounds of expertise, but a member of the governing body must chair each committee.

(2) A governing body of a public centre which provides education to learners with special education needs must establish a committee on special education needs.

18. Admission to public centre

(1) A public centre must admit learners and serve their educational requirements without unfairly discriminating in any way.

(2) An application for admission to a public centre must be made to the Head of Department in a manner determined by him or her.

(3) If an application referred to in subsection (2) is refused, the Head of Department must inform the learner in writing of such refusal and the reasons therefor.
(4) Any learner who has been refused admission to a public centre may appeal against the decision of the Head of Department to the Member of the Executive Council.

18A. Curriculum and assessment

(1) The Minister must, by notice in the Government Gazette, determine-

(a) a national curriculum statement indicating the minimum outcomes or standards;

(b) a national process and procedures for the assessment of learner achievement.

(2) The curriculum and process for the assessment contemplated in subsection (1) must be applicable to public and private centres.

[S. 18A inserted by s. 27 of Act 50/2002]

19. Representative council of learners

(1) A representative council of learners must be established at every public centre.

(2) The Member of the Executive Council may, by notice in the Provincial Gazette, determine guidelines for the establishment, election and functions of representative councils of learners.

20. Disciplinary measures

(1) Every learner at a public centre is subject to such code of conduct, disciplinary measures and procedures as may be
determined by the governing body subject to provincial policy.

(2) The policy contemplated in subsection (1) must in particular deal with measures to curb racism, sexual violence and sexual harassment.

(3) A code of conduct must contain provisions of due process safeguarding the interest of the learner in disciplinary procedures.

20A. Prohibition of corporal punishment and initiation practices

(1) A person may not administer corporal punishment to a learner at any adult education and training centre.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which may be imposed for assault.

(3) A person may not conduct or participate in initiation practices at public and private centres.

(4) Any person who contravenes subsection (3) is guilty of misconduct and disciplinary action must be instituted against such a person.

(5) In addition to subsection (4), a person may institute civil action against a person or a group who manipulated and forced that person to conduct or participate in any initiation practices.

[S. 20A inserted by s. 28 of Act 50/2002]
20B. **Application of Chapter**

This Chapter applies to the employment of educators at public centres in the Republic.

20C. **Employers of educators and other persons**

(1) Save as is otherwise provided in this section, the Head of Department shall be the employer of educators in the service of the provincial education department in posts on the educator establishment of public centres for all purposes of employment.

(2) For the purposes of determining the salaries and other conditions of service of educators, the Minister shall be the employer of all educators contemplated in subsection (1).

(3) For the purposes of creating posts on the educator establishment of public centres in a provincial education department, the Member of the Executive Council shall be the employer of educators in the service of that department.

20D. **Salaries and other conditions of service of educators**

(1) Notwithstanding anything to the contrary contained in any law but subject to the provisions of this section, the Labour Relations Act or any collective agreement concluded by the Education Labour Relations Council, the Minister shall determine the salaries and other conditions of service of educators.
(2) Different salaries and conditions of service contemplated in subsection (1) may be determined in respect of different ranks and grades of educators.

(3) A determination by the Minister under this section involving expenditure from the National Revenue Fund may only be made with the concurrence of the Minister of Finance.

20E. Educator establishment

(1) Notwithstanding anything to the contrary contained in any law but subject to the norms prescribed for the provisioning of posts, the educator establishment of a provincial education department shall consist of the posts created by the Member of the Executive Council.

(2) The educator establishment of any public centre under the control of a provincial education department shall, subject to the norms prescribed for the provisioning of posts, consist of the posts allocated to the said public centre or office by the Head of Department from the educator establishment of that department.

(3) For the purposes of this Chapter-

(a) the power to create a post under this section shall include the power to grade, to regrade, to designate, to re-designate, to convert or to abolish the post; and

(b) the power to allocate a post under this section shall include the power to re-allocate the post.
The non-educator establishment of a public centre is determined in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

20F. **Powers of employers**

(1) Subject to the provisions of this section, the appointment of any person, or the promotion or transfer of any educator, in the service of a provincial education department shall be made, or effected, by the Head of Department.

(2) Subject to the provisions of this Chapter, the Labour Relations Act or any collective agreement concluded by the Education Labour Relations Council, appointments in, and promotions or transfers to, posts on any educator establishment under this Act shall be made in accordance with such procedure and such requirements as the Minister may determine.

20G. **Appointments and filling of posts**

(1) In the making of any appointment or the filling of any post on any educator establishment under this Act, due regard shall be had to equality, equity and the other democratic values and principles which are contemplated in section 195(1) of the Constitution of the Republic of South Africa, 1996, and which include-

(a) the ability of the candidate; and

(b) the need to redress the imbalances of the past in order to achieve broad representation.

(2) A person may be appointed under this Chapter-
(a) in a permanent capacity, whether on probation or not;

(b) in a temporary capacity for a fixed period, whether in a full-time, in a part-time or in a shared capacity; or

(c) on special contract for a fixed period or for a particular assignment, whether in a full-time or in a part-time capacity.

20H. Transfer of educators

(1) Subject to the provisions of this Chapter, the Head of Department may transfer any educator in the service of-

(a) the relevant department to any post or position in any other department of state with the prior approval of the person in that other department of state having the power to appoint or to transfer and with the consent of that educator; and

(b) the provincial education department to any other post in that department.

(2) The salary and other conditions of service of an educator may not be adversely affected by a transfer under this section without the written consent of that educator.

20I. Secondment of educators

(1) Any educator in the service of any provincial education department may, with the written consent of that educator, be placed at the disposal of-

(a) another department of education;
(b) another government; or

(c) any other body or person, for a particular service or for a stated period on such conditions, in addition to the conditions prescribed by or under any law, as may be determined by the Head of Department.

(2) While so placed at such disposal, the educator shall remain subject to the provisions of this Act.

20J. Retirement

(1) Subject to the provisions of this section-

(a) an educator shall have the right to retire, and shall be so retired, on the day on which the educator attains the age of 65 years; and

(b) an educator who attains the said age after the first day of a month shall be deemed to have attained that age on the first day of the following month.

(2) Notwithstanding the provisions of subsection (1), an educator who was in employment immediately before 2 September 1994 in terms of a law repealed by the Educators' Employment Act, 1994 (promulgated under Proclamation No. 138 of 1994), shall have the right to retire on or after attaining the retirement age applicable to the educator immediately before the said date.

(3) Notwithstanding-

(a) the provisions of subsections (1) and (2), an educator
shall have the right to retire on or after attaining the age of 55 years; and

(b) the absence of any reason for discharge in terms of section 20K, the employer may, at the request of an educator, allow the educator to retire before attaining the age of 55 years, if the employer is of the opinion-

(i) that a sufficient reason exists therefor; and

(ii) that the retirement will be to the advantage of the State.

(4) Notwithstanding the provisions of this section, an educator-

(a) who was in employment immediately before 1 May 1996;

(b) who, without interruption of service, has completed a period of 10 years' continuous pensionable service in terms of the pension law applicable to the educator; and

(c) who has attained the age of 50 years,

shall have the right to retire.

20K. Discharge of educators

(1) The employer may, having due regard to the applicable provisions of the Labour Relations Act, discharge an educator from service-

(a) on account of continuous ill-health;

(b) on account of the abolition of the educator's post or any
reduction in, or reorganisation or re-adjustment of, the post establishments of departments or public centres;

(c) if, for reasons other than the educator's own unfitness or incapacity, the educator's discharge will promote efficiency or economy in the department or public centre in which the educator is employed, or will otherwise be in the interest of the State;

(d) on account of unfitness for the duties attached to the educator's post or incapacity to carry out those duties efficiently;

(e) on account of misconduct;

(f) if the educator was appointed in the post in question on the grounds of a misrepresentation made by the educator relating to any condition of appointment; and

(g) if, in the case of an educator appointed on probation, the educator's appointment is not confirmed.

