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Kaapstad,

THE PRESIDENCY

No. 21 17 January 2017

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

Act No. 9 of 2016: Higher Education Amendment Act, 2016

DIE PRESIDENSIE

No. 21 17 Januarie 2017

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

Wet No 9 van 2016: Wysigingswet op Hoër Onderwys, 2016



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 16 January 2017)

ACT

To amend the Higher Education Act, 1997, so as to provide for the insertion of new definitions; to provide for the determination of transformation policy and oversight mechanisms for the public higher education system; to provide for the development of articulation and recognition of prior learning frameworks across the education system; to provide for new institutional types; to provide for the conversion of public higher education institutions; to provide for the powers of the council of a public higher education institution to invest funds; to provide further for the issuing of Ministerial directives; to provide for indemnification of an independent assessor; to provide for the indemnification and termination of the term of office of an administrator; to provide for different categories of registration of private higher education institutions and the associated rights to extend the power to award diplomas, certificates and confer degrees to private higher education institutions; to provide for the withdrawal and revocation of qualifications by public or private higher education institutions; 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, as amended by section 1 of Act 44 of 1999, section 1 of Act 54 of 2000, section 1 of Act 63 of 2002, section 1 of Act 39 of 2008 and section 1 of Act 26 of 2010

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1. Section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997) (herein referred to as the principal Act), is hereby amended—

- (a) by the substitution for the definition of “auditor” of the following definition:
 “ **‘auditor’** means a person registered in terms of section 37 of the Auditing Professions Act, 2005 (Act No. 26 of 2005);”
- (b) by the insertion after the definition of “Department of Education” of the following definition:
 “ **‘directive’** means the written communication from the Minister to the council of a higher education institution or the council of a national institute for higher education, as applicable, contemplated in section 42;”
- (c) by the deletion of the definition of “college”;

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- (d) by the insertion after the definition of “college” of the following definitions:
 “**‘Constitution’** means the Constitution of the Republic of South Africa, 1996;
‘convert’ means the process of conversion as contemplated in section 20(1) in terms of which an identified higher education institution or subdivision, faculty, school, department, section or component of a public higher education institution or education institution becomes a juristic or new juristic person, as the case may be, on a date specified by the Minister in the notice contemplated in section 20(1);”;
- (e) by the substitution for the definition of “foreign juristic person” of the following definition:
 “**‘foreign juristic person’** means a person that—
 (a) has the legal authority to provide higher education in its country of origin;
 (b) is registered or established as a juristic person in terms of a law of a foreign country; and
 (c) is entitled to be registered as an external company in terms of section 23 of the Companies Act, 2008 (Act No. 71 of 2008);”;
- (f) by the deletion of the definition of “HEQF”;
- (g) by the insertion after the definition of “HEQF” of the following definition:
 “**‘HEQSF’** means the sub-framework for higher education as contemplated in section 7(d) of the National Qualifications Framework Act;”;
- (h) by the substitution for the definition of “higher education” of the following definition:
 “**‘higher education’** means all learning programmes which must be registered in accordance with the provisions of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), as a qualification or part-qualification on the HEQSF, regardless of whether such programmes are in fact registered or not on the sub-framework;”;
- (i) by the insertion after the definition of “higher education” of the following definition:
 “**‘higher education college’** means a higher education institution providing higher education, but with a limited scope and range of operations and which meets the criteria for recognition as a higher education college as prescribed by the Minister under section 69(d) and—
 (a) established, merged, converted, deemed to have been established or declared as a public higher education college; or
 (b) registered as a private higher education college, in terms of this Act;”;
- (j) by the substitution for paragraph (a) of the definition of “higher education institution” of the following paragraph:
 “(a) converted, merged, established or deemed to be established as a public higher education institution under this Act; or”;
- (k) by the insertion after the definition of “incorporation of a subdivision” of the following definition:
 “**‘independent assessor’** means the person appointed under section 44;”;
- (l) by the substitution for the definition of “local juristic person” of the following definition:
 “**‘local juristic person’** means a person established as a juristic person in South Africa in terms of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008);”;
- (m) by the insertion after the definition of “Minister” of the following definition:
 “**‘national institute for higher education’** means any institute for higher education established as a national institute for higher education in terms of Chapter 6A;”;
- (n) by the insertion after the definition of “organ of the state” of the following definitions:
 “**‘PAJA’** means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);”;

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- (o) by the substitution for the definition of “public higher education institution” of the following definition:
 “**public higher education institution**’ means any higher education institution that is established, deemed to be established, converted or declared as a public higher education institution under this Act;”;
- (p) by the insertion after the definition of “private higher education” of the following definition:
 “**provide higher education**’ means the performing of any or all of the following functions—
 (a) registering of students for higher education;
 (b) taking responsibility for the provision and delivery of a higher education curriculum;
 (c) assessing a student’s performance in a higher education programme; and
 (d) conferring a higher education qualification.”;
- (q) by the deletion of the definition of “to provide higher education”;
- (r) by the insertion after the definition of “registrar” of the following definition:
 “**relative**’ in relation to any person, means—
 (a) the spouse or partner of that person;
 (b) anybody related to that person or his or her spouse within the third degree of consanguinity or affinity; or
 (c) any adoptive child within the first degree of consanguinity.”;
- (s) by the insertion after the definition of “senate” of the following definition:
 “**spouse**’ means a person’s partner in a marriage—
 (a) recognised as such in terms of the laws of the Republic or a foreign country; or
 (b) concluded in terms of religious rites.”;
- (t) by the deletion of the definition of “technikon”;
- (u) by the substitution for the definition of “university” of the following definition:
 “**university**’ means a higher education institution providing higher education and with a scope and range of operations, including undergraduate and postgraduate higher education programmes, research and community engagement, which meets the criteria for recognition as a university as prescribed by the Minister under section 69(d) and—
 (a) established, merged, converted, deemed to have been established or declared as a public university; or
 (b) registered as a private university, in terms of this Act.”;
- (v) by the insertion after the definition of “university” of the following definition:
 “**university college**’ means a higher education institution providing higher education, but with a limited scope and range of operations and which meets the criteria for recognition as a university college as prescribed by the Minister under section 69(d) and—
 (a) established, merged, converted, deemed to have been established or declared as a public university college; or
 (b) registered as a private university college, in terms of this Act.”.

Substitution of section 2 of Act 101 of 1997

2. The following section is hereby substituted for section 2 of the principal Act:

“Application and interpretation**2. This Act—**

- (a) applies to higher education and related matters in the Republic; and
 (b) prevails, subject to section 34 of the National Qualifications Framework Act, over any provision of other legislation that regulates matters referred to in paragraph (a) and that is materially inconsistent with the objects, or a specific provision, of this Act.”.

