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GENERAL NOTICE

NOTICE 256 OF 2008

DEPARTMENT OF EDUCATION

CALL FOR COMMENT ON THE FOLLOWING BILLS:

1. **NATIONAL QUALIFICATIONS FRAMEWORK BILL, 2008**

2. **HIGHER EDUCATION ACT AMENDMENT BILL, 2008**

3. **GENERAL AND FURTHER EDUCATION AND TRAIING QUALITY ASSURANCE ACT AMENDMENT BILL, 2008**

I, Grace Naledi Mandisa Pandor, Minister of Education hereby publish the above Bills for comment.

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

The Director-General, Private Bag X895, Pretoria, 0001, for attention: Ms J Ackerman, tel. 012 312 5926, email ackerman.j@doe.gov.za, or Mr VL Rikhotso, tel. 012 312 5930, email rikhotso.v@doe.gov.za, fax 012 312 5902.

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

The comments should reach the Department by 10 March 2008.

G. N. M. Pandor

Grace Naledi Mandisa Pandor, MP

Minister of Education

Date: 11-02-2008

NATIONAL QUALIFICATIONS FRAMEWORK BILL, 2008

BILL

To provide for the national qualifications framework; to provide for the responsibilities of Ministers; 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.

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;

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:-

CHAPTER 1

INTERPRETATION, OBJECT AND APPLICATION OF THIS ACT

Definitions

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

"Authority" means the South African Qualifications Authority contemplated in chapter 4;

"board" means the board of the Authority established in chapter 4;

"Council on Higher Education" means the Council established in terms of section 4 of the Higher Education Act, 1997 (Act 101 of 1997);

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

"gazette" means *Government Gazette;*

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

"level" means a level contemplated in chapter 2;

"Minister" means Minister of Education;

"NQF" means the national qualifications framework contemplated in chapter 2;

"PFMA" means Public Finance Management Act, 1999 (Act 1 of 1999);

"part qualification" means an assessed unit of learning that may be registered as part of a qualification;

"professional body" means a statutory or non-statutory body of expert practitioners in an occupational field, which is recognised by SAQA in terms of this Act, 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;

"QC" means a Quality Council contemplated in chapter 5;

"**qualification**" means a registered national qualification, and includes a part qualification;

"registered" means registered on the NQF by SAQA in terms of chapter 4;

"relevant minister" means either the Minister or the Minister of Labour as indicated by the context;

"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 97 of 1998);

"sub-framework" means a sub-framework contemplated in chapter 2;

"SAQA" means the Authority;

"SAQA Act" means the South African Qualifications Authority Act, 1995 (Act 58 of 1995);

"training provider" means a provider of occupational learning programmes accredited in terms of the Skills Development Act;

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

Object of Act

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

Application of Act

3. This Act applies to –

(a) qualifications offered by

(i) education institutions; and

(ii) training providers; and

(b) professional designations, subject to the limitations prescribed in this Act.

CHAPTER 2

NATIONAL QUALIFICATIONS FRAMEWORK

Framework

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

Objectives of NQF

5. (1) The objectives of the NQF are to –

(a) create an 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; and thereby

(e) contribute to the full personal development of each learner and the social and economic development of the nation at large.

(2) The objectives of the NQF are to be achieved 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 and are internationally comparable; and

(c) ensuring that South African qualifications are quality assured.

Framework levels

6. (1) The NQF is organised as a series of levels of learning achievement 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 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 in terms of this Act for each sub-framework contemplated in section 7.

(4) SAQA assigns a qualification to a particular level on the NQF if it fits the descriptor for that level.

Sub-frameworks

7. The NQF comprises three co-ordinated sub-frameworks –

(a) for General and Further Education and Training;

(b) for Higher Education; and

(c) for Trades and Occupations.

CHAPTER 3

RESPONSIBILITIES OF MINISTERS

Joint responsibilities

8. The Minister and the Minister of Labour must –

(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) co-operate in discharging their respective responsibilities under this Act;

(d) encourage collaboration among QCs and between QCs and SAQA;

(e) consult one another on any matter affecting their respective interests in terms of this Act; and

(f) consult one another before any executive decision in terms of this Act is published in the gazette.

Responsibilities of Minister

9. The Minister –

(a) has overall executive responsibility for the NQF;

(b) has executive responsibility for SAQA;

(c) must, after consultation with the Minister of Labour, provide SAQA with a multi-year remit which sets out the government's strategy and priorities for the NQF and which may be annually updated;

(d) has executive responsibility for the QC for General Education and Training and the QC for Higher Education contemplated in chapter 5;

(e) must provide funds from money appropriated by Parliament for SAQA, the QC for General and Further Education and Training and the QC for Higher Education to enable them to fulfil their functions under this Act;

(f) must determine level descriptors recommended by SAQA in terms of section 14, after consultation with the Minister of Labour;

(g) must determine a dispute referred by SAQA in terms of section 12, but a dispute involving the QC for Trades and Occupations must be determined in co-operation with the Minister of Labour;

(h) must consider advice on NQF matters given by SAQA or a QC in terms of this Act;

(i) must determine policy on NQF matters in terms of this Act, and publish it in the gazette; and

(j) may perform any other function consistent with this Act that advances the objectives of the NQF contemplated in chapter 2.

Responsibilities of Minister of Labour

10. The Minister of Labour –

(a) has executive responsibility for the QC for Trades and Occupations established by the Skills Development Act;

(b) must consider advice on NQF matters given by SAQA or a QC in terms of this Act, and provide a response in writing; and

(c) may perform any other function consistent with this Act that advances the objectives of the NQF contemplated in chapter 2.

CHAPTER 4

SOUTH AFRICAN QUALIFICATIONS AUTHORITY

Continuation of Authority

11. The South African Qualifications Authority continues to exist as a juristic person despite the repeal of the SAQA Act contemplated in chapter 7.

Objects of Authority

12. The objects of the Authority are to –

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

(b) advance the objectives of the NQF contemplated in chapter 2.

Accountability of Authority

13. The Authority is accountable to the Minister.

Functions of Authority

14. (1) The Authority must perform its functions subject to this Act.

(2) The Authority must advise the Minister and the Minister of Labour on NQF matters in terms of this Act.

(3) The Authority must undertake its functions –

(a) in a co-operative, consultative, open and transparent manner; and

(b) with due regard for the statutory rights, powers and functions of QCs, education institutions, professional bodies and training providers.

(4) The Authority must -

(a) oversee the implementation of the NQF in accordance with a multi-year rolling strategic plan, budget and implementation framework which must -

(i) take account of the remit of the Minister contemplated in chapter 3;

(ii) be prepared after consultation with the QCs;

(iii) be co-ordinated with the annual state budget process; and

(iv) be submitted to the Minister for approval;

(b) with respect to QCs –

(i) facilitate a system of collaboration in order to achieve the objectives of the NQF contemplated in chapter 2; and

(ii) refer a dispute to the Minister for determination as provided in section 8;

(c) with respect to levels –

(i) recommend level descriptors to the Minister after considering proposals by each QC; and

(ii) keep level descriptors under review in order to ensure that they remain current and appropriate.

(d) with respect to qualifications –

(i) recommend a policy framework to the Minister for the development, registration and publication of qualifications in each sector, after considering proposals by each QC;

(ii) recommend a policy framework to the Minister for assessment, recognition of prior learning and credit accumulation and transfer, after considering proposals by each QC; and

(iii) register a qualification recommended by a QC if it meets the approved criteria;

(e) with respect to quality assurance, recommend a policy framework to the Minister for quality assurance in each sector, after considering proposals by each QC;

(f) with respect to professional bodies –

(i) recommend a policy framework to the Minister 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 after considering proposals by each QC; and

(ii) recognise a professional body and register its professional designations if the approved criteria have been met;

(g) with respect to international relations –

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

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

(h) with respect to research, conduct or commission and publish 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;

(i) with respect to records of education and training, maintain a national learners' records database comprising registers of national qualifications, national standards, learner achievements, professional bodies, professional designations, and associated information;

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

(k) 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.

The SAQA board

15. (1) The Authority is governed by a board.

(2) The board comprises –

(a) twelve members appointed in their personal capacities by the Minister after consultation with the Minister of Labour;

(b) the chief executive officer of SAQA contemplated at section 20, 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) The Minister must appoint members in such a manner as to ensure, insofar as is practically possible, that the functions of the Authority are performed according to the highest professional standards;

(a) the membership taken as a whole –

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

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

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

(iv) has known and attested commitment to the interests of education and training;

(v) has knowledge and understanding of standards generation and quality assurance in education and training;

(vi) is competent to undertake the governance and oversee the financial affairs of the Authority; and

(b) due attention is given to the representivity of the board in terms of such factors as race, gender and disability.