(2) If an educator is discharged from service in terms of subsection (1)(f), that educator shall be deemed to have been discharged on account of misconduct.

20L. Discharge on account of ill-health

An educator may be discharged on account of ill-health in the circumstances referred to in Schedule 1 to the Employment of Educators Act.
20M. Discharge of educators appointed on probation

(1) If it is not desirable to confirm the appointment, transfer or promotion of an educator on probation, the employer may, notwithstanding anything to the contrary contained in this Act but subject to this section-

(a) extend the period of probation of the educator; or

(b) after reasonable notice to the educator, discharge the educator from service upon the expiry of the period of probation or any extension thereof.

(2) No appointment, transfer or promotion on probation may be extended, and no educator who is serving on probation may be discharged from service, if-

(a) the educator has been diligent;

(b) the educator's conduct has been uniformly satisfactory;

(c) the educator is in all respects suitable for the post which the educator holds; and

(d) the educator has complied with all the conditions applicable to the educator's appointment, transfer or promotion.

(3) An educator whose transfer or promotion on probation is not confirmed and who immediately before such transfer or promotion was an educator, other than an educator on probation, shall be transferred to the post formerly held by that educator, or to a post of equivalent grading.
20N. Resignation

(1) An educator may resign by giving 90 days' notice in writing or such shorter notice as the employer may approve at the request of the educator.

(2) If the name of an educator is struck off the register of educators kept by the South African Council for Educators, the educator shall, notwithstanding anything to the contrary contained in this Act, be deemed to have resigned with effect from the day following immediately after the day on which the educator's name was so struck off.

20O. Incapacity and misconduct

The incapacity and misconduct of educators are dealt with in accordance with the procedure contemplated in Chapter 5 read with Schedules 1 and 2 to the Employment of Educators Act.

20P. Performance of other work by educators

(1) Unless an educator's conditions of service provide otherwise-

(a) an educator shall place such time as the Minister may determine at the disposal of the employer;

(b) no educator shall without permission of the employer perform or undertake to perform remunerative work outside the educator's official duty or work; and

(c) no educator may claim additional remuneration in respect of any official duty or work which the educator-
(i) performs voluntarily; or

(ii) has been ordered to perform by a competent authority.

(2) The employer may order an educator to perform, on a temporary basis, duties other than those ordinarily assigned to the educator, if such temporary duties are appropriate to the grade, designation or classification of the educator's post.

20Q. Transitional arrangements in respect of public centres

(1) For the purposes of this Chapter and with regard to employment and related matters, an educator employed at a public centre under the Employment of Educators Act prior to 31 December 2010, will continue to be employed on the post establishment of that public centre, and the post occupied by that educator shall be deemed to be a post created by the Member of the Executive Council in terms of this Chapter.

(2) The post establishment of the public centre existing immediately before 31 December 2010 shall be deemed to be the educator establishment of that public centre for the purposes of section 20E.

(3) The employment and related matters contemplated in subsection (1), such as salary and other conditions of service applicable to an educator, shall continue to be applicable to that educator for the purposes of this Act and shall be deemed to have been determined by the Minister in terms of section 20D.

[Chapter 3A inserted by s. 4 of Act 25/2010]
CHAPTER 4

FUNDING OF PUBLIC CENTRES

21. Responsibility of State

(1) The Member of the Executive Council must from money appropriated for this purpose by the provincial legislature fund public adult education and training on a fair equitable and transparent basis.

(2) The Member of the Executive Council may, subject to the norms and standards determined in terms of section 22, impose -

(a) any reasonable condition in respect of an allocation of funding contemplated in subsection (1); and

(b) different conditions in respect of different centres and different adult education and training programmes, if there is a reasonable basis for such differentiation.

(3) The Member of the Executive Council must, on an annual basis, provide sufficient information to public centres regarding the funding referred to in subsection (1) to enable the public centre to prepare its budget for the next financial year.

22. Norms and standards for funding public centre

The Minister must, in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996), determine norms and standards for funding of public centres, after consultation with the Council of Education Ministers, the Minister of Finance and NABAET.
23. **Funds of public centre**

The funds of a public centre consist of -

(a) funds allocated by the State;

(b) any donations or contributions received by the centre;

(c) money raised by the centre;

(d) money payable by learners for adult education and training provided by the centre; and

(e) other funds from any other source.

24. **Financial records and statements of public centre**

(1) The governing body of a public centre, in the manner determined by the Member of the Executive Council -

(a) must keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions of the public centre as a whole, of its substructures and of other bodies operating under its authority;

(b) must in each financial year, at such time and in such manner as the Member of the Executive Council may determine, submit a statement of its estimated income and expenditure for the ensuing financial year to the Member of the Executive Council for his or her approval granted with the concurrence of the Member of the Executive Council responsible for finance in that province;
(c) must in any financial year, submit adjusted statements of its estimated income and expenditure to the Member of the Executive Council for his or her approval, granted with the concurrence of the Member of the Executive Council responsible for Finance in that province; and

(d) may not incur any expenditure which exceeds the total amount approved in terms of paragraphs (b) and (c).

(2) If the Member of the Executive Council does not approve the governing body's statement of its estimated income and expenditure, the Member of the Executive Council must require the governing body to provide a revised statement to him or her within a specified period.

(3) The governing body of a public centre must, in respect of the preceding financial year and by a date or dates and in the manner determined by the Member of the Executive Council, provide the Member of the Executive Council with a -

(a) report on the overall governance of the centre;

(b) duly audited or examined statement of income and expenditure; and

(c) balance sheet and cash flow statement.

(4) The governing body of a public centre must provide the Member of the Executive Council with such additional information as the Member of the Executive Council may reasonably require.
(5) The governing body of a public centre must appoint a person registered as an auditor in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005), to audit the records and financial statements referred to in subsection (1). [Subs. (5) substituted by s. 24 of Act 31/2007]

(6) If the audit referred to in subsection (5) is not reasonably practicable, the governing body of a public centre must appoint a person to examine and report on the records and financial statements referred to in subsection (1) who -

(a) is qualified to perform the duties of an accounting officer in terms of section 60 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or

(b) is approved by the Member of the Executive Council for this purpose.

(7) No person who has a financial interest in the affairs of the public centre may be appointed under this section.

(8) If the Member of the Executive Council deems it necessary, he or she may request the Auditor-General to undertake an audit of the records and financial statements of a public centre.

25. **Failure of governing body to comply with Act**

(1) If the governing body of a centre fails to comply with any provision of this Act under which allocation from money appropriated by the provincial legislature is paid to the public centre, or with any condition subject to which any allocation is paid to the public centre, the Member of the
Executive Council may call upon the governing body to comply with the provision or condition within a specified period.

(2) If the governing body thereafter fails to comply with the provision or condition timeously, the Member of the Executive Council may withhold payment of any portion of any allocation appropriated by the provincial legislature in respect of the public centre in question.

(3) Before taking action under subsection (2), the Member of the Executive Council must -

(a) give notice to the governing body of the public centre in question of the intention so to act;

(b) give such governing body a reasonable opportunity to make representations; and

(c) consider such representations.

(4) If the Member of the Executive Council acts under subsection (2), a report regarding the action must be tabled in the provincial legislature by the Member of the Executive Council or as soon as reasonably practical after the action.

CHAPTER 4A

25A. Objectives of Chapter

The objectives of this Chapter are to provide for-

(a) the determination of national education policy by the Minister in accordance with certain principles;
(b) the consultations to be undertaken prior to the
determination of policy, and the establishment of certain
bodies for the purposes of consultation;

(c) the publication and implementation of national education
policy; and

(d) the monitoring and evaluation of adult education and
training.

25B. Determination of national education policy for centres

(1) The Minister shall determine national education policy in
accordance with the provisions of the Constitution and this
Act.

