



PROVINCE OF THE EASTERN CAPE
IPHONDO LEMPUMA KOLONI
PROVINSIE OOS-KAAP

Provincial Gazette Igazethi Yephondo Provinsiale Koerant

Selling price: **R1,50**
Other countries: **R1,95**

Vol. 3

BISHO/
KING WILLIAM'S TOWN, 16 NOVEMBER 1996

No. 200
(Extraordinary)

PROVINCIAL NOTICE

DEPARTMENT OF EDUCATION, CULTURE AND SPORT

No. 17

16 November 1996

EASTERN CAPE SCHOOLS EDUCATION BILL, 1996

The above-mentioned bill is hereby published in terms of Rule 127(2) of the rules of the Legislature of the Province of the Eastern Cape, for general information and comment.

Any person who wishes to comment or remark on the said bill must submit these in writing to the Permanent Secretary, Department of Education, Culture and Sport, Province of the Eastern Cape, Private Bag X0032, Bisho, within 14 days of the date of publication hereof.

EASTERN CAPE SCHOOLS EDUCATION BILL, 1996*(As introduced)*

(MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE FOR
EDUCATION, CULTURE AND SPORT)

BILL

**To provide for the control of education in schools in the Province of the Eastern
Cape; and for other matters connected therewith**

ARRANGEMENT OF SECTIONS

| | <i>Sections</i> |
|---|-----------------|
| CHAPTER 1 | |
| Definitions and application of Act..... | 1-2 |
| CHAPTER 2 | |
| Powers and functions of Member of Executive Council and Department | 3-14 |
| CHAPTER 3 | |
| Public schools | 15-21 |
| CHAPTER 4 | |
| Governing bodies..... | 22-26 |
| CHAPTER 5 | |
| Independent schools..... | 27-36 |
| CHAPTER 6 | |
| Learners | 37-51 |
| CHAPTER 7 | |
| Miscellaneous | 52-65 |
| CHAPTER 8 | |
| Adult basic education and training and adult continuing education and training | 66-73 |
| CHAPTER 9 | |
| Repeal of laws and short title..... | 74-75 |

BE IT ENACTED by the Legislature of the Province of the Eastern Cape, as follows:—

CHAPTER 1

DEFINITIONS AND APPLICATION OF ACT

Definitions

1. (1) In this Act, unless the context indicates otherwise—

“Board of Education and Training” means the Provincial Board of Education and Training established by section 12;

“centre” means a centre established under section 5(1)(a), or a centre for adult education established under section 5(1)(c);

“child with special education needs” means a learner who, in the opinion of the Permanent Secretary, is able to benefit from a specialised education programme for learners with special education needs, but who deviates to such an extent from the majority of the learners of his or her age in body, mind or behaviour that he or she—

- (a) cannot benefit sufficiently from the instruction provided in the ordinary course of education;
- (b) needs specialised education to facilitate his or her adaptation in the community; or
- (c) should not attend an ordinary class in an ordinary school, because such attendance may be harmful to himself or herself or to the other learners in such a class;

“combined school” means a school providing primary and secondary education to a level higher than the ninth level but not exceeding the 12th level;

“Constitution” means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

“council” means a hostel council established under section 26(1);

“democratically constituted community structures” means existing democratically constituted interest groups concerned with education in the community;

“Department” means the department responsible for education in the Province;

“departmental institution” means a centre, public school, hostel established under section 5(1)(b), educational auxiliary service, teachers' centre, office of a regional council or an office of the Department;

“education” means instruction, teaching or training provided to learners in terms of this Act;

“educational auxiliary service” means an educational auxiliary service provided under section 5(1)(e);

“Education Development Officer” means a departmental official concerned with the administration, organisation, management and development of education;

“educator” means an educator as defined in the Educator's Employment Act, 1994 (Proclamation No. 138 of 1994);