(4) The Minister –

(a) must invite nominations for appointed members by notice in the gazette; and

(b) may invite nominations from persons and organisations involved in education and training, professional bodies, organised labour, organised business, and organisations representing community and development interests.

(5) Any appointed 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 appointed members as chairperson.

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

Vacation of office by a board member and filling of vacancies

16. (1) An appointed member must vacate the office if the member –

(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 or 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 revoke the appointment of an appointed member at any time before the expiry of the member's term of office, if there are sound reasons for doing so.

(3) Any vacancy on the board must be filled by appointment in accordance with section 15.

Committees of board

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

(2)A committee may include a person who is not a member of the board but the board must give due regard to the criteria contemplated in section 15 when it appoints such a person to a committee.

(3) The board must appoint an appointed member of the board as chairperson of a committee.

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

Meetings of board and committees

18. (1) The board and its committees must meet at least twice a year at such times and places as the relevant chairperson may determine by notice in writing to the members concerned.

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

(a) within 14 days of the 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 appointed members present must appoint 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 in terms of the Promotion of Access to Information Act, 2000 (Act 2 of 2000).

Allowances and remuneration of members of board and committees

19. Any appointed member of the board and any appointed 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 Authority 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.

Appointment of chief executive officer and staff

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

(2) The board must appoint such number of employees as it may deem necessary for the performance of the Authority's functions, but the board may delegate this function to the chief executive officer for the Authority subject to such conditions as are consistent with the relevant provisions of the PFMA.

(3) The Authority 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.

Functions of chief executive officer

21. The chief executive officer –

(a) is responsible to the board for executing the functions of the Authority in terms of this Act;

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

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

Funds of Authority

22. (1) The funds of the Authority consist of –

(a) money appropriated by Parliament;

(b) donations and contributions received by the Authority;

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

(d) interest received on investments; and

(e) any other income received by the Authority.

(2) The board –

(a) must keep a record of all funds received and spent and of all assets, liabilities and financial transactions;

(b) must in each financial year, in such manner as the Minister may determine, submit for the Minister's approval a strategic plan and budget for the ensuing financial year, as contemplated in section 14;

(c) may in any financial year submit adjusted budgets to the Minister for approval; and

(d) may not incur any expenditure which exceeds the total amount approved in terms of paragraphs (b) and (c).

(3) If the Minister does not approve the budget of the Authority, the Minister must require the board to submit a revised budget within a specific period.

(4) The funds contemplated in (1) must be used in accordance with the approved budget.

Alienation and encumbrance of property

23. 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 Authority.

Financial statements, audit and annual report

24. (1) The financial statements of the Authority must be prepared in terms of the Standards of Generally Recognised Accounting Practice set by the Accounting Standards Board established in terms of the PFMA.

(2) The financial statements referred to in (1) must be audited at the end of each financial year by a person registered as an accountant and auditor in terms of the Accountancy Professions Act, 2005 (Act 26 of 2005), and appointed by the board with the approval of the Auditor-General.

(3) The board must, not later than five months after the end of each financial year, submit to the Minister an annual report in such form as the minister may determine on the performance of the functions of the Authority during that financial year, including the audited financial statements of the Authority.

(4) The Minister must table in Parliament the annual report, including the financial statements of the Authority within one month after receipt thereof, if Parliament is then sitting, and if Parliament is not then sitting, within one month after the commencement of the next sitting.

CHAPTER 5

QUALITY COUNCILS

QC for General and Further Education and Training

25. Umalusi is the QC for General and Further Education and Training.

QC for Higher Education

26. The Council on Higher Education is the QC for Higher Education.

QC for Trades and Occupations

27. The QC for Trades and Occupations is the body of that name established by the Skills Development Act.

Functions of QCs

28. (1) A QC must perform its functions subject to this Act.

(2) A QC must advise the relevant minister on matters relating to its sub-framework in terms of this Act.

(3) A QC must undertake its functions –

(a) in a co-operative, consultative, open and transparent manner;

(b) in collaboration with SAQA and other QCs; and

(c) with due regard for the statutory rights, powers and functions of SAQA, other QCs, education institutions, professional bodies and training providers.

(4) A QC must -

(a) develop and manage the sub-framework in accordance with a multi-year rolling strategic plan, budget and implementation framework which must –

(i) take into account the Minister's remit contemplated in section 8;

(ii) be prepared after appropriate consultation within its sector;

(iii) be co-ordinated with the annual state budget process; and

(iv) be submitted to the relevant minister for approval;

(b) with respect to levels on its sub-framework –

(i) propose level descriptors to SAQA for consideration and recommendation to the Minister; and

(ii) keep level descriptors under review in order to ensure that they remain current and appropriate;

(c) with respect to qualifications for its sub-framework –

(i) propose a policy framework to SAQA for the development, registration and publication of qualifications, after consultations within the sector;

(ii) propose a policy framework to SAQA for assessment, recognition of prior learning and credit accumulation and transfer, after consultations within the sector;

(iii) ensure the development of such qualifications as are necessary for the sector, which may include appropriate measures for the assessment of learning achievement; and

(iv) recommend qualifications to SAQA for registration;

(d) with respect to quality assurance within its sub-framework –

(i) propose a policy framework to SAQA for quality assurance, after consultations within the sector;

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

(iii) make provision for the delegation of powers to undertake quality assurance;

(iv) ensure that such quality assurance as is necessary for the sector is undertaken; and

(v) publish reports on the outcomes of quality assurance processes.

(e) with respect to information matters –

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

(ii) submit such data in a format determined in consultation with SAQA for recording on the national learners' records database contemplated at section 14.

(f) with respect 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.

CHAPTER 6

PROFESSIONAL BODIES

Recognition by SAQA

29. A statutory or non-statutory body of expert practitioners in an occupational field must apply to SAQA to be recognised as a professional body in terms of this Act.

Co-operation with QCs

30. 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, but nothing in this Act may be construed as superseding any lawful requirement relating to public health and safety.

Registration of professional designation

31. A professional body must apply to SAQA in the prescribed manner to register a professional designation on the NQF.

Information

32. A professional body must, in consultation with SAQA –

(a) maintain a database for purposes of this Act;

(b) submit such data in an agreed format for recording on the national learners' records database contemplated at section 14.

CHAPTER 7

MISCELLANEOUS

Regulations

33. The Minister –

(a) must make regulations relating to any matter which by this Act must be prescribed; and

(b) may make regulations on any other matter in order to give effect to the provisions of this Act.

Transitional arrangements

34. (1) The Authority which was established in terms of the SAQA Act continues to exist and performs its functions in terms of this Act until the board contemplated in chapter 4 is appointed by the Minister.

(2) The regulations made under the SAQA Act continue to exist to the extent that they are consistent with this Act until they are repealed and where necessary replaced by the Minister by notice in the gazette.

(3) Subject to any applicable law, all conditions of service or service benefits applicable immediately prior to the commencement of this Act continue to exist until changed by the board.

Repeal of law

35. The South African Qualifications Authority Act, 1995 (Act 58 of 1995) is hereby repealed in its entirety.

Short title and commencement

36. (1) This Act is called the National Qualifications Framework Act, 2008.

(2) This Act takes effect on a date determined by the Minister by notice in the gazette.

NATIONAL QUALIFICATIONS FRAMEWORK BILL, 2008

EXPLANATORY MEMORANDUM

Introduction

Background

The Ministers of Education and Labour have published a joint policy statement on *Enhancing the Efficacy and Efficiency of the National Qualifications Framework* (the NQF). This Bill gives legislative effect to the new policy.

The joint policy statement concluded the review of the implementation of the NQF which began in April 2001, when a study team comprising international and local specialists was appointed by the two ministers. The study team's report was published and drew a vigorous response. The Departments of Education and Labour conferred for a year before publishing a consultative document on the way forward for the NQF. This document too received valuable written comment and was subjected to scrutiny in consultations with stakeholders. Prolonged inter-departmental consultation and engagement with the South African Qualifications Authority resulted in Ministerial agreement late in 2007.

The Ministers explain in their joint statement that:

> "The new policy retains the original objectives of the NQF but envisages changes in its organisational structures.... Such changes...are designed to address the allocation of responsibility, resolve tensions among important role-players, and simplify the NQF apparatus in order to speed up the achievement of NQF objectives."