(2) In determining national policy for adult education and
training at centres, the Minister shall take into account the
competence of the provincial legislatures in terms of section
146 of the Constitution, and the relevant provisions of any
provincial law relating to adult education and training.

(3) Subject to the Constitution, national policy shall prevail over
the whole or a part of any provincial policy on adult
education and training if there is a conflict between the
national and provincial policies.

(4) Subject to the provisions of subsections (1) to (3), the
Minister shall determine national policy for the planning,
provision, financing, coordination, management,
governance, programmes, monitoring, evaluation and well-
being of the adult education and training system and,
without derogating from the generality of this section, may
determine national policy for-
(a) adult education and training management information systems, including the provision of data in accordance with the international obligations of the government;

(b) the organisation, management and governance of the national adult education and training system;

(c) facilities, finance and development plans for adult education and training, including advice to the Financial and Fiscal Commission;

(d) innovation, research and development in adult education and training;

(e) the organisation, management, governance, funding, establishment and registration of centres;

(f) curriculum frameworks, core syllabuses and adult education and training programmes, learning standards, examinations and the certification of qualifications, subject to the provisions of any law establishing a national qualifications framework or a certifying or accrediting body;

(g) co-operation between the Department and-

(i) other state departments;

(ii) provincial education departments;

(iii) local government; and

(iv) non-government organisations,
with a view to advancing the national education policy contemplated in this section and the Reconstruction and Development Programme;

(h) international relations in the field of adult education and training; and

(i) executive functions required to implement national education policy determined in terms of this Chapter, including the implementation of measures to address past discriminatory practices.

25C. Directive principles of national education policy

The policy contemplated in section 25B shall be directed toward-

(a) the advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter 2 of the Constitution and in terms of international conventions approved by Parliament, in particular the right-

(i) of every person to be protected against unfair discrimination within or by the Department or centres on any ground whatsoever;

(ii) of every person to receive adult education and training and to have equal access to public centres;

(iii) of every person to gain access to adult education and training;

(iv) of every learner to be instructed in the language of his or her choice where this is reasonably practicable;
(v) of every person to the freedoms of conscience, religion, thought, belief, opinion, expression and association at centres;

(vi) of every person to establish, where practicable, centres based on a common language, culture or religion, as long as there is no discrimination on the ground of race; and

(vii) of every person to use the language and participate in the cultural life of his or her choice at centres;

(b) enabling the adult education and training system to contribute to the full personal development of each learner, and to the moral, social, cultural, political and economic development of the nation at large, including the advancement of democracy, human rights and the peaceful resolution of disputes;

(c) achieving equitable education opportunities and the redress of past inequality in adult education and training provision, including the promotion of gender equality and the advancement of the status of women;

(d) endeavouring to ensure that no person, as a result of physical disability, is denied the opportunity to receive adult education and training to the maximum of his or her ability;

(e) providing opportunities for and encouraging lifelong learning;

(f) achieving an integrated approach to adult education and training within a national qualifications framework;
(g) cultivating skills, disciplines and capacities necessary for reconstruction and development;

(h) recognising the aptitudes, abilities, interests, prior knowledge and experience of learners;

(i) encouraging independent and critical thought;

(j) promoting a culture of respect for teaching and learning at centres;

(k) promoting enquiry, research and the advancement of knowledge;

(l) enhancing the quality of adult education and training and educational innovation-

(i) through systematic research and development in respect of adult education and training;

(ii) through monitoring and evaluation of adult education and training provision and performance; and

(iii) through the training of educators and adult education and training managers;

(m) ensuring broad public participation in the development of adult education and training policy and the representation of stakeholders in the governance of all aspects of the adult education and training system;

(n) achieving the cost-effective use of adult education and training resources and sustainable implementation of adult education and training services;
(o) achieving close co-operation between the national and provincial governments on matters relating to adult education and training, including the development of capacity in the Department and the effective management of the national adult education and training system.

25D. Consultation on national education policy

(1) Policy contemplated in section 25B shall be determined by the Minister after consultation with the Council of Education Ministers.

(2) The policy contemplated in section 25B shall be determined by the Minister with the concurrence of the Minister of Finance in so far as it involves expenditure from the State Revenue Fund.

(3) Nothing in this section shall limit the discretion of the Minister to consult whomsoever he or she wishes for advice on the determination of national education policy.

25E. Consultation on legislation

Legislation on a matter contemplated in section 25B shall be introduced in Parliament or, in the case of regulations, be published in the Gazette only after consultation between the Minister and-

(a) the Council of Education Ministers, in respect of adult education and training at centres; and

(b) all the parties in the Education Labour Relations Council established by section 40 of the Labour Relations Act, in
respect of any matter falling within the objectives of that Act.

25F. **Publication of national education policy**

The Minister shall within 21 days after determining policy in terms of section 25B-

(a) give notice of such determination in the *Gazette* and indicate in such notice where the policy instrument with regard to which the notice was issued may be obtained; and

(b) table the policy instrument contemplated in paragraph (a) in Parliament within 21 days after the notice has appeared in the *Gazette*, if Parliament is then in session, or, if Parliament is in recess, within 21 days after the commencement of the first ensuing session of Parliament.

25G. **Monitoring and evaluation of adult education and training**

(1) The Minister shall direct that the standards of adult education and training provision, delivery and performance throughout the Republic be monitored and evaluated by the Department annually or at other specified intervals, with the object of assessing progress in complying with the provisions of the Constitution and with national adult education and training policy, particularly as determined in terms of section 25B.

(2) Each directive issued in terms of subsection (1) shall comply with the provisions of any law establishing a national qualifications framework, and shall be formulated after consultation with the Council of Education Ministers.
(3) The Department shall undertake the monitoring and evaluation contemplated in subsection (1) by analysis of data gathered by means of adult education and training management information systems, or by other suitable means, in co-operation with provincial departments of education.

(4) The Department shall fulfil its responsibilities in terms of subsections (1) to (3) in a reasonable manner, with a view to enhancing professional capacities in monitoring and evaluation throughout the national education system, and assisting the competent authorities by all practical means within the limits of available public resources to raise the standards of adult education and training provision and performance.

(5) The Department shall prepare and publish a report on the results of each investigation undertaken in terms of subsection (3) after providing an opportunity for the relevant provincial education department to comment, which comment shall be published with the report.

(6) If a report prepared in terms of subsection (5) indicates that the standards of adult education and training provision, delivery and performance in a province do not comply with the Constitution or with the policy determined in terms of section 25B, the Minister shall inform the provincial political head of education concerned and require the submission, within 90 days, of a plan to remedy the situation.

(7) A plan required by the Minister in terms of subsection (6) shall be prepared by the provincial education department concerned, in consultation with the Department, and the Minister shall table the plan in Parliament with his or her
comments within 21 days of receipt, if Parliament is then in session, or, if Parliament is in recess, within 21 days after the commencement of the first ensuing session of Parliament.

25H. Functions of Council of Education Ministers in respect of adult education and training

The Council of Education Ministers must-

(a) promote a national adult education and training policy which takes full account of the policies of the government;

(b) share information and views on all aspects of adult education and training in the Republic; and

(c) co-ordinate action on matters of mutual interest to the national and provincial governments.

25I. Functions of Heads of Education Departments Committee in respect of adult education and training

The Heads of Education Departments Committee established by section 41I of the Further Education and Training Act, 2006 (Act No. 16 of 2006), must-

(a) facilitate the development of a national adult education and training system in accordance with the objectives and principles provided for in this Act;

(b) share information and views on national adult education and training;
(c) co-ordinate administrative action on matters of mutual interest to the Department and the provincial education departments; and

(d) advise the Department on any matter contemplated in sections 25B to 25G and 25J in respect of adult education and training or on any other matter relating to the proper functioning of the national adult education and training system.