Amendment of section 3 of Act 101 of 1997, as amended by section 2 of Act 54 of 2000

3. Section 3 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The Minister must, taking into consideration the provisions of the Constitution and after consulting the CHE, determine policy on higher education, which policy includes, but is not limited to—
- (a) transformation goals and oversight mechanisms for these goals;
 - (b) articulation and recognition of prior learning frameworks across the education system; and
 - (c) criteria for recognition as a university, university college, or higher education college.”.

Amendment of section 7 of Act 101 of 1997, as amended by section 1 of Act 23 of 2001 and substituted by section 3 of Act 39 of 2008

4. Section 7 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The CHE is responsible for the implementation of the [HEQF] HEQSF.”.

Amendment of section 20 of Act 101 of 1997, as amended by section 4 of Act 23 of 2001 and section 3 of Act 63 of 2002

5. Section 20 of the principal Act is hereby amended—

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

- “(1) The Minister may, after consulting the CHE, by notice in the *Gazette* and from money appropriated for this purpose by Parliament—
- (a) establish a public university, public university college or a public higher education college [technikon or college]; or
 - (b) with the concurrence of the council of a public higher education institution, convert that institution, or a subdivision of that institution, into a public university or a public university college.”;

(b) by the insertion after subsection (1) of the following subsection:

- “(2) The Minister may, after consultation with the CHE and with the concurrence of the governance body of a private education institution, by notice in the *Gazette* and from money appropriated for this purpose by Parliament, declare an institution, or subdivision of an institution to be a public university, public university college or public higher education college.”;

(c) by the substitution for subsection (4) of the following subsection:

- “(4) Every public higher education institution established, merged, converted, deemed to have been established or declared as a public higher education institution under this Act, is a juristic person.”; and

(d) by the insertion of the following subsection after subsection (5):

- “(5A) The Minister may, in the notice contemplated in subsection (1) and with the concurrence of the council of another public higher education institution, determine—
- (a) certain functions which the newly established or converted public higher education institution must perform under the supervision of the other public higher education institution; and
 - (b) the terms, conditions and period applicable to such supervision.”.

Amendment of section 21 of Act 101 of 1997, as amended by section 5 of Act 23 of 2001 and section 4 of Act 63 of 2002

6. Section 21 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively: 5
- “(a) a university, **[technikon]** university college or higher education college; or
- (b) an incorporated subdivision of a university, **[technikon]** university college or higher education college.”; and
- (b) by the substitution in subsection (2) for paragraphs (a), (b) and (c) of the following paragraphs, respectively: 10
- “(a) the date on which the education institution becomes a university, **[technikon]** university college or higher education college or a subdivision of a university, **[technikon]** university college or higher education college, as the case may be; 15
- (b) the name of the university, **[technikon]** university college or higher education college; and
- (c) the physical location and the official address of the university, **[technikon]** university college or higher education college.”.

Amendment of section 23 of Act 101 of 1997, as amended by section 5 of Act 23 of 2001 and section 6 of Act 63 of 2002 20

7. Section 23 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) Before making a decision under subsection (1), the Minister must—
- (a) give written notice to the councils of the public higher education institutions concerned of the intention to merge the institutions and the reasons for the intended merger; 25
- (b) publish a notice giving the reasons for the intended merger in one or more newspapers circulating in the area in which the public higher education institutions concerned are situated; 30
- (c) give the councils of the public higher education institutions concerned and any other interested persons an opportunity to make representations within at least 90 days of the date of the notice referred to in paragraph (b); and
- (d) consider the representations contemplated in paragraph (c).”.

Amendment of section 27 of Act 101 of 1997, as amended by section 8 of Act 23 of 2001, section 7 of Act 63 of 2002, section 1 of Act 21 of 2011 and sections 5A and 5B of Act 23 of 2012 35

8. Section 27 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection: 40
- “(2) Subject to the policy determined by the Minister as contemplated in section 3, the council, with the concurrence of the senate, must—
- (a) determine the language policy of **[a]** the public higher education institution **[and must]**concerned;
- (b) publish the policy; and
- (c) make **[it]** the policy available on request.”. 45
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) The council, after consultation with the students' representative council, must provide for and establish a suitable structure to advise on the policy for student support services within the public higher education institution.”; 50
- (c) by the substitution for subsection (5B) of the following subsection:
- “(5B) Any person who has been a member of a council of a public higher education institution—
- (a) under circumstances contemplated in sections **[49A(4)(a)]** 49B(1)(a) and 49E; and 55

- (b) **[who is implicated]** against whom an independent assessor has made an adverse finding in the report **[of the independent assessor]** contemplated in section 47(1)(b), [is] shall not be eligible for appointment, election, re-appointment or re-election as a member of a council of [a] any public higher education institution;; 5
- (d) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:
 “A member of a council or a member of a committee of a council or a person with delegated functions in terms of section 68(2)—”; 10
- (e) by the substitution in subsection (7) for paragraphs (b) and (c) of the following paragraphs, respectively:
 “(b) must participate in the deliberations of the council or the committee of the council, or exercise any delegated function in the best interests of the public higher education institution concerned; 15
 (c) must before he or she assumes office, and annually for as long as he or she continues to hold such office, declare any business, commercial or financial activities undertaken for financial gain that may raise a conflict or a possible conflict of interest with the public higher education institution concerned;”; 20
- (f) by the substitution in subsection (7)(e) for subparagraphs (ii) and (iii) of the following subparagraphs, respectively:
 “(ii) may not have a direct or indirect financial, personal, or other interest in any matter to be discussed at a meeting, or in regard to which he or she is to make a decision in terms of a delegated function, and which entails or may entail a conflict or possible conflict of interest with the public higher education institution concerned; 25
 (iii) must, before the meeting of the council or the committee concerned and in writing, inform the chairperson of that meeting of [that] the existence of a conflict or possible conflict of interest.”; 30
- (g) by the substitution for subsection (7A) of the following subsection:
 “(7A) Any person may, in writing, inform the chairperson of a meeting of the council or a committee of the council concerned, before [the] that meeting, of a conflict or possible conflict of interest of a member of the council or of a committee of the council with the public higher education institution concerned of which such person may be aware.”; 35
- (h) by the substitution for subsection (7C) of the following subsection:
 “(7C) **[A]** In the event that any member of a committee of the council or any employee, with delegated functions in terms of section 68(2), has a conflict or possible conflict of interest as contemplated in this section in respect of a matter to be considered, the committee or the employee concerned may not take part in any consideration or a decision on [a] the matter [considered by it if any member of the committee has a conflict of interest contemplated in this section] but must refer the matter for decision by council, having noted the member’s or the employee’s interest in the matter;”; 40 45
- (i) by the substitution in subsection (7E) for paragraph (a) of the following paragraph:
 “(a) having regard to the provisions of [sections 27(9) and (7A) to (7D)] subsections (7A) to (7D), (9) and section 34 and after consultation with the institutional forum, adopt a code of conduct to which all the members of the council, all the members of committees of the council and all other persons who exercise functions of the council in terms of delegated authority must subscribe in writing;”; and 50 55
- (j) by the substitution for subsection (9) of the following subsection:
 “(9) If a council resigns as contemplated in subsection (8) a new council must be constituted in terms of the institutional statute of the public higher education institution concerned by the administrator appointed in accordance with section 49G within a period of six months following the administrator’s appointment.”; 60

Amendment of section 31 of Act 101 of 1997, as amended by section 11 of Act 23 of 2001 and section 8 of Act 63 of 2002

9. Section 31 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) The council must—

- (a) consider the advice given by the institutional forum; and
(b) provide written reasons if the advice is not accepted.”.