The National Qualifications Framework

The South African NQF has its roots in the 1980s in the struggle against racial discrimination in the workplace. Labour unions campaigned for the right of workers to have their skills formally recognised, be admitted to structured career paths and receive formal education and training to enable them to advance to any level within their industries. By 1994 the concept of a national framework of qualifications in education and training as a whole had taken root. The *Reconstruction and Development Programme* (p. 62) envisaged an NQF that would:

- Integrate all elements of the education and training system
- Enable learners to progress to higher levels from any starting point
- Enable learners to transfer credits from one part of the system to another
- Enable assessment and recognition of prior learning and skills acquired through experience
- Enable curricula to cut across traditional divisions of skills and knowledge.

The South African Qualifications Authority (SAQA) Act, 1995 (Act 58 of 1995) was the first substantive measure on education and training passed by the first democratic Parliament. It was an enabling Act that established SAQA as a statutory body and gave it wide powers to develop and oversee the implementation of the NQF in order to achieve objectives which encapsulated the features envisaged in the RDP base document.

In little more than ten years the NQF, developed by SAQA with the participation of thousands of citizens, has become an essential frame of reference for the nation's education and training system, in formal learning institutions and in the workplace.

The Ministers of Education and Labour observe that "all social institutions benefit from renewed mandates and revised procedures that take experience into account". The NQF is no exception.

Main features of the Bill

The main features of the Bill distinguish it from the SAQA Act which it will replace.

(1) **The NQF.** The SAQA Act did not describe the NQF, since in 1995 it had not yet been established. The NQF Bill, 2008 contains such a description and in so doing clarifies the concept of an NQF and the way it is organised. The change of name from "SAQA Act" to "NQF Bill" reflects the new focus.

(2) **Ministerial authority.** The SAQA Act requires the Ministers of Education and Labour to achieve agreement on many matters in consultation with one another. Such provisions reflect the wide scope of the NQF, which covers all education and training, but they have proved cumbersome in practice. The NQF Bill requires the two Ministers to act collaboratively, but prescribes clear spheres of ministerial responsibility.

(3) **SAQA's role.** The SAQA Act gave SAQA the responsibility of conceptualising the NQF and leading its implementation. Although SAQA has been true to its mandate to act consultatively, the NQF system as it developed was felt by many participants to entail an unnecessary degree of centralisation and conceptual and procedural rigidity. The NQF Bill secures an apex role for SAQA as custodian of the values of the NQF, research organisation, learning database manager and advisor on the entire NQF system to the government (among other responsibilities). The Bill gives executive responsibility for NQF implementation to three sectoral Quality Councils which will act in close liaison with each other and with SAQA.

(4) **A fit for purpose approach.** The SAQA Act encompassed all areas of education and training. It was expected that the desired integration of the system would be achieved by means of an essentially uniform approach to designing standards and qualifications. Experience has taught that a different approach is preferable. Learning outcomes cannot (or ought not) be dissociated from what is learnt, and what is learnt depends on the purpose and context of learning and the age, previous learning and experience of the

learner. While the NQF will still encompass all areas of learning and advance the integration of education and training, the NQF Bill will foster a variety of fit-for-purpose approaches to standard setting and quality assurance.

(5) **Simplification.** The SAQA Act empowered SAQA to establish or recognise sub-structures to carry out the design of standards and qualifications and to undertake quality assurance. SAQA did this by way of regulations. Many Acts, including the Mine Health and Safety Act, 1996 (Act 29 of 1996), the Higher Education Act, 1997 (Act 101 of 1997), the Skills Development Act, 1998 (Act 97 of 1998), and the General and Further Education and Training Quality Assurance Act, 2001 (Act 58 of 2001), added new statutory quality assurance bodies that were required to work within the SAQA system. NQF processes were thus complicated by the proliferation of sub-structures with overlapping mandates. By naming Quality Councils for General and Further Education and Training, Higher Education, and Trades and Occupations respectively, the NQF Bill provides a radically simplified sectoral architecture with clear lines of accountability and explicit requirements for collaboration and dispute resolution.

(6) **Sectors not bands.** The regulations under the SAQA Act formalised the concepts of NQF bands as an organising principle: the General Education and Training band (level 1), the Further Education and Training band (levels 2-4), the Higher Education and Training band (levels 5-8). This horizontal organisation was meant to give expression to the integration of all forms of learning within a band, no matter how or where it was provided. The Bill, by contrast, is based on the idea of education and training sectors: the General and Further Education and Training sector, the Higher Education sector, the Trades and Occupations sector. The first two sectors comprise formal education institutions (schools, adult education centres, FET colleges, higher education institutions) and fall under the Minister of Education. The third comprises education and training in and for the workplace, and falls under the Minister of Labour. The sectoral approach reflects how provision is actually organised, and therefore runs with the grain of the education and training system. The Bill provides both a conceptual framework and organisational mechanisms to ensure that the work of the sectors is co-ordinated and that the progressive objectives of the NQF are safeguarded and advanced.

A suite of Bills

The passage of the NQF Bill requires consequential amendments to a number of Acts in the 2008 Parliamentary session.

The most important changes relate to the establishment of the three Quality Councils (QCs). Umalusi is to become the QC for General and Further Education and Training. The Council on Higher Education is to become the QC for Higher Education. These bodies already have experience as quality assurers for their sectors of the formal education system. Their Acts must be amended to reflect their new status and additional functions. The position is different for work-related education and training. A new QC for Trades and Occupations must be established from scratch.

The NQF Bill will therefore be accompanied by Bills to amend the General and Further Education and Training Quality Assurance Act, 2001, the Higher Education Act, 1997, and the Skills Development Act, 1998. Consequential amendments to other Acts where the changes required are less significant do not need to be introduced in the 2008 session of Parliament.

The NQF Bill will now be explained clause by clause.

Chapter 1: Interpretation, Object and Application of the Act

Clause 1: Definitions

Most definitions in clause 1 are straightforward. A few involve policy considerations that may not be self-evident.

"learning": The definition of learning is deliberately broad in order to reflect the fact that the NQF is not confined to one or other variety of learning. In the Act the term is used in phrases like "learning achievements", "occupational learning" and "recognition of prior learning".

"part qualification": This term covers terms in common use in different sectors that refer to an assessed unit of learning, such as "unit standard" or "module".

"professional body": SAQA is empowered in chapter 6 to recognise professional bodies for purposes of the Act. SAQA has engaged over many years with the community of professional bodies to clarify their role *vis-à-vis* the NQF. The Bill does not interfere with the responsibilities of professional bodies to their members and the public. It reflects the consensus view that professional designations be registered on SAQA's National Learners' Records Database.

"quality councils": These are the new, sector based structures that will be responsible for the development and quality assurance of qualifications in their sub-frameworks of the NQF.

"sub-framework": The concept of a sub-framework covering a particular sector of education and training was introduced during the review process and is a significant feature of the Ministers' joint policy statement. Clause 7 of the Bill provides that the NQF will henceforth be organised in three co-ordinated sub-frameworks, for General and Further Education and Training, for Higher Education, and for Trades and Occupations. The Higher Education Qualifications Framework (HEQF) has already been determined and gazetted by the Minister of Education in terms of the Higher Education Act, 1997, following advice given by the Council on Higher Education. The General and Further Education and Training Qualifications Framework is being prepared by Umalusi. The Department of Labour in consultation with its stakeholders has begun work on the Trades and Occupations sub-framework.

Clause 2: Object of Act

Clause 2 makes it clear that the NQF is a going concern and that the Act is intended to foster it and prescribe its organisation and governance.

Clause 3: Application of Act

The Bill applies to all education institutions for which the Minister of Education and MECs for Education are responsible and all occupational training providers for whom the Minister of Labour is responsible in terms of the Skills Development Act, 1998. It also applies to the professional designations conferred by recognised professional bodies insofar as they are to be registered on the National Learners' Records Database.

Chapter 2: National Qualifications Framework

Clause 4: Framework

This clause provides a compact explanation of what the NQF is; the first to be provided in our law.

Clause 5: Objectives of NQF

The objectives of the NQF provided in sub-clause (1) are identical to those in the SAQA Act, 1995. They have won widespread endorsement. Sub-clause (2) sets out the categories of actions required for the objectives to be realised.

Clause 6: Framework levels

The NQF (like its counterparts in other countries) is organised as a series of levels of learning achievements. When a qualification is registered by SAQA on the NQF it is registered at a particular NQF level (sub-clause 5). This is the basic organising principle of the NQF which enables qualifications at different levels to be related to one another for purposes of learner progression and mobility. The initial organisation of the NQF in eight levels proved too constraining, and a consensus was achieved during the review process that a framework of ten levels would cover all requirements. This is provided at sub-clause 1.