- "examination board"** means a body consisting of all stakeholders in education advising the Permanent Secretary regarding the formulation, implementation and administration of examinations and general examination and related issues in the Province of the Eastern Cape;
- "financial head"** means the person appointed in terms of section 149 of the Constitution as a member of the Executive Council responsible for financial matters in the Province;
- "fixed date"** means the date of commencement of this Act;
- "governing body"** means a governing body referred to in section 22;
- "hostel"** means a hostel established under section 5(1)(b);
- "hostel council"** means a hostel council referred to in section 26(1);
- "independent school"** means a school other than a public school;
- "independent school for specialised education"** means a school registered in terms of section 28 as an independent school for specialised education, or is deemed to be so registered;
- "industrial school"** means a school for the reception, care and education of children referred or transferred thereto under the Child Care Act, 1983 (Act No. 74 of 1983);
- "intermediate school"** means a school providing primary and secondary education up to but not exceeding the ninth level;
- "learner"** means any person receiving education in a school in terms of this Act;
- "Legislature"** means the Legislature of the Province of the Eastern Cape established in terms of section 125 of the Constitution;
- "level"** means that part of an educational programme in a primary, secondary, intermediate or combined school, or of any other educational programme which the Permanent Secretary may deem to be equivalent, which a learner may complete within one school year;
- "Member of the Executive Council"** means the Member of the Executive Council responsible for education in the Province;
- "national policy"** means national education policy determined by a competent authority within the jurisdiction of the national government;
- "non-governmental organisations"** means organisations independent from the government with an interest in education in general;
- "organised parent community"** means the parent community as represented by the governing bodies, councils established under this Act and the parent bodies and associations recognised by the Member of the Executive Council;
- "organised teaching profession"** means the teaching profession or a part thereof, as represented by an employee organisation as defined in section 1 of the Educational Labour Relations Act, 1993 (Act No. 146 of 1993), or a provincial body of such organisation recognised by the Member of the Executive Council;
- "parent"** means a parent, who in law or by virtue of an order of a competent court, has the custody or control of a learner, or a legal guardian, or in the absence of such parent or guardian, the person with whom the learner resides and to whom the parent or guardian has entrusted in writing custody or control of such learner, or if the learner has no parent or legal guardian, the person with whom the learner resides and who has the actual custody or control of such learner;

- "parent community"** means parents of all learners in a school;
- "parents of past learners"** means parents of learners who have left the school for a period not exceeding three years;
- "Permanent Secretary"** means the Head of the Department responsible for education in the Province;
- "pre-primary school"** means a school for children who are not younger than three and not older than seven years but who are not yet subject to compulsory school attendance;
- "prescribed"** means prescribed by regulation;
- "primary school"** means a school providing education up to but not exceeding the seventh level;
- "principal"** means the person appointed to the post of principal at a school, or a person acting in that post;
- "Province"** means the Province of the Eastern Cape;
- "provincial curriculum advisory council"** means a body, consisting of all stakeholders in education within the Province concerned with curriculum matters organised on a provincial and regional basis;
- "Provincial Gazette"** means the official gazette in which government and other official notices of the provincial government are published;
- "Provincial Qualification Authority"** means a body established in the Province to define levels, formats for unit standards and requirements for the registration of qualifications;
- "public school"** means a school established or deemed to be established under section 15 and shall include a farm school;
- "reform school"** means a school for the reception, care and education of children referred thereto under the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or transferred thereto under the Child Care Act, 1983 (Act No. 74 of 1983);
- "region"** or **"subregion"** means a region or subregion established in terms of section 13;
- "regional board"** means a regional board established under section 13;
- "regulation"** means a regulation made under this Act;
- "school"** means a public school or an independent school;
- "school attendance officer"** means a school attendance officer appointed under section 10(1);
- "school for specialised education"** means a school for specialised education established under section 15 or an independent school for specialised education;
- "secondary school"** means a school providing education from not lower than the eighth up to but not exceeding the twelfth level;
- "specialised education"** means education of a specialised nature provided to suit the needs of children with special education needs, as well as—
- (a) the psychological medical, dental, paramedical and therapeutic treatment of, including the performance of operation on, children with special education needs;