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Amendment of section 34 of Act 101 of 1997, as amended by section 2 of Act 21 of 2011

10. Section 34 of the principal Act is hereby amended— 10

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

“(2) Notwithstanding subsection (1) the principal, any vice-principal and the academic employees of the public higher education institution must be appointed by the council after consultation with the senate;”;

(b) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 15

“(a) (i) before he or she assumes office; and
(ii) whenever a new interest arises,
declare any business, commercial or financial activities undertaken for financial or other gain that may raise a conflict or a possible conflict of interest with the public higher education institution concerned; and”;

(c) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words: 20

“An employee may not conduct business directly or indirectly with the public higher education institution at which he or she is employed that entails or may entail a conflict of interest with the public higher education institution unless the council of such public higher education institution is of the opinion, and takes a decision, that—”; and

(d) by the substitution for subsections (6) and (7) of the following subsections, respectively: 30

“(6) An employee may not on behalf of [that] the public higher education institution concerned contract with himself or herself or his or her relative or any entity in which [he or she] the employee or any relative has a direct or indirect financial [or], personal, fiduciary or other interest. 35

(7) Contracting referred to in subsection (6) relates to conduct that is aimed at receiving any direct or indirect financial, personal, fiduciary or other gain that does not form part of the employment relationship contemplated in subsection (1).”.

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Repeal of sections 38A to 38O of Act 101 of 1997

11. Sections 38A to 38O of the principal Act are hereby repealed.

Amendment of section 39 of Act 101 of 1997, as amended by section 4 of Act 55 of 1999

12. Section 39 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsections: 45

“(3A) If the council of a public higher education institution fails to comply with any—

- (a) provision of this Act under which an allocation from money appropriated by Parliament is paid to the institution; or
(b) condition subject to which any such allocation is paid to such institution, the Minister may in writing request such council to comply with the provision or condition within a specified period. 50

(3B) If such council thereafter fails to comply with the provision or condition within the specified period as contemplated in subsection (3A), the Minister— 55

- (a) may withhold payment of any commensurate portion of any allocation appropriated by Parliament in respect of the public higher education institution concerned; and
 - (b) must in writing inform the council concerned of his decision.
- (3C) Before acting under subsection (3B), the Minister must—
- (a) give notice in writing to the council of the public higher education institution concerned of the intention so to act;
 - (b) give such council a reasonable opportunity to make representations; and
 - (c) consider such representations.
- (3D) The Minister must table a report in Parliament, regarding any action taken under subsection (3B), within a period of 30 days of the action.”

Amendment of section 41 of Act 101 of 1997, as amended by section 5 of Act 54 of 2000 and substituted by section 10 of Act 63 of 2002

13. Section 41 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
 - “**Records to be kept, external audit and information to be furnished by council**”;
 - (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 - “(b) in respect of the public higher education institution concerned as a whole—
 - (i) ensure the implementation of an external audit in accordance with accepted audit principles and standards on an annual basis; and
 - (ii) keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions **[of the public higher education institution as a whole, of its substructures and of other bodies operating under its auspices]**”; and
 - (c) by the substitution for subsection (2) of the following subsection:
 - “(2) The council of a public higher education institution must[, **in respect of the preceding year and**] by a date and in the manner prescribed by the Minister, provide the Minister with such information, in such format, as the Minister [**prescribes**] may prescribe.”.

Insertion of heading in Act 101 of 1997

14. The following heading is inserted after section 41 of the principal Act:

**“CHAPTER 6
MINISTERIAL INTERVENTIONS IN HIGHER EDUCATION
INSTITUTIONS”.**

Repeal of section 41A of Act 101 of 1997

15. Section 41A of the principal Act is hereby repealed.

Substitution of section 42 of Act 101 of 1997

16. The following section is hereby substituted for section 42 of the principal Act:

“Ministerial directive

- 42.** (1) The Minister may issue a directive to the council of a public higher education institution if the Minister, after having complied with the provisions of subsection (3), has reasonable grounds to believe that the Council or the management of that public higher education institution—
- (a) is involved in financial impropriety or the public higher education institution is being otherwise mismanaged;
 - (b) is unable to perform its functions effectively;

- (c) has acted in an unfair, discriminatory or wrongful manner towards a person to whom it owes a duty under this Act or any other law;
- (d) has failed to comply with any law;
- (e) has failed to comply with any directive given by the Minister in terms of section 39; or
- (f) has obstructed the Minister or a person authorised by the Minister in performing a function in terms of this Act.
- (2) A directive contemplated in subsection (1) must state—
- (a) the nature and extent of the deficiency;
- (b) the negative impact of the deficiency on the institution and or higher education in an open and democratic society;
- (c) the steps which should be taken to remedy the situation;
- (d) a reasonable period within which the steps contemplated in subparagraph (c) or any other steps contemplated by the higher education institution and approved by the Minister, must be taken; and
- (e) the manner in which the council of the public higher education institution concerned must provide written information to the Minister in respect of compliance with the directive.
- (3) Before making a decision under subsection (1), the Minister must—
- (a) give notice to the council of the intention to issue a directive;
- (b) provide the council with the reasons for the intended directive;
- (c) give the council a reasonable opportunity to make representations; and
- (d) consider the representations contemplated in paragraph (c).
- (4) In the event that the Minister has reasonable grounds to believe that the council of the public higher education institution concerned has failed to comply with the directive contemplated in this section within the stated period, or the steps taken, fail to remedy the deficiency within a reasonable period of time, the Minister may, depending on the circumstances—
- (a) appoint an independent assessor in accordance with section 44; or
- (b) appoint an administrator in accordance with section 49B; or
- (c) take any other appropriate action allowed by this Act or any other law.”.

Deletion of the heading of Act 101 of 1997

17. The heading “**CHAPTER 6 INDEPENDENT ASSESSOR**” after section 42 of the principal Act is hereby deleted.

Amendment of section 44 of Act 101 of 1997

18. Section 44 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “[The] Notwithstanding any other provision of this Act, the Minister may, from the independent assessment panel contemplated in section 43, appoint an assessor who is independent in relation to the public higher education institution concerned, to conduct an investigation at the public higher education institution—”;
- (b) by the insertion after subsection (1) of the following subsection:
- “(1A) The Minister must publish a notice on the appointment of the independent assessor contemplated in subsection (1) in the *Gazette* as soon as possible.”; and
- (c) by the substitution for subsection (2) of the following subsection:
- “(2) The council of the public higher education institution, employees and students of the public higher education institution concerned and any person affected by the investigation must, subject to relevant legal provisions and practice, assist and co-operate with the independent assessor in the performance of his or her functions in [terms of] accordance with section 47.”.