Each level has a level descriptor which specifies the nature of the learning achievement deemed appropriate for that level. This is the case at present and the Bill recognises this essential feature of a qualifications framework. Sub-clause (4) requires that level descriptors be developed separately for each sub-framework of the NQF. The Bill builds in safeguards for the integrity of the NQF. The sub-frameworks must be co-ordinated (clause 7). The three Quality Councils that are responsible for the sub-frameworks must collaborate with one another (clause 26). SAQA has broad oversight responsibility for the

NQF, and must consider level descriptors before recommending them to the Minister for approval (clause 12). The Minister must approve level descriptors only after consultation with the Minister of Labour (clause 8).

Clause 7: Sub-frameworks

The co-ordinated sub-frameworks are named here, as explained earlier in relation to the definition of 'sub-framework'. This is the most important organisational innovation introduced by the Bill and reflects the upshot of the years of investigation and consideration during the process of reviewing NQF implementation. The change has won widespread acceptance. It provides opportunity for creative and holistic thinking about the structure of qualifications for a sector of learning, and the processes by which learners progress from level to level or advance horizontally by receiving credit for a qualification when enrolling for another. The challenge before SAQA and the Quality Councils is to ensure that the sub-frameworks are indeed co-ordinated, and promote progression and mobility for learners across sectors as well as within them, as the objectives of the NQF require.

Chapter 3: Responsibilities of Ministers

The NQF originated in a historic collaboration between education and training constituencies associated with the Ministries of Education and Labour respectively. The Bill confirms that collaboration, but specifies clearly the Ministers' joint and individual responsibilities.

Clause 8: Joint responsibilities

This clause affirms the joint responsibility of the two Ministers for the advancement of NQF objectives and retaining public confidence in the NQF. They must do so by discharging their responsibilities in a co-operative manner and consulting one another on all important matters concerning the NQF.

Clause 9: Responsibilities of Minister

The Minister of Education has portfolio responsibility for the NQF. The list of the Minister of Education's responsibilities is therefore significant. SAQA and the two formal education QCs are accountable to the Minister of Education, who must therefore ensure these bodies' financial viability. The Minister must provide SAQA with a multi-year remit, or directive, setting out government's expectations from the NQF. On the advice of SAQA, the Minister must determine the NQF's level descriptors, which are the crucial signposts that guide the development and classification of qualifications across NQF sub-sectors. The minister is advised by SAQA on NQF matters and determines NQF policy after consulting the Minister of Labour. Additional Ministerial responsibilities are spelled out in other clauses of the Act (especially clauses 15 and 33).

Clause 10: Responsibilities of Minister of Labour

The Minister of Labour has executive responsibility for the QC for Trades and Occupations, and must consider the advice of that body and of SAQA.

Chapter 4: South African Qualifications Authority

Clause 11: Continuation of Authority

SAQA continues as a juristic person, but with a revised membership structure and revised functions.

Clause 12: Objects of Authority

SAQA's oversight and advocacy role on behalf of the NQF is perpetuated.

Clause 13: Accountability of Authority

SAQA is accountable to the Minister of Education.

Clause 14: Functions of Authority

This clause should dispel fears that SAQA's role in the new NQF dispensation will be vague and without real influence. The opposite is the case. Precise functions are prescribed for SAQA that give form to the crucial oversight role and demonstrate its strategic importance and forward-looking character. SAQA already operates a highly devolved but complex system of qualifications development and quality assurance. The devolved operations will henceforth be structured more simply by sub-framework in the three QCs. They will have the task of co-ordinating operations in their sectors, and SAQA will have close relations with them.

SAQA's functions are both broad and specific. Broad functions include the preparation of a rolling strategic plan and budget that will guide the development of the NQF in the light of the Minister's remit, and the development of a system of collaboration that will enable the QCs and SAQA to fulfil their respective mandates in a coherent and collaborative manner.

SAQA's specific functions (on the advice of the QCs) include recommending level descriptors to the Minister and ensuring that they are kept up to date; preparing policy frameworks for the Minister's approval on the main areas of NQF activity that will guide the QC' operations (qualifications, assessment, recognition of prior learning, credit accumulation and transfer, quality assurance, recognition of professional bodies and the registration of professional designations); international collaboration with counterpart NQF authorities; research, including studies of the NQF's impact on South African education, training and employment; the maintenance of the national learners' records database (a vital and accessible electronic storehouse of historic and contemporary data

on South African education and training); the evaluation of foreign qualifications; and public information on the NQF.

Clause 15: The SAQA board

The SAQA Act used the same term "Authority" for the juristic person and for the governing body. The NQF Bill follows the accepted convention of reserving the term "Authority" for the juristic person and using the term "board" to describe the governing body.

The Bill changes the structure of the SAQA board and reduces the membership. The current appointment process is cumbersome and protracted. The SAQA Act provides for a chairperson, 20 members nominated by constituencies (covering the entire education and training spectrum as well as social partners), up to six members appointed by the Minister, no more than two co-opted members, and the executive officer (*ex officio*) for a maximum total of 30. All appointed and co-opted members must be approved by the Minister of Education in consultation with the Minister of Labour. The term of office of appointed and co-opted members is three years.

Clause 15 provides for a smaller board appointed for a period of five years by the Minister after consultation with the Minister of Labour. The board will comprise 12 members appointed in their personal capacities on the basis of nominations by the general public and by constituencies, and the CEOs of SAQA and the three QCs (*ex officio*), for a total of 16. The Minister must ensure that the board, taken as a whole, meets strict criteria relating to knowledge of the education and training system, the NQF mandate, development goals, representivity and organisational competence.

Clause 16: Vacation of office by a board member and filling of vacancies
Clause 17: Committees of board
Clause 18: Meetings of board and committees
Clause 19: Allowances and remuneration of members of board and committees
Clause 20: Appointment of chief executive officer and staff
Clause 21: Functions of chief executive officer
Clause 22: Funds of Authority
Clause 23: Alienation and encumbrance of property
Clause 24: Financial statements, audit and financial report

These clauses deal with straightforward procedural and organisational matters and are virtually identical to corresponding sections of the SAQA Act, except that they reflect the requirements of the PFMA. Clause 23 is identical to the corresponding section of the SAQA Act except that by omitting the word "let" the Bill enables SAQA to make decisions about the letting of space in SAQA House or any other property without having to seek ministerial authorization.

Chapter 5: Quality Councils

Clause 25: QC for General and Further Education and Training

The Bill provides that Umalusi is the QC for General and Further Education and Training. Umalusi is established by the General and Further Education and Training Quality Assurance (GENFETQA) Act, 2001 (Act 58 of 2001) and is the successor to the South African Certification Council (SAFCERT). Umalusi discharges the functions previously performed by SAFCERT with respect to the moderation of public examinations and certification of learners at exit points for schools, FET colleges and adult education, but it has a broader mandate under its Act "to ensure that continuous enhancement of quality is achieved in the delivery and outcomes of the general and further education and training sectors of the national education and training system". Umalusi is therefore well placed to assume the responsibilities of a sectoral Quality Council in terms of this Bill.

The GENFETQA Act is under review by the department of Education and the Umalusi Council with a view to its replacement by a new Umalusi Act that will be fully in tune with the new environment created by this NQF Bill. The new Umalusi Act will also resolve outstanding questions relating to the respective responsibilities of Umalusi and the Departments of Education for the quality assurance of education provision.

Clause 26: QC for Higher Education

The Bill provides that the Council on Higher Education (CHE) is the QC for Higher Education. The CHE is established by the Higher Education Act, 1997 (Act 101 of 1997) to advise the Minister on higher education matters and related functions. The Act also established the Higher Education Quality Committee (HEQC) as a permanent committee of the CHE to undertake quality assurance and quality promotion in the higher education sector. The HEQC has developed a well-regarded and robust regime of quality assurance for higher education programmes. The CHE's well-researched advice to the Minister on qualifications policy led to the formulation and determination by the Minister of the Higher Education Qualifications Framework, which becomes a sub-framework of the NQF in terms of this Bill. The CHE is therefore well placed to assume the functions of a sectoral Quality Council in terms of this Bill.

Clause 27: QC for Trades and Occupations

No single pre-existing statutory body provides a platform for the new QC for Trades and Occupations, which will therefore be established from scratch by amendments to the Skills Development Act, 1998 (Act 97 of 1998) introduced by the Minister of Labour.