- (b) the provision of artificial medical aids and apparatus to children with special education needs;
- (c) the care of children with special education needs in a hospital, hostel or other institution;
- (d) the provision of transport, escort and such other services as the Member of the Executive Council may deem necessary to meet the needs of children with special education needs; and
- (e) the provision of guidance to the parents of children with special education needs, including such children who are not yet subject to compulsory school attendance, with a view to the instruction, teaching, training or treatment of such children;

"sponsoring body" means a body or group of persons approved by the Member of the Executive Council, which is, on account of its involvement with a school, prepared to assist it financially;

"SRC" means a Students' Representative Council;

"teachers' centre" means a teachers' centre established under section 5(1)(g);

"the 1996 Act" means the South African Schools Act, 1996;

"this Act" includes the regulations made or deemed to be made thereunder; and

"Treasury" means the financial authority in charge of the financial affairs of the Province.

(2) Any word or expression used in this Act and to which a meaning has been assigned in the South African School Act, 1996, shall bear the meaning assigned thereto by the said Act.

Application of Act

2. The provisions of this Act shall, subject to national policy and to the provisions of the Constitution or any other law or Act applying to education in general in the whole of the Republic of South Africa, apply in relation to education provided in schools in the Province.

CHAPTER 2

POWERS AND FUNCTIONS OF MEMBER OF EXECUTIVE COUNCIL AND DEPARTMENT

Control of school education in the Province

3. As from the fixed date, school education in the Province shall be controlled by the Department, acting in accordance with the policy determined by the Member of the Executive Council.

Determination of provincial education policy

4. (1) The Member of the Executive Council shall determine school education policy in the Province within the framework of the following principles:

- (a) Every person shall have the right to basic education and to equal access to schools and centres of learning;
- (b) every learner shall have the right to instruction in the language of his or her choice where this is reasonably practicable;

- (c) no learner or educator shall be unfairly discriminated against by the Department, a public school or an independent school which receives a subsidy in terms of section 31;
- (d) there shall be a duty on the Department to foster the advancement of persons or groups or categories of persons previously disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of education rights;
- (e) there shall be a duty on the Department to combat sexual harassment at schools and centres of learning;
- (f) every learner and educator shall have the right to freedom of conscience, religion, thought, belief, opinion, speech and expression and the education process shall promote a culture of tolerance;
- (g) every learner and educator shall have the right to peaceful assembly and demonstration and shall have the right to freedom of association;
- (h) every person shall have the right of access to all information held by the Department or the governing body of a school in so far as such information is required for the exercise or protection of his or her rights;
- (i) there shall be democratic and decentralised governance of public schools and school education;
- (j) the structures of democratic governance in school education should be constituted with due regard to the racial and gender demographics of the Province;
- (k) education policy shall be aimed at achieving cost efficient and effective use of educational resources, eliminating wastage, inefficiency, maladministration and corruption;
- (l) educational policy shall be aimed at improving the quality and availability of educational opportunities and resources to the people of the Province;
- (m) the education process shall be aimed at fostering independent and critical thought;
- (n) every learner shall be entitled to 10 years of basic education and to equal access to educational institutions;
- (o) parents shall, in partnership with the government, be responsible for obligatory and voluntary contributions to school fees in respect of both the compulsory and the post-compulsory school phase;
- (p) no learner shall be excluded from the compulsory education phase or prejudiced in any way on the basis of the non-payment of obligatory fees by a parent.

(2) The Member of the Executive Council shall, by notice in the *Provincial Gazette*, publish details of any steps he or she intends taking to implement the policy determined by him or her in terms of subsection (1).

(3) The Permanent Secretary shall take such steps as may be necessary to implement the policy determined by the Member of the Executive Council.

General functions of Member of the Executive Council

5. (1) In addition to the other functions assigned to him or her by this Act, the Member of the Executive Council may, out of moneys appropriated for this purpose by the Legislature—

- (a) establish and maintain such centres as he or she may deem necessary for the development and promotion of the aptitude of learners or a category of learners;
- (b) establish and maintain hostels for public schools;
- (c) establish and maintain centres for adult education;
- (d) provide such equipment and erect such buildings as he or she may deem necessary or expedient for the administration of the provisions of this Act;
- (e) make provision for such educational auxiliary services as he or she may deem necessary;
- (f) provide, on such basis and subject to such conditions as he or she may determine, financial or other material aid or financial as well as other material aid to a learner admitted at a public school;
- (g) establish and maintain teachers' centres for the enrichment of an educator's academic and professional knowledge and teaching skills; and
- (h) make provision for the appointment of outside persons, institutions, organizations or departments to act on an agency basis.