25J. Transitional arrangements regarding policy

Any policy determined in terms of the National Education Framework Act, 1996 (Act No. 27 of 1996), up to 31 December 2010 and applicable to Adult education and training Centres remains in force and effect until amended or repealed by the Minister in terms of this Act.

[Chapter 4A inserted by s. 5 of Act 25/2010]

CHAPTER 5

PRIVATE CENTRES

26. Establishment of private centre

Subject to section 27, any person may, at his or her own cost, establish and maintain a private centre.

27. Registration of private centre

(1) No person may establish or maintain a private centre unless it is registered by the Head of Department.

(2) The Member of the Executive Council must, by notice in the
Provincial Gazette, determine the grounds on which the registration of a private centre may be granted or withdrawn by the Head of Department.

(3) The Head of Department must register a private centre if he or she is satisfied that the -

(a) standards to be maintained by such a private centre will not be inferior to the standard maintained in comparable public centres;

(b) admission policy of the private centre does not discriminate on the grounds of race; and

(c) private centre complies with the grounds for registration contemplated in subsection (2).

28. Withdrawal of registration of private centre

(1) No withdrawal of the registration of private centre is valid unless -

(a) the owner of such a private centre has been furnished by the Head of Department with a notice of the intention to withdraw the registration, stating the reasons why such withdrawal is contemplated;

(b) the owner of such centre has been granted an opportunity to make written representation to the Head of Department as to why the registration of the private centre should not be withdrawn; and

(c) any such representations received have been duly considered.
(2) The owner of the private centre may appeal to the Member of the Executive Council against the withdrawal of the registration of such a private centre.

29. Subsidies to registered private centre

(1) The Minister may, by notice in the Government Gazette, determine norms and standards or conditions for the granting of subsidies to private centres after consultation with the Council of Education Ministers and with the concurrence of the Minister of Finance.

(2) The Member of the Executive Council may, out of funds appropriated by the provincial legislature for that purpose, grant a subsidy to a private centre subject to subsection (1).

(3) If conditions contemplated in subsection (1) under which a subsidy was granted have not been complied with, the Head of Department may terminate or reduce the subsidy from a date determined by him or her.

(4) The Head of Department may not terminate or reduce a subsidy under subsection (3) unless -

(a) the owner of such private centre has been furnished with a notice of the intention to terminate or reduce the subsidy and the reasons therefor;

(b) such owner has been granted an opportunity to make written representations as to why the subsidy should not be terminated or reduced; and

(c) any such representations received have been duly considered.
(5) The owner of a private centre may appeal to the Member of the Executive Council against the termination or reduction of a subsidy to such centre.

30. **Declaration of private centre as public centre**

(1) The Member of the Executive Council may, with the concurrence of the Member of the Executive Council responsible for Finance in that province, enter into an agreement with the owner of a private centre in terms whereof such a centre is declared to be a public centre.

(2) Notice of the change of status contemplated in subsection (1) must be published in the *Provincial Gazette*.

31. **Functions of Member of Executive Council relating to private centre**

(1) The Member of the Executive Council may, by notice in the *Provincial Gazette*, determine requirements for -

(a) the admission of learners of a private centre to examinations conducted by or under the supervision of the education department;

(b) the keeping of registers and other documents by such a private centre;

(c) criteria of eligibility, conditions and manner of payment of any subsidy to such a centre; and

(d) any other matter relating to such a centre which must or may be prescribed in terms of this Act.
Different requirements may be made under subsection (1) in respect of different centres.

The Member of the Executive Council must allow the affected parties a reasonable period to comment on any requirement he or she intends determining under subsection (1).

CHAPTER 6
QUALITY ASSURANCE AND PROMOTION

32. Quality assurance of public and private centres

(1) Umalusi must, in accordance with the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001), read with the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), perform the functions relating to a Quality Council in respect of all qualifications offered by a public or private centre.

(2) For the purposes of this section, “Umalusi” means the council established by section 4 of the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001).

[S. 32 substituted by s. 29 of Act 50/2002 and s. 6 of Act 11/2010]

33. Advice by NABAET

(1) NABAET must advise the Minister on quality promotion and assurance.

(2) The Minister must -
(a) consider any advice given by NABAET; and

(b) provide reasons in writing to NABAET if the Minister does not accept the advice.

(3) The Minister may act without the advice of NABAET if -

(a) the matter is urgent; or

(b) NABAET has failed to provide the advice within 14 days after such a request was made.

(4) If the Minister acts as contemplated in subsection (3) he or she must -

(a) notify NABAET of such action; and

(b) provide reasons in writing to NABAET for such action.

34. **Report on quality assurance**

An annual report on the quality of adult education and training must be made to the Minister within 90 days after the end of the academic year by -

(a) NABAET in respect of the country as a whole; and

(b) the Member of the Executive Council in respect of the relevant province.
CHAPTER 7

GENERAL

35. Duty of centres to provide information

(1) A centre must make information available for inspection by any person, in so far as such information is required for the exercise and protection of such person's rights.

(2) Every centre must provide such information about the centre as is reasonably required by the Head of Department, or the Director-General in consultation with the Head of Department.

(3) The Head of Department, Director-General and any centre which offers adult education and training must provide such information about the centre or quality of adult education and training as is reasonably required by NABAET.

36. Investigation at public centre

(1) The Member of the Executive Council may appoint a person to conduct an investigation at a public centre if:

(a) the governing body of the public centre requests the appointment of such a person;

(b) circumstances arise at the public centre that:

(i) involve financial or other maladministration of a serious nature; or
(ii) seriously undermine the effective functioning of the public centre;

(c) the governing body of the public centre has failed to resolve circumstances contemplated in paragraph (b); or

(d) the appointment is in the interest of adult education and training in an open democratic society.

(2) The person appointed in terms of subsection (1) must, within 30 days after appointment and on the terms of reference specified by the Member of the Executive Council -

(a) conduct an investigation at the public centre concerned;

(b) report in writing to the Member of the Executive Council on the findings of his or her investigation; and

(c) suggest appropriate measures to resolve the matter.

(3) The Member of the Executive Council must as soon as practicable furnish a copy of the report referred to in subsection (2) to the governing body in question.

37. Name change of public centre

The governing body of a public centre may, with the approval of the Member of the Executive Council and by notice in the Provincial Gazette, change the name of the public centre.

38. Offences

(1) Any person other than an organ of state, who without the authority of a public or private adult centre -
(a) offers or pretends to offer any adult education and training programme or part thereof;

(b) confers a qualification which purports to have been granted by a centre, or in collaboration with a centre; or

(c) purports to perform an act on behalf of a centre,

is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.

(2) Any person who pretends that a qualification has been awarded to him or her by a centre whereas in fact no such qualification has been so awarded, is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.

(3) Any person who contravenes section 27(1), is guilty of an offence and is liable on conviction to a fine or imprisonment not exceeding five years or to both such fine and imprisonment.

39. Limitation of liability

Neither the State, the NABAET nor any person appointed in terms of this Act is liable for any loss or damage suffered by any person as a result of any act performed or omitted in good faith in the course of performing any function for which that person was appointed in terms of this Act.

40. Delegation of powers

(1) The Minister may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers
under this Act, except the power to make regulations, and
the performance of any of his or her duties in terms of this
Act to -

(a) NABAET;

(b) any employee of the Department; or

(c) any organ of state.

(2) The Member of the Executive Council may, on such
conditions as he or she may determine, delegate the exercise
of any of his or her powers under this Act, except the power
to make regulations under section 41, and the performance
of his or her duties in terms of this Act to any -

(a) employee in a provincial department responsible for
education and training; or

(b) organ of state.

(3) The Director-General may, on such conditions as he or she
may determine, delegate the exercise of any of his or her
powers under this Act and the performance of any of his or
her duties in terms of this Act to any employee in the
Department.