Clause 28: Functions of QCs

This clause provides a common template for all three QCs which dovetails with the functions of SAQA prescribed in the Bill. The QCs will advise their respective ministers on NQF matters related to their sub-frameworks. They will operate according to co-ordinated multi-year rolling strategic plans. They will propose policy frameworks to

SAQA for level descriptors; qualifications, assessment, recognition of prior learning and credit accumulation and transfer; and quality assurance. Their information systems will be integrated with SAQA's national learners' records database. They will undertake or commission research to advance their respective sub-frameworks and provide an information service to the public.

Chapter 6: Professional Bodies

Clause 29: Recognition by SAQA

Professional bodies are autonomous bodies governed by statute or their own constitutions. This Bill does nothing to disturb that status. If a professional body wishes to register its professional designation on the NQF it must apply for recognition by SAQA, which will act in terms of the policy envisaged by clause 14(f).

Clause 30: Co-operation with QCs

Within the current SAQA system, professional bodies have become vital players in the development of qualifications and quality assurance of programmes in their fields of expertise. This clause formalises a practice of collaboration that is already well accepted.

Clause 31: Registration of professional designation

SAQA and the professional body community have formulated a process for the registration of professional designations on the NQF. This clause gives it legal recognition.

Clause 32: Information

Professional bodies house important information that should be stored on the national learners' records database and available for analysis. This clause formalises an accepted practice.

Chapter 7: Miscellaneous

Clause 33: Regulations

The SAQA Act empowers SAQA to make regulations subject to the approval of the Minister. The Bill adopts the customary formulation that empowers the Minister with portfolio responsibility to determine and publish regulations in terms of the Act. This will be done on the advice of SAQA and the QCs and after consultation with the Minister of Labour.

Clause 34: Transitional arrangements

The customary transitional provisions ensure the continuity of the SAQA board and its operations until new regulations come into effect. The current (fourth) Authority's members were appointed by the Minister in 2007 for a three year term. They will continue in office until the Minister appoints a new board in terms of clause 15. SAQA employees' contracts are safeguarded until altered by a new board.

Clause 35: Repeal of law
Clause 36: Short title and commencement

These clauses are self-explanatory.

OTHER DEPARTMENTS OR BODIES CONSULTED

The Department of Labour was consulted. After publication for comment, the Bill will be referred to the National Treasury and the Department of Social Development. The Department will also supply stakeholders with copies of the Bill so that they may comment on it.

FINANCIAL IMPLICATIONS FOR THE STATE

The Bill merely replaces the South African Qualifications Authority Act 58 of 1995, for amendments to existing legislation and therefore, no additional costs are foreseen.

PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Education's Legislative Services Section are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76 of the Constitution.

The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act 41 of 2003, seeing that it does not contain provisions pertaining to customary law or to the customs of traditional communities.

HIGHER EDUCATION AMENDMENT BILL, 2008

BILL

To amend the Higher Education Act, 1997 (Act 101 of 1997) in order to make it consistent with the National Qualifications Framework Act, 2008 (Act .... of 2008), 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 101 of 1997

1. Section 1 of the Higher Education Act, 1997 (hereinafter referred to as "the Act"), is hereby amended –

(a) by the substitution for the definition of 'higher education' of the following definition:

"'higher education' means all learning programmes leading to **[qualifications]** a qualification **[higher than grade 12 or its equivalent in terms of the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act 58 of 1995), and includes tertiary education as contemplated in Schedule 4 of the Constitution]** that meets the requirements of the Higher Education Qualifications Framework;";

(b) by the substitution after the definition of 'higher education institution' of the following definition:

"**'higher education institution'** means any institution that provides higher education on a full-time, part-time or distance basis and which is –

(a) established or deemed to be established as a public higher education institution under this Act;
(b) declared as a public higher education institution under this Act; or
(c) registered or **[conditionally]** provisionally registered as a private higher education institution under this Act;";

(c) by the addition after the definition of 'higher education institution' of the following definition:

"'HEQF' means the Higher Education Qualifications Framework;";

(d) by the addition after the definition of 'HEQF' of the following definition:

"'Higher Education Qualifications Framework' means the sub-framework for higher education of the National Qualifications Framework;";

(e) by the substitution for the definition of 'Higher Education Quality Committee' of the following definition:

"'Higher Education Quality Committee' means the committee of the CHE established in terms of section 7**[(1)]**;";

(f) by the addition after the definition of 'institutional statute' of the following definition:
"'National Qualifications Framework' means the National Qualifications Framework envisaged in the National Qualifications Framework Act;";

(g) by the addition after the definition of 'National Qualifications Framework' of the following definition:
"'National Qualifications Framework Act' means the National Qualifications Framework Act, 2008 (Act .... of 2008);";

(h) by the addition after the definition of 'organ of state' of the following definition:
"'other QCs' means the Quality Council for General and Further Education and Training and the Quality Council for Trades and Occupations contemplated in the National Qualifications Framework Act;";

(i) by the addition after the definition of 'public higher education institution' of the following definition:
"'QC' means quality council;";

(j) by the addition after the definition of 'QC' of the following definition:
"'quality council' means a quality council contemplated in the National Qualifications Framework Act';";

(k) by the substitution for the definition of 'SAQA' of the following definition:
"'SAQA' 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;";

(l) by the addition after the definition of 'senate' of the following definition:
"'South African Qualifications Authority' means the South African Qualifications Authority contemplated in the National Qualifications Framework Act;';

(m) by the substitution for subsection (a) of the definition of 'to provide higher education' of the following subsection:
"'to provide higher education' means -

(a) the registering of students for **[-**

(i) complete qualifications at or above level 5 of the National Qualifications Framework[as contemplated in the South African Qualifications Authority Act, 1995 (Act 58 of 1995)]; or

(ii) such part of a qualification which meets the requirements of a unit standard as [recognised] by the South African Qualifications Authority at or above the level referred to in subparagraph (i)]
higher education;".

2. Section 5 of the Act is hereby amended –
(a) by the substitution for subsection (1)(f)(i) of the following subsection:
"(f) perform any other function –
(i) conferred on or assigned to it in terms of this Act or the National Qualifications Framework Act;";

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

"(a) **[quality promotion and quality assurance]**qualifications, quality promotion and quality assurance;".

Amendment of section 7 of Act 101 of 1997

3. Section 7 of the Act is hereby amended by the substitution for section 7 of the following section:
["7 Quality promotion and quality assurance functions of CHE

(1) The CHE must establish the Higher Education Quality Committee as a permanent committee to perform the quality promotion and quality assurance functions of the CHE in terms of this Act.

(1A) The Higher Education Quality Committee is deemed to be accredited by SAQA as an Education and Training Quality Assurance body primarily responsible for higher education.
[Sub-s. (1A) inserted by s. 1 of Act 23 of 2001.**]**

(2) The CHE and the Higher Education Quality Committee must comply with the policies and criteria formulated by SAQA in terms of section 5 (1) (a) (ii) of the South African Qualifications Authority Act, 1995 (Act 58 of 1995).

(3) The Higher Education Quality Committee may, with the concurrence of the CHE, delegate any quality promotion and quality assurance functions to other appropriate bodies capable of performing such functions.

(4) The delegation under subsection (3)-

(a) must be in writing and published by notice in the Gazette;

(b) is subject to such conditions as the Higher Education Quality Committee may determine; and

(c) does not prevent the performance of such functions by the Higher Education Quality Committee.

(5) The CHE may charge fees for any service rendered by the Higher Education Quality Committee to any person, institution or organ of state.

(6) The Minister must make regulations to give effect to quality promotion and quality assurance in terms of this Act.]

7 Qualifications, quality promotion and quality assurance

(1) The CHE is the Quality Council for Higher Education in terms of the National Qualifications Framework Act.

(2) The CHE must establish the Higher Education Quality Committee as a permanent committee to perform the quality assurance and quality promotion functions of the CHE in terms of this Act.

(3) The CHE may establish other permanent committees to perform its functions in terms of this Act and the National Qualifications Framework Act.

(4) The Committees established in section 7(2) and 7(3) may, with the concurrence of the CHE, delegate any of their functions to other appropriate bodies capable of performing such functions.

(5) The delegation under subsection (3) –

(a) must be in writing and published by notice in the Gazette;

(b) is subject to such conditions as the Higher Education Quality Committee may determine; and

(c) does not prevent the performance of such functions by the Higher Education Quality Committee.

(6) The CHE may charge fees for any service rendered by its Committees to any person, institution or organ of state.