Substitution of section 45 of Act 101 of 1997

19. The following section is hereby substituted for section 45 of the principal Act:

“Cases where independent assessor may be appointed

45. **[An]** The Minister may appoint an independent assessor [may be appointed] under section 44 if— 5
- (a) the council of a public higher education institution requests **[the]** such appointment in writing; [or]
- (b) (i) circumstances arise at a public higher education institution that—
- [(i)](aa)** involve financial or other maladministration of a 10
serious nature; or
- [(ii)](bb)** seriously undermine the effective functioning of the
public higher education institution; **[or]; and**
- [(c)](ii)** the council of the public higher education institution has failed 15
to resolve such circumstances; **[and]**
- (c) the circumstances contemplated in section 42(4) arise; and
- (d) the appointment is in the best interest of the public higher education institution concerned and in the interests of higher education in an open and democratic society.”.

Amendment of section 45A of Act 101 of 1997, as inserted by section 9 of Act 23 of 2012

20. Section 45A of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) (a) The independent assessor has the power on receipt of a 25
complaint or an allegation or on the ground of information that has come to his or her knowledge and which **[points]** amounts to conduct such as referred to in section 45, to conduct an investigation for the purpose of determining—

- (i) the merits of the complaint, allegation or information; and 30
- (ii) the manner in which the matter concerned should be dealt with.

(b) The format and the procedure to be followed in conducting any investigation **[shall]** must be determined by the independent assessor with due regard to the PAJA, substantive fairness and the circumstances of the case. 35

(c) The independent assessor may direct that any category of persons or all persons whose presence is not desirable **[shall]** may not be present at any proceedings pertaining to any investigation or part thereof: Provided that in the event that the rights, interests or potential interests of a person so excluded may be affected by such proceedings, all information related to such excluded person obtained during the proceedings concerned must be made available in writing to him or her within a period not exceeding 14 calendar days after such proceedings in order to enable him or her to make written representations to the assessor if he or she so wishes. 40 45

(2) Notwithstanding anything to the contrary contained in any law, no person may disclose to any other person the contents of any document in the possession of the independent assessor or the record of any evidence given to the independent assessor during an investigation, unless the independent assessor determines otherwise: Provided that such document or evidence must be made available— 50

- (a) for purposes of, or during, proceedings before a court, tribunal or forum; and
- (b) to a person, or his or her union representative or legal representative, in the event that the rights, interests or potential interests of that 55
person may be affected by such document or evidence.”;

- (b) by the substitution for subsections (4) and (5) of the following subsections, respectively:

“(4) (a) For the purposes of conducting an investigation the independent assessor may in writing direct any member of the council, employee, student or service provider of the higher education institution or any other person or representative of an entity with a business or other relationship with the institution to submit an affidavit or affirmed declaration or to appear before him or her to— 5

- (i) give evidence; or **[to]**
 (ii) produce any document— 10
 (aa) in his or her possession; or
 (bb) under his or her control,

which has a bearing on the matter being investigated, and may **[examine]** interview such person.

(b) The independent assessor or any person contemplated in section 48 and duly authorised thereto by the independent assessor may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on a matter being₂ or to be₂ investigated. 15

(5) A **[direction]** directive referred to in subsection (4) must contain particulars of the matter in connection with which the person concerned is required to appear before the independent assessor and **[shall]** must be signed by the independent assessor and served on the person either by **[a]**— 20

- (a) registered **[letter sent through the post]** mail; or 25
 (b) [delivered] delivery executed by a person contemplated in section 48₂,

to the concerned person's last known address as registered with the public higher education institution.”; and

- (c) by the substitution for subsections (7) to (9) of the following subsections, respectively: 30

“(7) The independent assessor or any person contemplated in section 48—

(a) must be appointed as a commissioner of oaths in accordance with the relevant Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963), prior to administering an oath to, or accepting an affirmation from; and 35

(b) may administer an oath to, or accept an affirmation from, any [such] person contemplated in subsection (6).

(8) (a) If it appears to the independent assessor during the course of an investigation that any person is **[being]** implicated in the matter being investigated and that— 40

- (i) such implication may be to the detriment of that person; or
 (ii) **[that]** an adverse finding pertaining to that person may result, the independent assessor must give such a person notice of the detrimental implication or possible adverse finding, as the case may be, and provide such person with all the relevant documentation and evidence affecting the rights, interests or potential interests of such person obtained during the investigations conducted by the independent assessor and afford such person **[or the council an]** the opportunity to respond in connection therewith, in **[any]** a manner that **[may be]** is expedient under the circumstances. 50

(b) If such implication forms part of the evidence submitted to the independent assessor during the proceedings contemplated in section 45A(1)(c) or during an appearance in terms of the provisions of subsection (4), such person must be afforded [an] the opportunity to be heard in connection therewith by way of giving evidence. 55

(9) The independent assessor **[may]** must allow a legal representative or a representative from a trade union of which a person is a member to assist the person contemplated in subsection (1)(c), (2), (4) or (8) **[, in accordance with section 3 (5) of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)].”.** 60

Substitution of section 45B of Act 101 of 1997

21. The following section is hereby substituted for section 45B of the principal Act:

“Entering upon premises by independent assessor

45B. The independent assessor [~~shall be~~] is competent to enter, or to authorise another person contemplated in section 48 to enter, any building or premises of the public higher education institution under investigation in terms of section 45 and to make such investigation or assessment as he or she may deem necessary, and to copy any documents on those premises which in his or her opinion have a bearing on the investigation and to hand a signed inventory of such copied documents to the person or persons to whom the custody of the documents is entrusted.”

Amendment of section 47 of Act 101 of 1997, as amended by section 3 of Act 21 of 2011 and substituted by section 10 of Act 23 of 2012

22. Section 47 of the principal Act is hereby amended—

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

“(c) suggest in the report appropriate measures and provide the reasons why the measures are needed.”;

(b) by the insertion of the following subsection after subsection (1):

“(1A) The Minister may, on good cause shown, at the request of the independent assessor extend the period in subsection (1).”;

(c) by the substitution for subsection (2) of the following subsection:

“(2) The Minister must [as soon as practicable] within 90 days of receiving the report referred to in subsection (1), provide a copy of the report [referred to in subsection (1)] to the council concerned, table the report before the National Assembly and publish such report in the Gazette.”

Substitution of section 49 of Act 101 of 1997

23. The following section is hereby substituted for section 49 of the principal Act:

“Remuneration and allowances of independent assessor

49. The Minister, with the [~~concurrence~~] written approval of the Minister of Finance, may determine the remuneration and allowances to be paid to an independent assessor and any other person appointed under section 48.”