(4) The Head of Department may, on such conditions as he or
she may determine, delegate the exercise of any of his or her
powers under this Act and the performance of any of his or
her duties in terms of this Act to any employee in the
provincial education department.
(5) A delegation in terms of this Act does not prevent the Minister, Member of the Executive Council, the Director-General or the Head of Department, as the case may be, from exercising such powers or performing such duties.

41. Regulations

The Minister or the Member of the Executive Council, as the case may be, may make regulations consistent with this Act on -

(a) any matter which the Minister or the Member of the Executive Council are empowered or required to prescribe by regulation in terms of this Act;

(b) any matter in respect of which regulations are necessary or expedient in order to achieve the purpose of this Act;

(c) safety measures at public and private centres;

(d) a national curriculum statement applicable to public and private centres;

(e) a national process and procedures for the assessment of learner achievement for public and private centres;

(f) a national process for the assessment, monitoring and evaluation of education in public and private centres;

(g) initiation practices at public and private centres; or

(h) norms and minimum standards for funding.

[S. 41 substituted by s. 30 of Act 50/2002]
CHAPTER 8

TRANSITIONAL AND OTHER ARRANGEMENTS

42. Existing centres, structures and bodies

(1) Any public adult education and training centre which existed immediately before the commencement of this Act must be regarded as having been established in terms of this Act.

(2) Any structure or body which existed at a public centre prior to the commencement of this Act continues to exist until it is replaced by a structure contemplated in this Act.

43. Exemption of existing private centre

Section 38(3) does not apply to a person who was providing adult education and training programmes at a private centre immediately prior to the date of commencement of this Act until a date determined by the Member of the Executive Council by notice in the Provincial Gazette.

44. Short title

This Act is called the Adult Education and Training Act, 2000.

[S. 44 substituted by s. 7 of Act 25/2010]
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.

(Assented to 15 September 2011)

ACT

To amend-

- the National Education Policy Act, 1996, so as to amend or delete certain definitions;

- the South African Schools Act, 1996, so as to amend certain definitions and to define "loan"; to provide for consultation with the Minister of Finance before uniform minimum norms and standards are determined; to ensure that there is no unfair discrimination in respect of official languages; to provide for the
imposition of a suitable sanction if an appeal by a learner who had been expelled from a public school has been upheld by the Member of the Executive Council; to provide for public schools that provide education with a specialised focus on talent; to provide for additional functions of a principal of a public school; to provide for the training of governing bodies by recognised governing body associations; to prohibit political activities during school time; to empower the Member of the Executive Council to identify additional schools that may not charge school fees; and to further regulate the liability of the State for certain damages;

- the Employment of Educators Act, 1998, so as to amend certain definitions; and to regulate afresh the application of the said Act;

- the South African Council for Educators Act, 2000, so as to amend certain definitions; to empower the council to manage a system for the promotion of the continuing professional development of all educators; and to provide the council with funding from money appropriated by Parliament; and

- the General and Further Education and Training Quality Assurance Act, 2001, so as to amend certain definitions;

and to provide for matters connected therewith.

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

**Amendment of section 1 of Act 27 of 1996**

1. Section 1 of the National Education Policy Act, 1996, is hereby amended-

(a) by the substitution for the definition of "Director-General" of the following definition:
"'Director-General' means the Director-General: Basic Education;",

(b) by the substitution for the definition of "education institution" of the following definition:

"'education institution' means any [institution providing education, whether early childhood education, primary, secondary, further or higher education, other than a university or technikon, and also an institution providing specialised, vocational, adult, distance or community education] school contemplated in the South African Schools Act, 1996 (Act No. 84 of 1996);"

(c) by the substitution for the definition of "Minister" of the following definition:

"'Minister' means the Minister of Basic Education;"; and

(d) by the deletion of the definition of "student".

Amendment of section 3 of Act 27 of 1996, as amended by section 11 of Act 100 of 1997 and section 4 of Act 48 of 1999

2. Section 3 of the National Education Policy Act, 1996, is hereby amended by the substitution in subsection (4)(n) for the words preceding the proviso of the following words:

"control and discipline of [students] learners at education institutions".
Amendment of section 4 of Act 27 of 1996, as amended by section 12 of Act 100 of 1997

3. Section 4 of the National Education Policy Act, 1996, is hereby amended-

(a) by the substitution in paragraph (a) for subparagraph (v) of the following subparagraph:

"(v) of every [student] learner to be instructed in the language of his or her choice where this is reasonably practicable;"; and

(b) by the substitution for paragraph (b) of the following paragraph:

"(b) enabling the education system to contribute to the full personal development of each [student] learner, and to the moral, social, cultural, political and economic development of the nation at large, including the advancement of democracy, human rights and the peaceful resolution of disputes;".


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

(a) by the insertion in subsection (1) after the definition of "learner" of the following definition:
"'loan' means any financial obligation based on agreement, which obligation renders a school liable for making payment, in one or more instalments, in favour of any person, but does not include the payment of staff appointed by the governing body in terms of section 20(4) or (5);");

(b) by the substitution in subsection (1) for the definition of "Minister" of the following definition:

"'Minister' means the Minister of Basic Education;"; and

(c) by the substitution in subsection (1) for paragraph (a) of the definition of "parent" of the following paragraph:

"(a) the biological or adoptive parent or legal guardian of a learner.".

Amendment of section 5A of Act 84 of 1996, as inserted by section 5 of Act 31 of 2007

5. Section 5A of the South African Schools Act, 1996, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The Minister may, after consultation with the Minister of Finance and the Council of Education Ministers, by regulation prescribe minimum_uniform norms and standards for-".

Insertion of section 6B in Act 84 of 1996

6. The following section is hereby inserted in the South African Schools Act, 1996, after section 6A:
"Non-discrimination in respect of official languages

6B. The governing body of a public school must ensure that-

(a) there is no unfair discrimination in respect of any official languages that are offered as subject options contemplated in section 21(1)(b); and

(b) the first additional language and any other official language offered, as provided for in the curriculum, are offered on the same level."

Amendment of section 9 of Act 84 of 1996, as amended by section 7 of Act 48 of 1999 and section 2 of Act 24 of 2005

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

"(11)(a) If an appeal in terms of subsection (4) by a learner who has been expelled from a public school is upheld by the Member of the Executive Council, the Member of the Executive Council must ensure that a suitable sanction is then imposed on the learner within 14 days of the date on which the appeal was upheld.

(b) For the purposes of the imposition of a suitable sanction contemplated in paragraph (a), the provisions of subsections (8) and (9) apply with the changes required by the context."
Amendment of section 12 of Act 84 of 1996

8. Section 12 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) (a) A public school may be-

(i) an ordinary public school [or];

(ii) a public school for learners with special education needs; or

(iii) a public school that provides education with a specialised focus on talent, including sport, performing arts or creative arts.

(b) Subject to the relevant provisions of this Act, the Minister must determine norms and standards for school funding and norms and standards for governance and educator provisioning for public schools contemplated in paragraph (a)(iii)."

Amendment of section 16A of Act 84 of 1996, as inserted by section 8 of Act 31 of 2007

9. Section 16A of the South African Schools Act, 1996, is hereby amended by the deletion in subsection (2) of the word "and" at the end of paragraph (f), the insertion in that subsection of the word "and" at the end of paragraph (g) and the addition to that subsection of the following paragraphs:
"(h) assist the governing body with the management of the school's funds, which assistance must include-

(i) the provision of information relating to any conditions imposed or directions issued by the Minister, the Member of the Executive Council or the Head of Department in respect of all financial matters of the school contemplated in Chapter 4; and

(ii) the giving of advice to the governing body on the financial implications of decisions relating to the financial matters of the school;

(i) take all reasonable steps to prevent any financial maladministration or mismanagement by any staff member or by the governing body of the school;

(j) be a member of a finance committee or delegation of the governing body in order to manage any matter that has financial implications for the school; and

(k) report any maladministration or mismanagement of financial matters to the governing body of the school and to the Head of Department."