(7) The CHE must perform its functions as a QC –

(a) subject to the National Qualifications Framework Act;

(b) in a co-operative, consultative, open and transparent manner;

(c) in collaboration with SAQA and the other QCs; and

(d) with due regard for the statutory rights, powers and functions of SAQA, other QCs, higher education institutions, professional bodies and workplace providers.

(8) The CHE must –

(a) develop and manage the HEQF in accordance with a multi-year rolling strategic plan, budget and implementation framework which must –

(i) be prepared after appropriate consultation within the higher education sector;

(ii) take into account the Minister's remit to the CHE and SAQA;

(iii) be co-ordinated with the annual state budget process; and

(iv) be submitted to the Minister for approval;

(b) with respect to levels on the HEQF –

(i) propose level descriptors to SAQA for consideration and recommendation to the Minister; and

(ii) keep level descriptors under review in order to ensure that they remain current and appropriate;

(c) with respect to higher education qualifications –

(i) propose a policy framework to SAQA for the development, registration and publication of qualifications, after consultations within the higher education sector;

(ii) propose a policy framework to SAQA for assessment, recognition of prior learning and credit accumulation and transfer, after consultations within the higher education sector;

(iii) ensure the development of such qualifications as are necessary for the higher education sector, which may include appropriate measures for the assessment of learning achievement; and

(iv) recommend qualifications to SAQA for registration;

(d) with respect to quality assurance within higher education –

(i) promote quality improvement within the higher education sector;

(ii) propose a policy framework to SAQA for quality assurance, after consultations within the higher education sector;

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

(iv) make provision for the delegation of powers to undertake quality assurance;

(v) ensure that such quality assurance as is necessary for the sector is undertaken; and

(vi) publish reports on the outcomes of quality assurance processes.

(e) with respect to information matters –

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

(ii) submit such data in a format determined in consultation with SAQA for recording on the national learners' records database.

(f) with respect to other matters –

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

(ii) inform the public about the HEQF;

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

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

(9) The Minister must make regulations to give effect to the provisions of this section.".

Amendment of section 8 of Act 101 of 1997

4. Subsection 8(6) of the Act is hereby amended by the substitution of the following subsection:
"(6) The Minister must appoint **[five]** eight non-voting members of the CHE nominated respectively by the Director-General, the Provincial Heads of Education, **[the Director-General of the Department of Arts, Culture, Science and Technology]** the Director-General of the Department of Science and Technology, the Director-General of the Department of Labour, the National Research Foundation established in terms of the National Research Foundation Act, 1998 (Act 23 of 1998), and the respective chief executive officers of SAQA and the other QCs in their official capacities.".
[Sub-s. (6) substituted by s. 2 of Act 23 of 2001.]

Amendment of section 53 of Act 101 of 1997

6. Subsection 53(1)(b)(ii) of the Act is hereby amended by the substitution of the following subsection:
"(ii) will comply with the requirements of the **[appropriate quality assurance body accredited by SAQA in terms of the South African Qualifications Authority Act, 1995 (Act 58 of 1995)]**HEQC; and";

Amendment of chapter 9 of Act 101 of 1997

7. Chapter 9 of the Act is hereby amended by the addition of a new section 75A after section 75:
"Regulations affecting HEQC

75A. Regulations made under this Act or the South African Qualifications Authority Act, 1995 (Act 58 of 1995) that affect the decisions and operations of the HEQC continue to exist to the extent that they are consistent with this Act until they are repealed by the Minister of Education by notice in the Gazette."

HIGHER EDUCATION AMENDMENT BILL, 2008

EXPLANATORY MEMORANDUM

1. This Bill reflects consequential amendments made to the Higher Education Act 101 of 1997 as a result of the introduction of the National Qualifications Framework Bill on the Legislative Programme of Parliament for 2008. This amendment Bill together with the NQF Bill and the General and Further Education and Training Quality Assurance Amendment Bill will be published as a package and must be read in conjunction with one another. The reasons and objects of this amendment Bill will be dealt with in the Explanatory Memorandum attached to the NQF Bill.

2. OTHER DEPARTMENTS OR BODIES CONSULTED

The Department of Labour was consulted. After publication for comment, the Bill will be referred to the National Treasury and the Department of Social Development. The Department will also supply stakeholders with copies of the Bill so that they may comment on it.

3. FINANCIAL IMPLICATIONS FOR THE STATE

The Bill merely provides for amendments to existing legislation and therefore, no additional costs are foreseen.

4. PARLIAMENTARY PROCEDURE

4.1 The State Law Advisers and the Department of Education's Legislative Services Section are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution.

4.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act 41 of 2003, seeing that it does not contain provisions pertaining to customary law or to the customs of traditional communities.

GENERAL AND FURTHER EDUCATION AND TRAINING AMENDMENT BILL, 2008

BILL

To amend the General and Further Education and Training Quality Assurance Act, 2001 (Act 58 of 2001) so as to bring it into conformity 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:-

Amendment of section 1 of Act 58 of 2001

1. 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 '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 the South African Qualifications Authority in terms of the South African Qualifications Authority Act, 1995 (Act 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 addition after the definition of 'Council' of the following definition:
"Council on Higher Education" means the Council on Higher Education established by the Higher Education Act, 1997 (Act 101 of 1997);";

(d) by the deletion of the definition of 'Education and Training Quality Assurance Body' :
"['Education and Training Quality Assurance Body' means an education and training quality assurance body accredited in terms of section 5 (1) (a) (ii) (bb) of the South African Qualifications Authority Act, 1995 (Act 58 of 1995)];";

(e) by the addition after the definition of 'Education and Training Quality Assurance Body' 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]** education and training programmes leading to qualifications **[from]** on levels [2 to 4] 2, 3 and 4 of the general and further education and training sub-framework of the National Qualifications 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]** education and training programmes leading to a qualification on level 1 of the general and further education and training sub-framework of the National Qualifications Framework**[, which level is below further education and training]**;";

(h) by the substitution for the definition of 'National Qualifications Framework' of the following definition:
"'National Qualifications Framework' means the National Qualifications Framework contemplated in the **[South African Qualifications Authority Act, 1995 (Act 58 of 1995)]** National Qualifications Framework Act;";

(i) by the addition after the definition of 'National Qualifications Framework' of the following definitions:
"'National Qualifications Framework Act' means the National Qualifications Framework Act, 2008 (Act .... of 2008);

'NQF' means National Qualifications Framework;

'part qualification' means an assessed unit of learning that may be registered as part of a qualification;";

'private education institution' means an education institution contemplated in section 2 that is an independent school, a private college or a private centre;";

(j) by the deletion of the definition of 'provider':
"['provider' means any body which-

(a) delivers learning programmes which culminate in a specified National Qualifications Framework standard or qualification; and

(b) manages the assessment of such learning programmes, but, in respect of public schools, public further education and

training institutions and public adult learning centres, 'provider' means the department responsible for education in the relevant province]";

(k) by the addition after the definition of 'provider' of the following definition:
"'QC' means quality council;';

(l) by the substitution for the definition of 'qualification' of the following 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, and includes a part qualification;";

(m) by the addition after the definition of 'qualification' of the following definition:
"'quality council' means a quality council as contemplated in the National Qualifications Framework Act;";

(n) by the addition after the definition of 'quality council' of the following definition:
"'Quality Council for Trades and Occupations' means the Quality Council for Trades and Occupations established by the Skills Development Act, 1998 (Act 97 of 1998;";

(o) by the addition after the definition of 'raw marks' of the following definitions:
"'registrar' means the registrar of private colleges in terms of the Further Education and Training Colleges Act, 2006 (Act 16 of 2006);

"'SAQA' means "South African Qualifications Authority;";

'sector' means the general and further education and training sector;";

(p) 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;";

(q) by the deletion of the definition of 'standard':
"['standard' means registered statements of desired education and training outcomes and their associated assessment criteria]";

(r) by the addition after the definition of 'standard' of the following definition:

"'sub-framework' means the sub-framework for general and further education and training as contemplated in the National Qualifications Framework Act;".

Amendment of section 2 of Act 58 of 2001

2. Section 2 of the General and Further Education and Training Quality Assurance Act, 2001 is hereby amended by the substitution for paragraph (b) of the following paragraph:
"(b) **[Further Education and Training Act, 1998 (Act 98 of 1998); or]** Further Education and Training Colleges Act, 2006 (Act 16 of 2006); or".