Substitution of section 49A of Act 101 of 1997

24. The following section is hereby substituted for section 49A of the principal Act:

“Indemnification of independent assessor

49A. The Minister shall be liable for any loss or damage suffered by another person, which arose from an act or omission of an independent assessor as a claim against the State and may not recover such loss from the independent assessor, provided that the independent assessor shall forfeit this cover if he or she, with regard to the act or omission, is liable in law and guilty of the following acts:

(a) Intentionally exceeded his or her powers;

(b) made use of alcohol or drugs;

(c) did not act in the course and scope of his or her terms of reference;

(d) acted recklessly or intentionally;

- (e) without prior consultation with the State Attorney, made an admission that was detrimental to the best interest of higher education; or
- (f) failed to comply with or ignored standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim, excluding damage arising from the use of a vehicle for official purposes; and
- (g) in the case of a loss, damage or claim arising from the use of a vehicle for official purposes, the independent assessor—
 - (i) used the vehicle without authorisation;
 - (ii) did not possess a valid driver's licence or other appropriate licence;
 - (iii) did not use the vehicle in the interest of higher education;
 - (iv) allowed unauthorised persons to handle the vehicle; or
 - (v) deviated materially from the official journey or route without prior authorisation.”.

Amendment of section 49B of Act 101 of 1997, as inserted by section 11 of Act 23 of 2012

25. Section 49B of the principal Act is hereby amended—

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

“(1) Notwithstanding any other provision of this Act, the Minister may **[after consultation with the council of a public higher education institution, if practicable,]** appoint a person as administrator **[to take over the management, governance and administration of the public higher education institution and to perform the functions of the public higher education institution]**, if any of the following circumstances occur:

 - (a) An audit of the financial records of a public higher education institution or the report by an independent assessor or any other report or information reveals financial or other maladministration of a serious nature or serious undermining of the effective functioning of the public higher education institution;
 - (b) **[any other circumstances arising that reveal financial or other maladministration of a serious nature or the serious undermining of the effective functioning of the public higher education institution; or]** the circumstances contemplated in section 42(4) arise;
 - (c) the council of the public higher education institution requests such appointment; or
 - (d) if the council of the public higher education institution is deemed to have resigned as contemplated in section 27(8).”;
- (b) by the insertion after subsection (1) of the following subsection:

“(1A) The Minister must, before making an appointment under subsection (1) on the grounds listed in section (1)(a) or (b)—

 - (a) give written notice that complies with section 42(3) to the council of the higher education institution concerned of his or her intention to make such an appointment;
 - (b) provide the council of the higher education institution concerned with the reasons for the appointment;
 - (c) give the council of the higher education institution a reasonable opportunity to make written representations; and
 - (d) consider the representations contemplated in paragraph (c);”; and
- (c) by the substitution for subsection (2) of the following subsection:

“(2) The Minister may only act in terms of subsection (1)(a) or (b) if he or she has reason to believe that the appointment of an administrator is in the best interest of the public higher education institution concerned and of higher education in an open and democratic society.”.

Insertion of section 49BA in Act 101 of 1997

26. The following section is hereby inserted in the principal Act after section 49B:

“Publication of appointment of administrator

49BA. The Minister must, when appointing an administrator as contemplated in section 49B or 49G, by notice in the *Gazette* publish— 5

- (a) the name of the public higher education institution concerned;
- (b) the name, address and other contact details of the administrator so appointed;
- (c) the period of appointment as contemplated in section 49B(3)(a) or 49G; 10
- (d) the period of extension as contemplated in section 49B(3)(b) or 49G, as the case may be and if applicable; and
- (e) any other information that the Minister may deem necessary.”.

Substitution of section 49D of Act 101 of 1997

27. The following section is hereby substituted for section 49D of the principal Act: 15

“Remuneration and allowances of administrator

49D. (1) The Minister, in consultation with the Minister of Finance, must determine the remuneration and allowances to be paid to—

- (a) the administrator appointed in accordance with section 49B or 49G; and
- (b) any other person appointed in accordance with section 49C. 20

(2) All costs associated with the appointment of—

- (a) an administrator appointed in accordance with section 49B or 49G; and
- (b) any other person contemplated in subsection (1)(b), 25

are for the account of the public higher education institution concerned.”.

Insertion of sections 49F to 49J in Act 101 of 1997

28. The following sections are hereby inserted in the principal Act after section 49E:

“Role, powers, functions and duties of administrator

49F. (1) The administrator appointed in accordance with section 49B must, subject to the provisions of section 49G— 30

- (a) take over the role, powers, functions and duties of the council concerned;
- (b) carry out the role, exercise the powers, perform the functions and execute the duties of the council concerned to the extent that such role, powers, functions and duties relate to governance; 35
- (c) take over and execute the management of the public higher education institution concerned;
- (d) identify and initiate processes and initiatives that restore proper governance and management; and 40
- (e) ensure that a new council for the higher education institution concerned is appointed and constituted in accordance with the institutional statute as soon as is practicable.

(2) The Minister may, depending on the circumstances— 45

- (a) confine the mandate of the administrator to the role, powers, functions and duties related to the governance of the higher education institution concerned only; and
- (b) determine the mandate of the administrator to include specific tasks related to the circumstances justifying the appointment.

(3) Subject to this Act, the institutional statute and the rules of the higher education institution concerned, employees and students of the higher education institution concerned must comply with instructions given by the administrator.

Appointment of administrator on resignation of council

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49G. (1) In the event that a council is deemed to have resigned as contemplated in section 27(8), the Minister must appoint a person for a period not exceeding six months as an administrator on behalf of the public higher education institution concerned to—

- (a) take over the role, powers, functions and duties of the council; 10
- (b) carry out the role, exercise the powers, perform the functions and execute the duties of the council to the extent that such role, powers, functions and duties relate to governance; and
- (c) ensure that a new council is constituted in accordance with the institutional statutes of the institution concerned within a period not exceeding six months subsequent to his or her appointment. 15

(2) For the purposes of subsection (1), section 49C applies with the changes required by the context.

Termination of term of office of administrator

49H. (1) The term of office of an administrator is terminated in the event of— 20

- (a) the constitution of the council of the higher education institution in accordance with the institutional statute of the higher education institution concerned; 25
- (b) the expiry of term of appointment;
- (c) death or incapacity;
- (d) resignation; or
- (e) removal from office by the Minister.

(2) The decision contemplated in subsection (1)(e) must be taken with due observance of the provisions of PAJA. 30

(3) The Minister may in instances where the term of office of an administrator is terminated in accordance with subsection (1)(b) to (e) appoint a new administrator after consultation with the principal of the higher education institution concerned for the remainder of the term of office of the previous incumbent. 35

(4) Sections 49BA, 49D, 49F and 49G apply with the changes required by the context to an appointment made as contemplated in subsection (3).