**Amendment of section 19 of Act 84 of 1996**

10. Section 19 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:

"(3) The norms and standards for school funding must include-

(a) criteria for authorising a governing body association to perform the functions contemplated in subsection (4);
(b) criteria relating to any financial implications that would be incurred or costs that would have to be paid by the Head of Department in relation to the performance of the functions contemplated in subsection (4);

(c) guidelines relating to the nature, content, extent and duration of the functions contemplated in subsection (4); and

(d) criteria for granting a governing body an allocation for contribution towards membership of a recognised governing body association.

(4) (a) The Head of Department may request a recognised governing body association or other appropriate training authority to train members of a governing body of a particular school or group of schools and to build the capacity contemplated in section 25(4).

(b) For the purposes of paragraph (a), the Head of Department-

(i) must enter into an agreement with the governing body association;

(ii) must specify the nature, content, extent, duration and financial implications of the training in the agreement contemplated in subparagraph (i); and

(iii) may include a request for the training of members of a governing body of a school that is not a member of the governing body association requested to conduct the training in the agreement contemplated in subparagraph (ii)."
Insertion of section 33A in Act 84 of 1996

11. The following section is hereby inserted in the South African Schools Act, 1996, after section 33:

"Prohibition of political activities during school time

33A.(1) No party-political activities may be conducted at a school during school time determined by the governing body of the school in terms of section 20(1)(f).

(2) The party-political activities contemplated in subsection (1) include, but are not limited to-

(a) campaigning;

(b) the conducting of rallies;

(c) the distribution of pamphlets and fliers; and

(d) the hanging or putting up of posters and banners.

(3) A member of a political party may not, for the purposes of conducting party-political activities, encroach on the school time.

(4) A school may not allow the display of material of a party-political nature on its premises unless such party-political material is related to the curriculum at the school."
Amendment of section 36 of Act 84 of 1996, as amended by section 5 of Act 57 of 2001

12. Section 36 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:

"(4) (a) A governing body may, with the approval of the Member of the Executive Council-

(i) lease, burden, convert or alter immovable property of the school to provide for school activities or to supplement the school fund of that school; and

(ii) allow any person to conduct any business on school property to supplement the school fund.

(b) A governing body may not allow any activity on school property that is hazardous or disruptive to learners or prohibited by this Act.

(5) For the purposes of subsection (4), 'school property' means immovable property owned by the State, including property contemplated in sections 13 and 55 and any immovable property bought by a school from the school funds or donations to the school."

Amendment of section 39 of Act 84 of 1996, as amended by section 4 of Act 24 of 2005

13. Section 39 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:
"(13) Subject to subsection (7), the Member of the Executive Council may, after consultation with the relevant governing bodies, annually by notice in the Provincial Gazette identify additional public schools within his or her province that, although they have not been included in the list of schools contemplated in subsection (10)(c), may not charge school fees.

(14) The schools contemplated in subsection (13) must be the schools that have been ranked as the poorest schools in that province falling outside the list of schools contemplated in subsection (10)(c).

(15) The Member of the Executive Council may act in terms of subsection (13) only if sufficient funding has been secured in the province to fund learners in the schools affected by such action.

(16) For the purposes of subsection (15), 'sufficient funding' means funding that is not less than the no fee threshold.'.

Amendment of section 60 of Act 84 of 1996, as amended by section 14 of Act 48 of 1999 and section 12 of Act 31 of 2007

14. Section 60 of the South African Schools Act, 1996, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) Subject to paragraph (b), the State is liable for any delictual or contractual damage or loss caused as a result of any act or omission in connection with any school activity conducted by a public school and for which such public school would have been liable but for the provisions of this section.".
Amendment of section 1 of Act 76 of 1998, as amended by section 6 of Act 53 of 2000 and section 58 of Act 16 of 2006

15. Section 1 of the Employment of Educators Act, 1998, is hereby amended-

(a) by the substitution for the definition of "departmental office" of the following definition:

"'departmental office' means any office or institution controlled or administered by the Department of Basic Education or any provincial department of education, but does not include any public school [or adult basic education centre];";

(b) by the substitution for the definition of "Department of Education" of the following definition:

"'Department of Basic Education' means the department established in terms of section 7(2), read with Schedule 1, of the Public Service Act, 1994 (Proclamation No. 103 of 1994), responsible for basic education at national level;";

(c) by the substitution for the definition of "Director-General" of the following definition:

"'Director-General' means the Director-General: Basic Education;";

(d) by the substitution for paragraph (a) of the definition of "employer" of the following paragraph:
"(a) an educator in the service of the Department of Basic Education, means the Director-General;"; and

(e) by the substitution for the definition of "Minister" of the following definition:

"'Minister' means the Minister of Basic Education;".

Substitution of section 2 of Act 76 of 1998, as amended by section 58 of Act 16 of 2006

16. The following section is hereby substituted for section 2 of the Employment of Educators Act, 1998:

"Application of Act

2. This Act applies in respect of the employment of educators at-

(a) public schools; and

(b) departmental offices.".

Substitution of certain expressions in Act 76 of 1998

17. The Employment of Educators Act, 1998, is hereby amended-

(a) by the substitution for the expression "Department of Education", wherever it occurs, of the expression "Department of Basic Education"; and

(b) by the substitution for the expression "adult basic education
and training", wherever it occurs, of the expression "adult education and training".

Amendment of section 1 of Act 31 of 2000, as amended by section 19 of Act 31 of 2007

18. Section 1 of the South African Council for Educators Act, 2000, is hereby amended-

(a) by the substitution for the definition of "institution" of the following definition:

"'institution' means any school[, further education and training institution or adult learning centre] contemplated in the South African Schools Act, 1996 (Act No. 84 of 1996);"; and

(b) by the substitution for the definition of "Minister" of the following definition:

"'Minister' means the Minister of Basic Education;".

Amendment of section 5 of Act 31 of 2000

19. Section 5 of the South African Council for Educators Act, 2000, is hereby amended by the substitution in paragraph (b) for subparagraph (iv) of the following subparagraph:

"(iv) must manage a system for the promotion of the continuing professional development of all educators;".
Amendment of section 19 of Act 31 of 2000

20. Section 19 of the South African Council for Educators Act, 2000, is hereby amended by the insertion in subsection (1) after paragraph (a) of the following paragraph:

"(aA) money appropriated by Parliament;".

Amendment of section 1 of Act 58 of 2001, as amended by section 8 of Act 1 of 2004 and section 2 of Act 50 of 2008

21. Section 1 of the General and Further Education and Training Quality Assurance Act, 2001, is hereby amended-

(a) by the substitution for the definition of "department of education" of the following definition:

"'department of education' means-

(a) the [department] Department of Basic Education, which is responsible for school education at national level [or];

(b) a department responsible for school education in a province; or

(c) the Department of Higher Education and Training, which is responsible for further education and training colleges and adult education and training centres at national level;";

(b) by the substitution for the definition of "Director-General" of the following definition:
"'Director-General', in respect of functions relating to-

(a) school education, means the Director-General [of the department responsible for education at national level]: Basic Education; and

(b) further education and training colleges and adult education and training centres, means the Director-General: Higher Education and Training;"; and

(c) by the substitution for the definition of "Minister" of the following definition:

"'Minister', in respect of functions relating to-

(a) school education, means the Minister of Basic Education; and

(b) further education and training colleges and adult education and training centres, means the Minister of Higher Education and Training;".