(2) The Member of the Executive Council may at any time close a centre, a hostel or a teachers' centre, or discontinue an educational auxiliary service referred to in sub-section (1): Provided that where a hostel falls under the supervision of a council referred to in section 26(1), such hostel may be closed only after consultation with the council concerned.

(3) A centre, hostel, teachers' centre or educational auxiliary service established or provided for under any law repealed by this Act, or deemed to be established or provided for under such law, and which immediately prior to the fixed date was managed and controlled by a department referred to in such a law, shall from that date be deemed to be a centre, hostel, teachers' centre or educational auxiliary service established or provided for under this section.

(4) In order to further the objects of this Act, the Member of the Executive Council may enter into agreements with other government departments and with non-governmental organisations, but no agreement placing financial obligations on the Department shall be entered into without the concurrence of the financial head.

General functions of Permanent Secretary

6. (1) In addition to the other functions assigned to the Permanent Secretary in terms of this Act, he or she may—

- (a) approve educational programmes for learners;
- (b) approve education and training programmes for learners with special education needs;
- (c) determine conditions for admission to such education and training programmes, and the evaluation, by means of inspection or otherwise, of the effectiveness of the teaching and training provided in accordance therewith;

- (d) approve courses for the provision of education, including specialised education;
- (e) determine the conditions for admission to, and the syllabi in, such courses;
- (f) in respect of such courses—
 - (i) establish provincial and regional curricula, advisory councils and also study committees for specific subjects;
 - (ii) establish a provincial examination board;
 - (iii) cause examinations to be conducted and certificates to be issued to learners who passed those examinations; and
 - (iv) cause other approved forms of assessment to be conducted;
- (g) make rules as to—
 - (i) the conducting of examinations referred to in paragraph (f), the entering of candidates for those examinations, the conduct and discipline of candidates prior to, during and after, those examinations, and the issue of certificates referred to in that paragraph; and
 - (ii) the appointment, conduct, discipline, powers, duties and functions of examiners, moderators, invigilators and other persons whose services are necessary in connection with the conducting of those examinations;
- (h) make arrangements for medical, psychological, psycho-metric or dental examinations of learners and to provide social services to learners and persons employed at schools and hostels; and
- (i) determine the school calendar, school holidays and the minimum length of the school day.

(2) Different programmes, courses, school calendars, school holidays and lengths of the school day may be approved or determined, as the case may be, under subsection (1) in respect of different public schools.

Administrative inspection of schools and hostels or other official visits

7. (1) The Permanent Secretary may, through the Education Development Officer, either generally or in a specific case, authorise in writing a person to inspect a school or hostel.

(2) A person authorised under subsection (1) may—

- (a) at any reasonable time after prior notice enter upon the grounds of the school or hostel concerned;
- (b) question under oath or otherwise any person who in his or her opinion may be able to furnish information on matters to which this Act relates;
- (c) require any person who has in his or her possession or custody or under his or her control a register, book or document on a matter to which this Act relates, to submit such register, book or document to him or her;
- (d) examine such a register, book or document or make an extract therefrom or a copy thereof, and require from any person an explanation under oath or otherwise, of information contained therein;
- (e) attach such register, book or document as in his or her opinion may serve as proof of an offence or irregularity; and
- (f) evaluate the administrative management of the school.

(3) Under justifiable circumstances no notice needs to be given when entering the grounds of a school or hostel under subsection (2)(a).

Inquiry at Instance of Member of the Executive Council

8. (1) If it is in the interest of education in the Province, the Member of the Executive Council may appoint any appropriate person to conduct an inquiry on a matter specified in written terms of reference: Provided that the provisions of any applicable law shall be taken into account.