Directive to council appointed by administrator

49I. (1) The Minister, after taking into account the report of the administrator, may— 40

- (a) after the term of office of an administrator is terminated as contemplated in section 49H(1)(a);
 - (b) within the term of office of the first council of the higher education institution concerned appointed by the administrator; and
 - (c) after consultation with that council, 45
- issue a directive to the council to take such action as specified by the Minister in the event that the Minister has reasonable grounds to believe that certain matters related to the effective and efficient functioning of the institution and the execution of its mandate require specific or continued attention of the council and the management. 50

(2) The provisions of section 42(4) apply with the changes required by the context in instances of non-compliance by the council with the directive contemplated in subsection (1).

Indemnification of administrator

49J. Section 49A, with the changes required by the context, applies to an Administrator appointed in terms of section 49B or 49G.”.

Insertion of Chapter 6A in Act 101 of 1997

29. The following heading and sections are hereby inserted after section 49J in the principal Act. 5

“CHAPTER 6A**NATIONAL INSTITUTES FOR HIGHER EDUCATION****Establishment of national institute for higher education**

49K. (1) The Minister may, after consultation with the CHE and the public higher education institutions affected by the establishment, establish a national institute for higher education as a juristic person with a specific scope of application. 10

(2) The Minister must prescribe particulars of the establishment of the national institute for higher education, its board and its specific scope of application by notice in the *Gazette*. 15

Functions of national institute for higher education

49L. (1) The functions of a national institute for higher education relate to its specific scope of application and may include one or more of the following— 20

- (a) to provide services to higher education within its specific scope of application;
- (b) to advance learning within its specific scope or application by ensuring collaboration and co-ordination of the work of higher education institutions and other national institutes for higher education; and 25
- (c) to advise the Minister on matters relating to its specific scope of application, or to higher education generally.

(2) Subject to subsection (1) and the provisions of section 49K, the Minister must prescribe the functions of each national institute for higher education by notice in the *Gazette*. 30

Governance, composition of board and committees

49M. (1) A national institute of higher education is governed by a board.

(2) The board of a national institute for higher education consists of—

- (a) a chairperson; and 35
- (b) not more than 10 ordinary members.

(3) The majority of members contemplated in subsection (1) must have specific knowledge and experience in—

- (a) higher education generally; and
- (b) the scope of application of the specific institute established in terms of section 49K(1), specifically. 40

(4) The board may co-opt persons to the board, for a period not exceeding the term of office of the board and these co-opted persons have no voting rights.

(5) The chairperson and members contemplated in subsection (2) are appointed by the Minister from nominations received in the manner prescribed for that national institute for higher education and must, as far as is practically possible, be representative of the higher education institutions affected by the establishment of the specific national institute. 45

- (6) The board—
- (a) must establish—
- (i) an executive committee;
 - (ii) an audit and risk committee;
 - (iii) a human resources and remuneration committee; and
 - (iv) any other committee prescribed by the Minister; and
- (b) may establish any other committee.

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(7) The composition, manner of election, functions, procedure at meetings and the dissolution of committees of the board are determined by the institutional rules and policies of the board and the principles of good governance.

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Term of office of chairperson and members

49N. The chairperson and a member of the board hold office for a period of four years and may only serve a maximum of two consecutive terms.

Vacation of office

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49O. (1) A person ceases to be a member of the board if he or she—

- (a) resigns by giving written notice to the chairperson or, in the case of the chairperson, to the Minister;
- (b) is absent from three consecutive meetings of the board without the leave of the chairperson;
- (c) is declared insolvent;
- (d) is removed from an office of trust by a court of law;
- (e) is convicted of an offence involving dishonesty or an offence for which the sentence is imprisonment without the option of a fine;
- (f) is declared unfit to attend to his or her personal affairs by a court of law; or
- (g) is removed from office by means of a resolution passed by at least two-thirds of the total number of serving members of the board present at the meeting on account of misconduct, incapacity to carry out his or her official functions, or on account of any other reason recognised by law.

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(2) Removal of a member of the board from office is subject to the processes and procedures prescribed by notice in section 49K(2) in the *Gazette*, the institutional rules and or legal prescripts in general.

(3) Without limiting the generality of subsection (2), the resolution of the board contemplated in subsection (1)(g) may not be passed without prior notice to the member of the board concerned of the pending motion for his or her removal and the reasons therefore, and providing him or her with a reasonable opportunity to obtain assistance, to appear in person, and to present his or her case.

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Filling of vacancies

49P. (1) In the event of a vacancy occurring in the board, such vacancy is filled by the Minister in terms of section 49M(5).

(2) Any person appointed to fill a vacancy holds office for the unexpired portion of the vacating member's term.

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Delegations

49Q. (1) The board may delegate any of its functions under this Act to any committee of the board or person employed by the board and may at any time revoke such delegation.

(2) A delegation by the board must be in writing and is subject to such conditions as the board may impose.

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(3) The board is not divested of responsibility for the performance of any function delegated or assigned to a committee or an employee under subsection (1) and is, despite any delegation, not prevented from performing the function itself.

Staff and conditions of service

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49R. (1) The board may appoint a chief executive officer and other staff required to manage and administer the national institute for higher education in accordance with the institutional rules and procedures developed and approved by the board of the national institute on such conditions as it may determine.

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(2) The national institute for higher education must out of its own funds pay to its employees such remuneration, allowances and other benefits as the board may determine.

Funds of national institute for higher education

49S. (1) The Minister must, after consultation with the CHE and with the approval of the Minister of Finance, determine the policy on the funding of national institutes for higher education and publish such policy by notice in the *Gazette*.

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(2) The Minister must, subject to the policy determined in terms of subsection (1), allocate public funds to national institutes of higher education on a fair and transparent basis.

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(3) The Minister may, subject to the policy determined in terms of subsection (1), impose—

- (a) any reasonable condition in respect of an allocation contemplated in subsection (2); and
- (b) different conditions in respect of different national institutes of higher education, if there is a reasonable basis for such differentiation.

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(4) The funds of a national institute for higher education consist of—

- (a) money appropriated by Parliament;
- (b) donations or contributions;
- (c) money raised by the institute; and
- (d) any other income.

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(5) The board—

- (a) must keep a record of all—
 - (i) funds received and spent;
 - (ii) assets and liabilities; and
 - (iii) financial transactions;

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(b) must, once in each financial year, submit to the Minister, at the time and in the manner which the Minister may determine, a statement of estimated income and expenditure for the ensuing financial year for approval by the Minister and the Minister of Finance;

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(c) may in any financial year submit an adjusted statement of its estimated income and expenditure to the Minister for approval by the Minister and the Minister of Finance; and

(d) may not incur any expenses which exceed the total amount approved in terms of paragraph (b) or (c), as the case may be.