**Saving**

22. The provisions of this Act must not be construed as limiting, amending, repealing or otherwise altering the administration and powers and functions entrusted by the legislation identified in item 1.7 of the Schedule to Proclamation No. 44 of 2009, published in Government Gazette No. 32367 of 1 July 2009, to the Minister of Higher Education and Training insofar as the administration and powers and functions pertain to further education and training colleges and adult education and training centres.
23. This Act is called the Basic Education Laws Amendment Act, 2011.
GENERAL AND FURTHER EDUCATION AND TRAINING QUALITY ASSURANCE AMENDMENT ACT

GENERAL AND FURTHER EDUCATION AND TRAINING QUALITY ASSURANCE AMENDMENT ACT 50 OF 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

ACT

To amend the General and Further Education and Training Quality Assurance Act, 2001 so as to make it consistent with the National Qualifications Framework Act, 2008; and to provide for matters connected therewith.

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

Deletion of Preamble of Act 58 of 2001

1. The preamble to the General and further Education and Training Quality Assurance Act, 2001 (hereinafter referred to as the principal Act), is hereby deleted.
Amendment of section 1 of Act 58 of 2001, as amended by section 8 of Act 1 of 2004

2. Section 1 of the principal Act hereby amended –

(a) by the substitution for the definition of “accreditation” of the following definition:
   “accreditation’ means [the certification of a person, a body or an institution as having the capacity to fulfill a particular function in the quality assurance system set up by South African Qualifications Authority Act, 1995 (Act no. 58 of 1995)] accreditation by the council in terms of this Act;”;

(b) by the substitution for the definition of “assessment body” of the following definition:
   “assessment body’ means a department of education or [any other body registered with] a body accredited by the Council as a body responsible for conducting external assessment;”;

(c) by the substitution for the definition of “certificate” of the following definition:
   “certificate’ means a certificate contemplated in section [16(4)(e)] 17A(6);”;

(d) by the deletion of the definition of “Education and Training Quality Assurance Body”:

(e) by the insertion before the definition of “employee” of the following definition:
   “education institution’ means an education institution contemplated in section 2;”:

(f) by the substitution for the definition of “Further education and training” of the following definition:
   “Further education and training’ means all learning and training programmes leading to qualifications [from] on levels
[2 to 4] 2,3 and 4 of the National Qualification Framework [which levels are above general education and training but below higher education];”;

(g) by the substitution for the definition of “general education and training” of the following definition;

“‘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];”;

(h) by the substitution for the definition of “internal assessment” of the following definition:

“‘internal assessment’ means any assessment conducted by [the provider] an education institution contemplated in section 2, the outcomes of which count towards the achievement of a qualification;”;

(i) by the substitution for the definition of “National Qualifications Framework” of the following definition:


(j) by the insertion after the definition of “National Qualification Framework” for the following definitions:

“‘National Qualification Framework Act’ means the National Qualification Framework Act,2008;
‘part qualification’ means an assessed unit of learning that is registered on the National Qualification Framework as part of a qualification;
‘private education institution’ means an education institution which, in terms of a law referred to in section 2,is an independent school, a private college or a private centre;”;

(k) by the deletion of the definition of “provider”
(l) by the substitution for the definition of “qualification” of the definition “‘qualification’ means [the formal recognition of the achievement of the required number and range of credits and such other requirements at specific levels of the National Qualifications Framework as may be determined by the relevant bodies registered for such purpose] a qualification registered by the South African Qualifications Authority;”;

(m) by the insertion after the definition of “raw marks” of the following definitions:
“‘registrar’ means the registrar of private colleges referred to in section 27 of the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006); ‘SAQA’ means the South African Qualifications Authority;

(n) by the substitution for the definition of “South African Qualifications Authority” of the following definition:
“‘South African Qualifications Authority’ means the South African Qualifications Authority established by [section 3 of the South African Qualifications Authority Act, 1995 (Act 58 of 1995) the National Qualifications Framework Act”; and

(o) by the deletion of the definition of “standard”.

Substitution of section 3 of Act 58 of 2001

3. The following section is hereby substituted for section 3 of the principal Act:

“Object of Act
3. The object of the Act is to enhance the quality of general and further education and training”.
Substitution of heading to chapter 2 of Act 58 of 2001

4. The following heading is hereby substituted for the heading to Chapter 2 of the principal Act:
“ESTABLISHMENT [ACCREDITATION] FUNCTIONS OF COUNCIL”.

Repeal of section 5 of Act 58 of 2001

5. Section 5 of the principal Act is hereby repealed.

Amendment of section 6 of Act 58 of 2001

6. Section 6 of the principal Act is hereby amended by the substitution for subsection(2) of the following subsection:
“(2) in addition to the members contemplated in subsection (1), the [Chief Executive Officer is a member by virtue of his or her officer] chief executive officers of the following institutions are members by virtue of their office:
(a) The Council;
(b) the Council on Higher Education established by the Higher Education Act, 1997 (Act 101 of 1997);
(c) the Quality Council for Trades and Occupations contemplated in the National Qualifications Framework Act; and
(d) the SAQA”.

Substitution of section 16 of Act 58 of 2001

7. The following section is hereby substitute for section 16 of the principal Act:

“Functions of Council

16. (1) The Council performs its functions subject to-

(a) the National Qualifications Framework Act; and
(b) the National Education Policy Act, 1996 (Act No. 27 1996).

(2) The Council is the quality council for general and further education and training as contemplated in the National Qualifications Framework Act and has the functions contemplated in section 27 of the Act.

(3) The Council is responsible for the sub-framework for general and further education and training of the National Qualifications Framework determined by the Minister in terms of section 8(2)(e) of the National Qualifications Framework Act.

(4) The Council, with the approval of the Minister, may assume its functions progressively, depending on its capacity.

(5) The Council must perform any function consistent with this Act that the Minister may determine."

Insertion of heading after section 16 of Act 58 of 2001

8. The following heading is hereby inserted after section 16 of the principal Act:

“CHAPTER 2A
ASSESSMENT”

Insertion of section 17A in Act 58 of 2001

9. The following section is hereby inserted in the principal Act after section 17:

“External assessment”

17A. (1) B The council must assure the quality of assessment at exit points.
(2)

(a) The Council must develop policy for the accreditation of assessment bodies other than departments of education and must submit it to the Minister for approval.

(b) The Minister must make regulations in which the policy for accreditation is set out.

(c) The Council must accredit an assessment body in accordance with the regulations contemplated in paragraph (b)

(3) The Council must perform the external moderation of assessment of all assessment bodies and education institutions.

(4) The Council may adjust raw marks during the standardisation process.

(5) The Council must, with the concurrence of the Director-General and after consultation with the relevant assessment body or education institution, approve the publication of the results of learners if the council is satisfied that the assessment body or education institute has-

(i) conducted the assessment free of any irregularity that may jeopardise the integrity of the assessment or its outcomes;

(ii) complied with the requirements prescribed by the Council for conducting assessments;

(iii) applied the standards prescribed by the Council which a learner is required to comply with in order to obtain a certificate; and.

(iv) complied with every other condition determined by the Council.
(6) The Council must issue certificates to learners who have achieved “qualifications or part qualifications.”.

Amendment of section 18 of Act 58 of 2001

10. Section 18 of the principal Act is hereby amended –

(a) by the substitution for the heading of the following heading: “Functions of [provider or ] assessment body with regard to external assessment”; and

(b) by the substitution of words preceding paragraph (a) of the following words: “In respect of an external assessment and subject to policy determined by the Minister in terms of [section 3(4) of the National Education Policy Act, 1996 (Act No.27 of 1996)] this Act, an assessment body –“

Substitution of heading to Chapter 3 of Act 58 of 2001

11. The following heading is hereby substituted for the heading to Chapter 3 of the principal Act:

“[ACCREDITATION OF PROVIDERS] QUALITY ASSURANCE OF PRIVATE EDUCATION INSTITUTIONS”.