(2) A person who conducts an inquiry in terms of subsection (1) may—

- (a) enter the grounds of any school or centre of learning at any reasonable time as long as he or she has given to the person in charge of such school or centre of learning reasonable prior notice of his or her intention to enter the grounds;
- (b) if he or she has reason to believe that any person is able to give evidence on any matter relevant to the inquiry, direct that person, by notice served on him or her personally, to appear before him or her at a stated time and place to answer his or her questions;
- (c) question, under oath or otherwise, any person referred to in paragraph (b);
- (d) if he or she has reason to believe that any person is able to produce any article, document, book, video or audio recording relevant to the inquiry, order that person to deliver to him or her that article, document, book, video or audio recording;
- (e) examine and make copies of any document, book, video or audio recording referred to in paragraph (d); and
- (f) attach any article, document, book, video or audio recording referred to in paragraph (d) if, in his or her opinion, it may provide evidence of any offence or irregularity.

(3) A person appointed under subsection (1) who is not in the full-time employment of the State may be paid, out of monies appropriated for this purpose by the Legislature, such allowances as the Member of the Executive Council may, with the concurrence of the financial head, determine.

(4) Any person who, without just cause—

- (a) hinders or obstructs a person conducting an inquiry in the performance of his or her functions under this section;
- (b) fails to appear in accordance with a direction issued under subsection (2)(b), at the time and place in question;
- (c) refuses to answer a question put to him or her under subsection (2)(c);
- (d) deliberately gives a false answer to a question put to him or her under subsection (2)(c);
- (e) fails to produce any article, document, book, video or audio recording as ordered under subsection (2)(d); or
- (f) prevents any other person from appearing in accordance with a direction issued under subsection (2)(b), at the time and place in question,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

Submission of information

9. (1) The Permanent Secretary may direct any person employed at any school or centre of learning in writing to submit to him or her, within the period mentioned in the direction, such information at the disposal of such person as he or she may reasonably require in connection with the affairs of the school or centre of learning.

(2) Any principal of a school, or an Education Development Officer, or any official senior in rank or position to any educator, may, if he or she suspects on reasonable grounds that such educator is guilty of misconduct as detailed in section 12(1)(h) of the Educators' Employment Act, 1994 (Act No. 138 of 1994), require such educator—

- (a) to breathe into the prescribed apparatus for such period as he or she may direct; or
- (b) to undergo examination by a district surgeon or other registered medical practitioner (including any test, as well as any blood test, which such district surgeon or medical practitioner may deem necessary); or
- (c) to breathe into the prescribed apparatus and to undergo the examination referred to in paragraph (b).

(3) If—

- (a) any educator fails or refuses to breathe into the prescribed apparatus or to undergo any examination when so required under subsection (2)(a); or
- (b) the prescribed apparatus records that such educator has a blood alcohol content expressed in grams per one hundred millilitres of blood, of not less than 70 milligrams (0,7 per cent); or
- (c) the examination referred to in paragraph (a) indicates that such prescribed limit as aforesaid has been exceeded,

such educator shall be deemed conclusively to be guilty of misconduct as prescribed in the said section 12(1)(h) of the said Act.

Appointment of school attendance officers

10. (1) The Permanent Secretary may appoint a school attendance officer.

(2) A school attendance officer shall be provided with a certificate, signed by the Permanent Secretary, declaring that he or she has been appointed as a school attendance officer under this section.

(3) A school attendance officer may, in the execution of his or her duties and functions, be assisted by any other person or persons authorised by the Permanent Secretary for this purpose.

Functions of school attendance officers

11. (1) In order to ensure that compulsory school attendance is being complied with, a school attendance officer may—

- (a) at any reasonable time enter upon any premises if he or she has reasonable grounds to suspect that a learner who is subject to compulsory school attendance is on those premises;
- (b) question any person who in his or her opinion may be able to give information regarding such a learner; and

- (c) if he or she has reasonable grounds to suspect that such a learner is absent without adequate reasons from the school he or she should be attending, take such a learner into his or her custody, take him or her to that school and hand him or her over to the principal.

(2) A school attendance officer shall not perform a function under this section without having on his or her person the certificate provided to him or her in terms of section 10(2), which shall be produced by him or her to any person affected by the performance of that function.