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(6) If the Minister does not approve of the board's statement of estimated income and expenditure or adjusted statement of estimated income and expenditure contemplated in subsection (5)(b) or (c), as the case may be—

(a) the Minister must—

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- (i) inform the board in writing of the fact that the statement concerned was not approved; and
- (ii) indicate in writing a time period in which the board must submit a revised statement of estimated income and expenditure, which period may not be less than 30 calendar days;

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(b) the board must submit a revised statement of estimated income and expenditure to the Minister within the specified period; and

(c) the Minister must consider the revised statement of estimated income and expenditure for approval as contemplated in subsection (5)(c).

(7) (a) The funds contemplated in subsection (4) must be used in accordance with the approved statement referred to in subsection (5) or (6), as the case may be.

(b) Any funds not utilised within a specific financial year must be carried over as a credit to the following financial year.

(8) Subject to subsection (7), the board may invest any portion of its funds in such manner as the Minister and the Minister of Finance may approve.

Annual audit

49T. The Auditor-General must—

(a) audit the books of account and financial statements of every national institute for higher education; and

(b) submit a separate audit report to the Minister for each national institute for higher education within three months of receipt of the financial statements from the national institute for higher education concerned.

Annual report

49U. (1) The board must, within three months after the end of each financial year, submit a report to the Minister which includes a financial statement on the performance of its functions during the preceding financial year.

(2) The annual report contemplated in subsection (1) must—

(a) fairly present the financial state of affairs of the national institute for higher education;

(b) fairly present its activities and other business;

(c) fairly present its financial results and financial position at year end;

(d) fairly present its performance against predetermined objectives;

(e) contain the report drafted by the audit committee contemplated in section 49L(6)(a)(ii) and approved by the board; and

(f) contain any other information that may be prescribed by the Minister from time to time.

Ministerial interventions

49V. The provisions of sections 42 to 49J apply to national institutes of higher education with the changes required by the context.

Disestablishment of national institute for higher education

49W. (1) In the event that the functions of a national institute for higher education, as contemplated in section 49L, have become obsolete or, in the view of the Minister, could be performed effectively and efficiently otherwise, the Minister may, after consultation with the CHE and by notice in the *Gazette*, disestablish any national institute for higher education.

(2) Before making a decision under subsection (1), the Minister must—

(a) give notice to the board of the national institute for higher education concerned of the intention to disestablish such national institute for higher education;

(b) provide the board with the reasons for the disestablishment;

(c) give the board a reasonable opportunity to make representations; and

(d) consider the representations contemplated in paragraph (c).

(3) In the event that a national institute for higher education is disestablished in accordance with subsection (1), all assets and liabilities of such national institute for higher education must be dealt with by the Minister according to law and any assets remaining after payment of all liabilities vest in the Minister.

(4) The Minister may appoint a person on the terms of reference specified by the Minister to administer the closure of the national institute concerned.”.

Amendment of section 50 of Act 101 of 1997, as amended by section 7 of Act 55 of 1999 5

30. Section 50 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Director-General is—

- (a) the registrar for; and
 (b) responsible for registering,
 private higher education institutions in terms of section 53 as contemplated in section 29 of the Constitution.”. 10

Amendment of section 51 of Act 101 of 1997, as amended by section 6 of Act 54 of 2000 and section 2 of Act 26 of 2010

31. Section 51 of the principal Act is hereby amended— 15

(a) by the substitution for the heading of the following heading:

“**Authority to provide higher education**”;

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

“(1) No local juristic person or foreign juristic person other than a public higher education institution or an organ of state may provide higher education unless that person is— 20

- (a) in the prescribed manner, registered or conditionally registered as a private higher education institution in terms of this Act; and
 (b) registered or recognised as a juristic person in terms of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 17 of 2008), before such person is registered or conditionally registered in accordance with paragraph (a).” ; and 25

(c) by the substitution for subsection (2) of the following subsection:

“(2) If the person contemplated in subsection (1) is a foreign juristic person, that person must ensure that any qualification or part-qualification offered within the Republic is registered on the [sub-framework] sub-frameworks for higher education and trades and occupations on the National Qualifications Framework contemplated in section 7(b) and (c) read with section 13(1)(h) of the National Qualifications Framework Act.”. 30 35

Amendment of section 53 of Act 101 of 1997, as amended by section 7 of Act 54 of 2000, substituted by section 16 of Act 23 of 2001 and section 5 of Act 39 of 2008

32. Section 53 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“**Requirements for registration of private higher education institutions**”; and 40

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

- “(b) is able to provide higher education that will—
 (i) maintain acceptable standards that are not inferior to standards at a comparable public higher education institution; and
 (ii) comply with the requirements of the CHE.”. 45

Amendment of section 54 of Act 101 of 1997, as substituted by section 8 of Act 54 of 2000

33. Section 54 of the principal Act is hereby amended— 50

(a) by the substitution for subsection (7) of the following subsection:

“(7) No independent school as defined in the South African Schools Act, 1996 (Act No. 84 of 1996), and no other private education

institution may call itself a university, university college or higher education college, or use such wording in its name, unless it is registered—

(a) in terms of Chapter 7; and

(b) in the particular category of institutions which, in accordance with the Regulations, may call themselves universities, university colleges or higher education colleges, as the case may be.”; and

(b) by the addition of the following subsection:

“(8) Only a private higher education institution registered as a university or university college in accordance with subsection (7)(b) may confer a professorship or an honorary degree, or use the title of chancellor and vice-chancellor for its titular head and its principal, respectively.”.

Amendment of section 57 of Act 101 of 1997

34. Section 57 of the principal Act is hereby amended by the substitution in paragraph (b) of subsection (1) for the words preceding subparagraph (i) of the following words:

“(b) prepare financial statements within **[three]** six months of the end of the financial year, including at least—”.

Insertion of section 65AB in Act 101 of 1997

35. The following section is hereby inserted in the principal Act after section 65A:

“Change of type and scope of higher education institution

65AB. (1) The Minister may, at the request of the council of the institution concerned, after consultation with the CHE, by notice in the *Gazette*, change the type of a higher education institution concerned or amend or remove any restrictions on the scope and operations of a public higher education institution contemplated in sections 3(1) and 20(4).

(2) The Minister must, before acting under subsection (1), comply with the provisions of section 23(2), with the changes required by the context.

(3) The provisions of subsections (1) and (2) shall apply to registered private higher education institutions, subject to the necessary changes required by the context.”.

Amendment of section 65B of Act 101 of 1997, as substituted by section 24 of Act 23 of 2001

36. Section 65B of the principal Act is hereby amended by the addition of the following subsection:

“(3) The provisions of subsections (1) and (2) shall apply to registered private higher education institutions, subject to the necessary changes required by the context.”.

Insertion of section 65BA in Act 101 of 1997

37. The following section is hereby inserted in the principal Act after section 65B:

“Withdrawal and revocation of degree, diploma, certificate or other qualification

65BA. (1) Subject to the provisions of subsection (2), the council of a public higher education institution may, in consultation with the senate, withdraw and revoke any degree, diploma, certificate or other qualification that was awarded—

(a) on the basis of a material error on the part of the public higher education institution concerned: Provided that such withdrawal and revocation may only take place within a period not exceeding two years after the conferment concerned; or

(b) as a result of a fraudulent or dishonest act in connection with the obtaining of such degree, diploma, certificate or other qualification.