Amendment of section 3 of Act 58 of 2001

3. Section 3 of the General and Further Education and Training Quality Assurance Act, 2001 is hereby amended by the substitution for section 3 of the following section:
"[3 Objects of Act

The objects of this Act are to-

(a) establish a quality assurance body to ensure that continuous enhancement of quality is achieved in the delivery and outcomes of the] general and further education and training **[sector of the national education and training system;**

(b) develop a quality assurance framework for the general and further education bands of the National Qualification Framework; and

(c) regulate the relationship between the national Department of Education, the South African Qualifications Authority, other Education and Training Quality Assurance Bodies, providers and the Council.]"
"3 Object of Act

The object of the Act is to enhance the quality of general and further education and training."

Amendment of title of chapter 2 of Act 58 of 2001

4. The title of chapter 4 of the General and Further Education and Training Quality Assurance Act, 2001 is hereby amended by the substitution for the title of the following title:
"**[ESTABLISHMENT AND ACCREDITATION]** SUB-FRAMEWORK, ESTABLISHMENT AND FUNCTIONS OF COUNCIL".

Addition of new section 4A of Act 58 of 2001

5. The following new section 4A is hereby added after section 4 of the General and Further Education Quality Assurance Act, 2001:
"**4A The sub-framework**

"(1) The Minister, after considering the advice of the Council and SAQA, must determine and publish in the Government Gazette the qualifications sub-framework for general and further education and training contemplated in the National Qualifications Framework Act.

(2) The sub-framework determined by the Minister applies to public and private education institutions.

(3) A policy framework determined by the Minister for the sub-framework in terms of this Act applies to public and private institutions unless expressly stated to the contrary."

Amendment of section 5 of Act 58 of 2001

6. Section 5 of the General and Further Education Quality Assurance Act, 2001 is hereby deleted.
"[5 Accreditation as Education and Training Quality Assurance Body

(1) The Council must be regarded as having been accredited by the South African Qualifications Authority in terms of section 5 (1) (a) (ii) (bb) of the South African Qualifications Authority Act, 1995 (Act 58 of 1995), as the body responsible for quality assurance in respect of general and further education and training at education institutions contemplated in section 2.
[Sub-s. (1) substituted by s. 31 of Act 50 of 2002.]

(2) If the Council fails to comply substantially with the accreditation requirements for an Education and Training Quality Assurance Body, the South African Qualifications Authority must-

(a) notify the Council in writing and set out the criterion which the Council failed to comply with; and

(b) specify in the notice a reasonable period within which the Council must comply with the criterion.

(3) (a) If the Council does not comply with the criterion within the period specified in the notice contemplated in subsection (2) (a), the South African Qualifications Authority must inform the Minister of the failure.

(b) The South African Qualifications Authority must submit a copy of the written notice contemplated in subsection (2) (a) to the Minister when it acts in terms of paragraph (a).

(4) Subject to the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), the Minister must request the Chairperson of the Council to give a detailed report on why the Council has not complied with the criterion.

(5) After consideration of all the relevant factors, the Minister must direct the South African Qualifications Authority and the Council as to what reasonable steps each must take to solve the problem.]

Amendment of section 6 of Act 58 of 2001

7. Section 6 of the General and Further Education Quality Assurance Act, 2001 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]** chief executive officers of the Council, the Council on Higher Education, the Quality Council for Trades and Occupations, and SAQA **[is a member by virtue of his or her office]** are members by virtue of their offices.".

Amendment of section 16 of Act 58 of 2001

8. Section 16 of the General and Further Education Quality Assurance Act, 2001 is hereby deleted and the following section substituted:
"**16 Functions of Council**

[(1) The Council must perform its functions subject to-

(a) the South African Qualifications Authority Act, 1995 (Act 58 of 1995);

(b) the National Education Policy Act, 1996 (Act 27 of 1996); and

(c) any directive prescribed to it by the Minister.

(2) The Council must meet the criteria for accreditation and perform the functions of an Education and Training Quality Assurance Body for the general and further education and training bands of the National Qualifications Framework.

(3) The Council may, with the approval of the Minister and the South African Qualifications Authority, assume its functions progressively depending on its capacity.

(4) Subject to subsection (3), the Council must-

(a) accredit providers as contemplated in Chapter 3;

(b) monitor the suitability and adequacy of standards and qualifications;

(c) ensure that providers adopt quality management systems for learner achievement;

(d) assure the quality of learner assessment at exit points;

(e) issue certificates of learner achievement in terms of standards or qualifications registered on the National Qualifications Framework;

(f) maintain an acceptable data bank and follow acknowledged recording and reporting procedures;

(g) promote quality improvement among providers; and

(h) monitor and report to the Minister on the performance of departments of education as providers, and recommend steps to rectify any deficiencies.

(5) Subject to policy determined in terms of section 3 (4) of the National Education Policy Act, 1996 (Act 27 of 1996), the Council, with regard to external assessment-

(a) must perform the external moderation of assessment of all providers and assessment bodies;

(b) must, in concurrence with the Director-General and the relevant provider, approve the publication of the results of learners if the Council is satisfied that the provider or assessment body has-

(i) conducted the assessment free from any irregularity that may jeopardize the integrity of the assessment or its outcomes;

(ii) complied with the requirements prescribed by the Council for conducting assessments;

(iii) applied the norms and standards prescribed by the Council and the South African Qualifications Authority, which a learner is required to comply with in those assessments in order to obtain a certificate; and

(iv) complied with every other condition determined by the Council; and

(c) may adjust raw marks during the standardisation process.

(6) The Council may accredit an assessment body in accordance with the criteria determined by the South African Qualifications Authority and approved by the Minister.

(7) Subject to section 74 of the Higher Education Act, 1997 (Act 101 of 1997), the Council may endorse a certificate of a learner who has complied with the minimum requirements for admission to study at a higher education institution with the approval of the South African Universities Vice-Chancellors' Association, the Committee for Technikon Principals or any other similar body recognised by the Minister, as the case may be.]

"(1) The Council is the Quality Council for General and Further Education and Training in terms of the National Qualifications Framework Act.

(2)The Council must perform its functions subject to –

(a) the National Qualifications Framework Act;

(b) the National Education Policy Act, 1996 (Act 27 of 1996);

(c) any policy determined by the Minister;

(d) any directive prescribed to it by the Minister.

(3) The Council, with the approval of the Minister, may assume its functions progressively depending on its capacity.

(4) The Council must undertake its functions –

(a) in a co-operative, consultative, open and transparent manner;

(b) in collaboration with SAQA and the other QCs; and

(c) with due regard for the statutory rights, powers and functions of departments of education, other QCs, education institutions, professional bodies recognised by SAQA in terms of the National Qualifications Framework Act, and training providers accredited in terms of the Skills Development Act, 1998 (Act 97 of 1998).

(5) The Council must advise the Minister on matters related to the sub-framework.

(6) The Council must –

(a) develop and manage the sub-framework contemplated in section 4A in accordance with a multi-year rolling strategic plan, budget and implementation framework which must –

(i) take into account the Minister's remit to SAQA contemplated in the National Qualifications Framework Act;

(ii) be prepared after appropriate consultation within the sector;

(iii) be co-ordinated with the annual state budget process; and

(iv) be submitted to the Minister for approval;

(b) with respect to levels for the sub-framework –

(i) propose level descriptors to SAQA for consideration and recommendation to the Minister; and

(ii) keep level descriptors under review in order to ensure that they remain current and appropriate;

(c) with respect to qualifications within the sub-framework-

(i) propose a policy framework to SAQA for consideration and recommendation to the Minister for the development, registration and publication of qualifications, after consultations within the sector;

(ii) ensure the development of such qualifications as are necessary for the sector, which may include appropriate measures for the assessment of learning achievement; and

(iii) recommend qualifications to SAQA for registration;

(d) with respect to assessment within the sub-framework –

(i) propose one or more policy frameworks to SAQA for consideration and recommendation to the Minister for –

(aa) assessment;

(bb) recognition of prior learning; and

(cc) credit accumulation and transfer;

(ii) accredit assessment bodies in terms of this Act;

(iii) perform moderation of external assessment in terms of this Act;

(iv) issue directives for internal assessment in terms of this Act;

(e) with respect to quality assurance within the sub-framework –

(i) propose a policy framework to SAQA for quality assurance, after consultations within the sector;

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

(iii) ensure that such quality assurance as is necessary is undertaken, including the quality assurance of learner achievement at exit points and the accreditation of private education institutions in terms of this Act;

(iv) issue certificates of learner achievement with respect to qualifications on the sub-framework;

(v) publish reports on the outcomes of quality assurance processes; and

(vi) promote quality improvement within the sector;

(f) with respect to information matters –

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

(ii) submit such data in a format determined in consultation with SAQA for recording on the national learners' records database contemplated in the National Qualifications Framework Act;

(g) with respect 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.".