Repeal of Part 1 of Chapter3 of Act 58 of 2001

12. Part 1 of Chapter 3 of the principal Act is hereby repealed.

Deletion of heading in Chapter3 of Act 58 of 2001

13. The principal Act is hereby amended by the deletion of the heading. “Part 2 Private Providers”, which precedes section 23.
Substitution of section 23 and 24 of Act 58 of 2001

14. The following sections are hereby substituted for section 23 and 24 of the principal Act:

“Quality assurance of private education institutes”

23. (1) The council must develop policy and criteria for quality assurance of private education institutes.

   (2) Any institution that 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 college for further education and training in terms of the Further Education and Training Act 2006 (Act No. 16 of 2006): or

      (c) a private centre in terms of the Adult Basic Education and Training Act, 2000 (Act 52 of 2000), must comply with the policy and criteria contemplated in subsection (1).”.

“Notification of accredited programmes”

24. (1) The Council must within 14 days of accrediting [the] programmes [as] in terms of the policy contemplated in section 23-

   (a) in case of a [provider] private college contemplated in section [23(4)(b) 23(2)(b)], notify the registrar [of Further education and training institutions]; and

   (b) in the case of [a provider] an independent school or a private centre contemplated in section [23(4)(a)] or (c) [23(2)(a) or (c)], the relevant head of department.
(2) The notification must indicate if any conditions are attached to the accreditation and the nature thereof.”

**Amended of section 25 section 25 of Act 58 of 2001**

15. Section 25 of the principal Act is hereby amended by the substitution for subsections (1),(2) and (3) of the following subsections:

“(1) The Council must monitor private [providers] education institutions to ensure compliance with the policy contemplated in section [23(2)] 23(1).

(2) If a private [provider] education institution fails to comply with the policy. The Council must-

(a) notify such private [provider] education institution in writing and set out the nature and extent of the failure; and

(b) determine a reasonable period within which the private [provider] education institution must comply with the policy.

(3) At the expiry of the period contemplated in subsection (2)(b), The Council-

(a) must evaluate the steps taken by the private [provider] education institution to comply with the policy and take into account any submission made by the [provider] education institution; and

(b) may affirm the accreditation of the private [provider] education institution or withdraw the accreditation from a date specified by the Council.

**Short title**

I, Matsie Angelina Motshekga, Acting Minister of Higher Education and Training, in terms of section 8(2)(f) of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), hereby determines the Regulations set out in the Schedule in relation to the process by which a dispute involving the South African Qualification Authority as a Quality Council must be resolved.

Ms A Motshekga, MP
Acting Minister of Higher Education and Training
SCHEDULE

Definitions

1. In these Regulations, any expression to which a meaning has been assigned in the Act bears the same meaning, and, unless the context indicates otherwise -

"CEO" means the chief executive officer of SAQA;

"conflict" means a disagreement among QCs or between SAQA and a QC that, unless resolved, may result in a dispute;

"Director-General" means the Director-General of the department responsible for higher education and training;

"dispute" means a conflict that remains unresolved and relates to duties, responsibilities or functions of the respective party in terms of the Act;


"party" means SAQA or a QC that is a party to a conflict or a dispute;

"procedures" means conflict management and dispute resolution procedures contemplated in sub regulation 4(1); and

"system of collaboration" means the system of collaboration contemplated in section 13(1)(/)(i) of the Act.
Application

2. These Regulations apply to a conflict or dispute among QCs or between SAQA and a QC that relates to -

(a) the interpretation of the Act;

(b) the performance of a function by a party in terms of the Act;

(c) the exercising of a power by a party in terms of the Act; or

(d) any other matter contemplated in the Act that concerns a function or power of a party.

System of collaboration

3. (1) SAQA must determine a system of collaboration whose object is to guide the mutual relations of SAQA and the QCs in such a manner as to avoid or prevent conflict and to fairly and quickly resolve a dispute if it occurs.

(2) The system of collaboration must take into account -

(a) these regulations; and

(b) the Guidelines.

(3) The principles underlying the system of collaboration are that SAQA and the QCs must-

(a) act reasonably and in good faith;

(b) avoid or prevent conflict;
(c) contain conflict if it occurs;

(d) maintain communication;

(e) declare a dispute only if all procedures for preventing it have been exhausted; and

(f) expedite the resolution of a dispute in terms of the Act.

(4) In conducting their mutual relations, SAQA and the QCs have a duty to exercise their powers and carry out their functions in terms of the system of collaboration.

**Procedures to manage conflict or resolve a dispute among QCs**

4. (1) The CEO must attempt to conciliate a conflict among QCs.

(2) If conciliation is not successful the parties must within fourteen days declare a dispute in writing to the CEO.

(3) On receipt of the declaration of a dispute the CEO must within fourteen days refer the dispute to the SAQA board.

(4) At its next meeting the SAQA board must appoint a competent person of sufficient seniority who will act impartially on behalf of SAQA in resolving the dispute.

(5) In resolving a dispute, the person appointed by SAQA must -

(a) invite written representations from the parties;

(b) invite verbal representations from the parties;
(c) consult the chairpersons of the councils of the parties concerned;

(d) determine any additional procedure needed to adjudicate the dispute in a fair manner and communicate these procedures to the parties;

(e) make a finding as to the facts of the dispute;

(f) have regard to the objectives of the NQF contemplated in section 5 of the Act and the functions and powers of the parties in terms of the Act;

(g) as soon as is reasonably possible but no later than sixty days from the date of appointment, make a decision; and

(h) communicate the decision, giving reasons, to the Minister, the Minister of Basic Education and the parties in writing.

(6) SAQA may charge the parties in equal shares for the costs of resolving the dispute.

Procedures to manage conflict or resolve a dispute between SAQA and a QC

5. (1) The Director-General must attempt to conciliate a conflict between SAQA and a QC.

(2) If conciliation is not successful the parties must within fourteen days declare a dispute in writing to the Director-General.
(3) On receipt of a declaration of dispute by the parties the Director-General must within fourteen days notify the Minister in writing.

(4) In resolving a dispute, the Minister must invite the parties to consider binding arbitration of the dispute in terms of Regulation 6.

(5) If the parties do not agree to arbitration as contemplated in Regulation 6, the Minister must-

(a) invite written representations from the parties;

(b) invite verbal representations from the parties;

(c) consult the chairperson of SAQA and the chairpersons of the councils of the other parties concerned;

(d) consult the Minister of Basic Education, if Umalusi is a party;

(e) determine any additional procedure needed to adjudicate the dispute in a fair manner and communicate these procedures to the parties;

(f) make a finding as to the facts of the dispute;

(g) have regard to the objectives of the NQF contemplated in section 5 of the Act and the functions and powers of the parties in terms of the Act;

(h) as soon as is reasonably possible but no later than ninety days from the date on which the dispute was notified to the Minister in terms of subregulation (3), make a decision; and
(i) communicate the decision to the Minister of Basic Education and the parties in writing, giving reasons.

(6) The decision of the Minister is final, unless an order of court directs otherwise.

Arbitration of a dispute

6. (1) This Regulation applies if the parties agree to arbitration as contemplated in Regulation 5(4).

(2) The dispute must be referred by the Minister or the Director-General in writing to an arbitrator agreed by the parties.

(3) The arbitrator must conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the matter fairly and quickly, but must deal with the substantial merits with a minimum of legal formality.

(4) The arbitrator must have regard to the objectives of the NQF contemplated in section 5 of the Act and the functions and powers of the parties in terms of the Act.

(5) The arbitrator must make a finding as to the facts of the dispute.

(6) The arbitrator's award is final and binding on the parties.

(7) The arbitrator must communicate the award in writing to the Minister and the parties.

(8) The Minister must send a copy of the award to the Minister of Basic Education if Umalusi is a party to the dispute.
(9) The parties must pay in equal shares for the costs of the arbitration.

**Short title and commencement**

7. These Regulations-

(a) are called the Regulations for Resolving a Dispute in terms of the National Qualifications Framework Act, 2008; and

(b) come into effect on the date of publication in the *Gazette*. 