(2) (a) Prior to the council of a public higher education institution withdrawing and revoking the conferment of a degree, diploma, certificate or other qualification, the council must—

(i) notify the recipient of the qualification concerned that a revocation and withdrawal is being considered;

(ii) provide the recipient with relevant information justifying the intended action;

(iii) provide the recipient with an opportunity to obtain assistance and to present his or her case; and

(iv) consider the submissions and representations of the recipient.

(b) In the event that the withdrawal and revocation relates to circumstances contemplated in subsection (1)(b), the higher education institution must report the matter for criminal investigation as contemplated in section 66(2).

(3) The provisions of subsections (1) and (2) shall apply to registered private higher education institutions, subject to the necessary changes required by the context.

(4) In the event that any degree, diploma, certificate or other qualification that was awarded, is withdrawn or revoked, the relevant Quality Council responsible for the qualification or part-qualification and SAQA must be informed so as to amend the National Learner Record Database, if necessary.”.

Amendment of section 65D of Act 101 of 1997, as inserted by section 24 of Act 23 of 2001

38. Section 65D of the principal Act is hereby amended—

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

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

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

“(2) Any public higher education institution identified by the Minister in accordance with policy determined under section 3, must offer an education programme or trade and occupational learning programme that leads to a qualification or part-qualification on the sub-framework for trades and occupations contemplated in section 7(c) of the National Qualifications Framework Act and in compliance with any condition set by the Minister.”.

Amendment of section 66 of Act 101 of 1997, as substituted by section 10 of Act 54 of 2000

39. Section 66 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) Any person contravening the provisions of section 51 or 65D is guilty of an offence and is liable on conviction to a sentence which may be imposed for fraud.”.

Amendment of section 68 of Act 101 of 1997, as amended by section 9 of Act 55 of 1999 and substituted by section 11 of Act 54 of 2000

40. Section 68 of the principal Act is hereby amended—

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

“(c) the board of a national institute for higher education;”; and

(b) by the addition of the following subsection:

“(5) The provisions of subsections (2) and (3) apply to national institutes for higher education with the changes required by the context.”.

Amendment of section 69 of Act 101 of 1997, as substituted by section 13 of Act 63 of 2002 and amended by section 6 of Act 39 of 2008 5

41. Section 69 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) the planning and reporting framework for public higher education institutions.”. 10

Repeal of section 70 of Act 101 of 1997

42. Section 70 of the principal Act is hereby repealed.

Substitution of Long Title of Act 101 of 1997

43. The following Long Title is hereby substituted for the Long Title of the principal Act: 15

“To regulate higher education; to provide for the establishment, composition and functions of a Council on Higher Education; to provide for the determination of transformation policy and oversight mechanisms for the public higher education system; to provide for the development of articulation and recognition of prior learning frameworks across the education system; to provide for new institutional types; to provide for the establishment, disestablishment, conversion, merging, incorporation, governance and funding of public higher education institutions; to provide for the powers of the council of a public higher education institution to invest funds; to provide for the conflict of interest and code of conduct of members of the council, committees of the council, and employees, of a public higher education institution; to provide for the issuing of Ministerial directives; to provide for the appointment [and], functions and indemnification of an independent assessor; to provide for the appointment, functions, indemnification and termination of the term of office of an administrator; to provide for the issuing of post-administration directives by the Minister; to provide for the establishment, disestablishment, governance and funding of national institutes for higher education; to provide for the registration of private higher education institutions, the different categories of registration and the associated rights; to provide for quality assurance and quality promotion in higher education; to provide for the withdrawal and revocation of qualifications by public or private higher education institutions; to provide for transitional arrangements and the repeal of certain laws; and to provide for matters connected therewith.”. 20
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Amendment of the Arrangement of Sections of Act 101 of 1997 40

44. The Arrangement of Sections of the principal Act is hereby amended—

(a) by the substitution for item 2 of the following item:

“2. Application and interpretation”;

(b) by the deletion of items 38A to 38O;

(c) by the substitution for item 41 of the following item: 45

“41. Records to be kept, external audit and information to be furnished by council”;

(d) by the insertion after item 41 of the following heading:

**“CHAPTER 6
MINISTERIAL INTERVENTIONS IN HIGHER EDUCATION
INSTITUTIONS”** 50

(e) by the deletion of item 41A;

(f) by the substitution for item 42 of the following item:

“42. Ministerial directive”;

- (g) by the deletion after item 42 of the following heading:
**“CHAPTER 6
 INDEPENDENT ASSESSOR”**
- (h) by the substitution for item 49 of the following item:
“49. Remuneration and allowances of independent assessor”; 5
- (i) by the substitution for item 49A of the following item:
“49A. Indemnification of independent assessor”;
- (j) by the insertion after item 49B of the following item:
“49BA. Publication of appointment of administrator”;
- (k) by the substitution for item 49D of the following item:
“49D. Remuneration and allowances of administrator”; 10
- (l) by the insertion after item 49E of the following items:
**“49F. Role, powers, functions and duties of administrator
 49G. Appointment of administrator on resignation of council
 49H. Termination of term of office of administrator
 49I. Directive to council appointed by administrator
 49J. Indemnification of administrator”;** 15
- (m) by the insertion after item 49J of the following heading and items:
**“CHAPTER 6A
 NATIONAL INSTITUTES FOR HIGHER EDUCATION** 20
**49K. Establishment of national institute for higher education
 49L. Functions of national institute for higher education
 49M. Governance, composition of board and committees
 49N. Term of office of chairperson and members
 49O. Vacation of Office
 49P. Filling of vacancies
 49Q. Delegations
 49R. Staff and conditions of service
 49S. Funds of national institute for higher education
 49T. Annual audit
 49U. Annual report
 49V. Ministerial interventions
 49W. Disestablishment of national institute for higher education”;** 25
“51. Authority to provide private higher education”; 35
- (n) by the substitution for item 51 of the following item:
“51. Authority to provide private higher education”;
- (o) by the substitution for item 53 of the following item:
**“53. Requirements for registration of private higher education institu-
 tions”;**
- (p) by the insertion after item 65A of the following item:
“65AB. Change of type and scope of higher education institution”; 40
- (q) by the insertion after item 65B of the following item:
**“65BA. Withdrawal and revocation of degree, diploma, certificate or
 other qualification”;** and
- (r) by the deletion of item 70.

Transitional arrangements 45

45. Any action taken under the repealed sections 38A to 38O of the principal Act, immediately prior to the commencement date of section 11 of the Higher Education Amendment Act, 2016, is deemed to have been taken under the authority of the corresponding provision of Chapter 6 of the principal Act.

Short title and commencement 50

46. (1) This Act is called the Higher Education Amendment Act, 2016, and comes into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.