Establishment and functions of Provincial Board of Education and Training

12. (1) There is hereby established a board to be known as the Provincial Board of Education and Training, which shall consist of—

- (a) the Permanent Secretary;
- (b) the prescribed number of persons designated by the Permanent Secretary from his or her staff;
- (c) the prescribed number of persons in respect of universities, technikons and colleges of education, respectively, designated by the Member of the Executive Council out of nominations made in the prescribed manner by the respective institutions in the Province;
- (d) the prescribed number of persons designated in the prescribed manner by the organised teaching profession representative of each region;
- (e) the prescribed number of persons designated in the prescribed manner by the organised parent community representative of each region in the Province;
- (f) the prescribed number of representatives of independent schools in each region, designated by the Member of the Executive Council out of nominations made in the prescribed manner by the independent schools registered with the Department;
- (g) one person designated by the Member of the Executive Council out of the nominations made in the prescribed manner by the governing bodies of schools for specialised education representative of each region in the Province;
- (h) one person designated by the Member of the Executive Council out of nominations made in the prescribed manner by the councils of technical colleges representative of each region in the Province;
- (i) the prescribed number of members of non-governmental organisations and organised student organisations designated by the Member of the Executive Council; and
- (j) one representative from each region designated by the Educational Development Officers employed in each one of the regions.

(2) A Board of Education and Training shall elect from its members a chairperson and a vice-chairperson.

(3) Whenever the chairperson of the Board of Education and Training is absent or is unable to perform his or her functions as a chairperson, the vice-chairperson shall act as a chairperson and while he or she is so acting, the vice-chairperson shall have all the powers and perform all the functions of the chairperson.

- (4) The Member of the Executive Council may make regulations in relation to—
- (a) the qualifications and term of office of members of the Board of Education and Training, and the filling of vacancies; and
 - (b) the appointment and functions of the executive committee of the Board of Education and Training.

(5) A member of the Board of Education and Training who is not in the full-time employment of the State may be paid, out of moneys appropriated for this purpose by the Legislature, such allowances as the Member of the Executive Council may, with the concurrence of the financial head, determine.

(6) If a designation contemplated in paragraph (d) or (e) of subsection (1) or a nomination contemplated in paragraph (f), (g) or (h) of subsection (1), is not made, after due notice having been given to the relevant body, the Member of the Executive Council may make such designation or nomination as the case may be.

(7) The administrative functions of a Board of Education and Training shall be performed by officers of the Department who shall be seconded for this purpose.

(8) The Board of Education and Training shall—

- (a) determine its own rules governing meetings and procedure at those meetings;
- (b) advise the Member of the Executive Council and the Department in regard to matters relating to education referred to it by the Member of the Executive Council or the Department, or which the Board of Education and Training wishes to bring to the attention of the Member of the Executive Council or the Department; and
- (c) perform such functions as may be assigned to it by or under this Act, or any other Act or regulations.

(9) An act of the Board of Education and Training shall not be invalid merely by reason of a vacancy which exists on such a board.

Establishment of Regional Boards and Subregional Boards of Education and Training

13. The Member of the Executive Council may, after consultation with the Board of Education and Training, by notice in the *Provincial Gazette*—

- (a) divide the Province into regions and subregions, determine the boundaries thereof and establish a regional board or subregional board of Education and Training for each region; and
- (b) change the boundaries of such a region at any time and, should he or she deem it desirable, dissolve the regional board or subregional board concerned and establish a new regional board or subregional board of Education and Training with effect from a date mentioned in the notice.

Allowances to members of Regional or Subregional Boards of Education and Training and committees of regional or subregional Boards

14. The Member of the Executive Council may, with the concurrence of the financial head, determine the allowances payable to a member of a regional or subregional Board, or a committee thereof who is not in the full-time service of the State, when he or she is engaged in the business of that Board.