Addition of new chapter of Act 58 of 2001

9. The General and Further Education Quality Assurance Act, 2001 is hereby amended by the addition after section 16 of the following new chapter number and title:

"**CHAPTER 3A**

ASSESSMENT (ss. 17A-21)"

Amendment of Act 58 of 2001 by the addition of a new section 17A

10. The following new section 17A is hereby added after section 16 of the General and Further Education Quality Assurance Act, 2001:

"**17A External assessment**

(1) The Council, with respect to external assessment –

(a) must accredit an assessment body other than a department of education in accordance with the policy framework determined by the Minister if it complies with the requirements for accreditation;

(b) must perform the external moderation of assessment of all assessment bodies and education institutions;

(b) must, with the consent 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 institution has –

(i) conducted the assessment free from any irregularity that may jeopardize 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 such assessments in order to obtain a certificate; and

(iv) complied with every other condition determined by the Council; and

(d) may adjust raw marks during the standardisation process.

(2) Subject to section 74 of the Higher Education Act, 1997 (Act 101 of 1997), the Council may endorse a certificate of a learner who has complied with the minimum requirements for admission to study at a higher education institution with the approval of the South African

Universities Vice-Chancellors' Association, the Committee for Technikon Principals or any other similar body recognised by the Minister, as the case may be.".

Amendment of section 18 of Act 58 of 2001

10. Section 18 of the General and Further Education Quality Assurance Act, 2001 is hereby deleted to the extent indicated and the following substituted:

"**[18 Functions of provider or assessment body with regard to external assessment**

In respect of an external assessment and subject to policy determined in terms of section 3 (4) of the National Education Policy Act, 1996 (Act 27 of 1996), an assessment body-]

18 Functions of assessment body with regard to external assessment

In respect of an external assessment and subject to the Minister's policy determined in terms of this Act, an assessment body –]".

Amendment of title of chapter 3 of Act 58 0f 2001

11. The title of chapter 3 of Act 59 of 2001 is amended by the substitution for the title of the following title:
"**[ACCREDITATION OF PROVIDERS] PRIVATE EDUCATION INSTITUTIONS**"

Amendment of Part 1 of Chapter 3 of Act 58 of 2001

12. Part 1 of chapter 3 of the General and Further Education Quality Assurance Act, 2001 is hereby amended by the deletion of the title and section 22:

"**[Part I**
Public providers (s 22)

22. Accreditation of provincial education departments
(1) Every department responsible for education in a province must be regarded as having been accredited as a public provider by the Council.
(2) The Council must develop criteria for accreditation to which a department responsible for education in a province must adhere and submit them to the Minister for approval.
(3) The Minister must determine policy in respect of such criteria in terms of the National Education Policy Act, 1996 (Act 27 of 1996).

(4) The policy contemplated in subsection (3) is binding on any department responsible for education in a province and on public education institutions established in terms of legislation referred to in section 2.
(5) The Council must monitor compliance with the policy contemplated in subsection (3).
(6) If a department responsible for education in a province fails to comply substantially with the policy contemplated in subsection (3), the Council must-

(a) notify such department in writing of its failure and set out the policy which the department failed to comply with; and

(b) specify in the notice a reasonable period within which the department must comply with the policy.

(7) (a) If the department does not comply with the policy within the period specified in the notice contemplated in subsection (6), the Council must inform the Minister of the failure.

(b) The Council must submit a copy of the written notice contemplated in subsection (6) (a) to the Minister when it acts in terms of paragraph (a).

(8) Subject to the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), and section 8 of the National Education Policy Act, 1996 (Act 27 of 1996), the Minister must request the member of the executive council responsible for education in the province in question to give a detailed report on why the provincial education department has not complied with the policy.
(9) After consideration of all the relevant factors, the Minister must direct the Council and the provincial education department as to what reasonable steps each must take to solve the problem.]"

Amendment of Part 2 of Chapter 3 of Act 58 of 2001

13. Part 2 of Chapter 3 of the General and Further Education Quality Assurance Act, 2001 is hereby amended by the deletion of the title.
"**[Part 2**
Private providers]"

Amendment of section 23 of Act 58 of 2001

14. Section 23 of the General and Further Education Quality Assurance Act, 2001 is hereby amended by the substitution for section 23 of the following section:
"(1) The Council must develop **[criteria]** a policy framework for accreditation of private providers and submit **[them]** it to SAQA for consideration and recommendation to the Minister.

(2) The Minister must determine **[policy in respect of such criteria in terms of the National Education Policy Act, 1996 (Act 27 of 1996)]** regulations in respect of such policy.

(3) The **[policy]** regulations contemplated in subsection (2) **[is]** are binding on all private **[providers]** education institutions.

(4) Any person who is required to register as –

(a) an independent school in terms of the South African Schools Act, 1996 (Act 84 of 1996);

(b) a private further education and training **[institution]** college in terms of the Further Education and Training **[Act, 1998 (Act 98 of 1998)]** Colleges Act (Act 16 of 2006); or

(c) a private centre in terms of the Adult Basic Education and Training Act, 2000 (Act 52 of 2000),

must apply to the Council **[for accreditation in the manner determined by the Council]** in terms of the regulations.".

Amendment of section 24 of Act 58 of 2001

15. Section 24 of the General and Further Education and Training Quality Assurance Act, 2001 is hereby amended by the substitution for section 24 of the following section:

"**24 Notification of accredited programmes**

(1) The Council must within 14 days of accrediting **[the]** programmes in terms of the regulations **[as]** contemplated in section 23 –

(a) in the case of a **[provider]** private college contemplated in section 23 (4) (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) respectively, the relevant head of department.

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

Amendment of section 25 of Act 58 of 2001

16. Section 25 of the General and Further Education and Training Quality Assurance Act, 2001 is hereby amended by the substitution for section 25 of the following section:

"**25 Failure to comply with policy**

(1) The Council must monitor private **[providers]** education institutions to ensure compliance with the **[policy]** regulations contemplated in section 23(2).

(2) If a private provider 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 submissions made **[by the provider]** to it; and

(b) may affirm the accreditation of the private **[provider]** education institution or withdraw the accreditation as from a date specified by the Council.

(4) Before the Council withdraws an accreditation, it must notify the head of the department or registrar concerned, as the case may be, contemplated in section 24(1) of its intention to withdraw the accreditation and of the date of the intended withdrawal."

Amendment of section 28 of Act 58 of 2001

17. Section 28 of the General and Further Education Quality Assurance Act, 2001 is hereby amended by the deletion of subsection (2) and the amendment of subsection (3) as follows:
"**[(2) The Council may delegate any quality promotion and quality assurance which may be performed in terms of this Act to any appropriate Education and Training Quality Assurance Body.]**

(3) A delegation or assignment under subsection (1) **[or (2)]** –".

Amendment of section 29 of Act 58 of 2001

18. Section 29 of the General and Further Education Quality Assurance Act, 2001 is hereby amended by the addition after subsection (4) of a new subsection (5):
"(5) Any policy, policy framework or regulation determined by the Minister in respect of the functions of Umalusi or a related matter prior to the promulgation of the General and Further Education and Training Quality Assurance Amendment Act, 2008 (Act .... of 2008) remain in effect until replaced or repealed by the Minister by notice in the Government Gazette."

GENERAL AND FURTHER EDUCATION AND TRAINING QUALITY ASSURANCE AMENDMENT BILL, 2008

EXPLANATORY MEMORANDUM

1. This Bill reflects consequential amendments made to the Higher Education Act 101 of 1997 as a result of the introduction of the National Qualifications Framework Bill on the Legislative Programme of Parliament for 2008. This amendment Bill together with the NQF Bill and the General and Further Education and Training Quality Assurance Amendment Bill will be published as a package and must be read in conjunction with one another. The reasons and objects of this amendment Bill will be dealt with in the Explanatory Memorandum attached to the NQF Bill.

2. OTHER DEPARTMENTS OR BODIES CONSULTED

The Department of Labour was consulted. After publication for comment, the Bill will be referred to the National Treasury and the Department of Social Development. The Department will also supply stakeholders with copies of the Bill so that they may comment on it.

3. FINANCIAL IMPLICATIONS FOR THE STATE

The Bill merely provides for amendments to existing legislation and therefore, no additional costs are foreseen.

4. PARLIAMENTARY PROCEDURE

4.1 The State Law Advisers and the Department of Education's Legislative Services Section are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76 of the Constitution.

4.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act 41 of 2003, seeing that it does not contain provisions pertaining to customary law or to the customs of traditional communities.

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