CHAPTER 3**PUBLIC SCHOOLS****Establishment and maintenance of public schools**

15. (1) The Member of the Executive Council may, out of moneys appropriated for this purpose by the Legislature, establish and maintain the following public schools, namely:

- (a) Pre-primary schools;
- (b) primary schools;
- (c) secondary schools;
- (d) intermediate schools;
- (e) combined schools;
- (f) schools for specialised education;
- (g) industrial schools;
- (h) reform schools; and
- (i) any other type of school which he or she deems necessary for education.

(2) The following types of schools:

- (a) A pre-primary school;
- (b) a junior primary school;
- (c) a primary school;
- (d) a junior secondary school;
- (e) an intermediate school;
- (f) a combined school;
- (g) a school for specialised education, special school and home school;
- (h) an industrial school;
- (i) a reform school;
- (j) a farm school;
- (k) a clinic school;
- (l) a training centre for mentally retarded children;
- (m) a technical school;
- (n) an agricultural school;
- (o) a secondary school; or
- (p) a vocational school,

established or erected in terms of a law repealed by this Act, or deemed to be established or erected in terms of such a law, and which was controlled and managed by a department referred to in such law immediately prior to the fixed date, shall with effect from that date be deemed to be—

- (i) a pre-primary school;
- (ii) a junior primary school;
- (iii) a primary school;

- (iv) a junior secondary school;
- (v) an intermediate school;
- (vi) a combined school;
- (vii) a school for specialised education, special school and home school;
- (viii) an industrial school;
- (ix) a reform school;
- (x) a farm school;
- (xi) a clinic school;
- (xii) a training centre for mentally retarded learnerren;
- (xiii) a technical school;
- (xiv) an agricultural school;
- (xv) a secondary school; and
- (xvi) a vocational school,

respectively, established under this section.

(3) Public schools may, subject to section 11(2) of the 1996 Act, be classified by the Member of the Executive Council into such categories or sections of schools as he or she may determine, and he or she may combine two or more such categories or sections into one school.

Language policy

16. (1) (a) The language policy of a public school shall be determined by the governing body of the school concerned subject to section 6 of the 1996 Act.

(b) The governing body of the school concerned shall refer a policy determined in terms of paragraph (a) to the Member of the Executive Council who will determine whether the policy conforms with the requirements of the said section 6 and of subsection (2).

(2) The language policy of a public school shall be developed within the framework of the following principles:

- (a) The education process should aim at the development of a national democratic culture of respect for the country's diverse language communities;
- (b) within practical limits, a learner shall have the right to language choice in education;
- (c) school language policy should be designed to facilitate the maximum participation of learners in the learning process;
- (d) special measures should be taken to enable a learner to become competent in the languages of learning of his or her school, and where practicable, to enable a learner to use his or her language of choice where it differs from the languages of learning of his or her school;
- (e) school language policies should be co-ordinated at a district level and should take into account the availability of human and material resources;
- (f) on completion of the ninth level of education a learner should have acquired satisfactory standards of competence in at least two of the official languages;

- (g) special measures should be taken to promote the status and use of official languages which have previously been neglected or discriminated against by education authorities;
- (h) there shall be a duty on all public schools and on the Department to ensure that educators acquire the special skills necessary for teaching in a multi-lingual educational environment.

(3) If at any time, the Member of the Executive Council has reason to believe that the language policy of a public school does not comply with the principles set out in subsection (2), the Member of the Executive Council may, after consultation with the governing body of the school concerned, direct that the language policy of the school shall be reformulated in accordance with subsections (1) and (2).

Language and discrimination

17. (1) Language competence testing shall not be used as an admission requirement to a public school.

(2) Learners at public schools shall be encouraged to make use of the range of official languages used in the Province.

(3) No learner at a public school or an independent school which receives a subsidy in terms of section 31 shall be punished for expressing himself or herself in a language which is not a language of learning of the school concerned.

(4) The right contemplated in section 16(2)(a) may be limited in circumstances where such limitation is reasonable and justifiable in an open and democratic society based on freedom and equality and committed to multi-lingualism.

Recognition of sign languages

18. (1) The Member of the Executive Council may by notice in the *Provincial Gazette* recognise any sign language which in his or her opinion is used by a significant proportion of people communicating in a sign language in the Province.

(2) For the purposes of any matter related to school education in the Province any sign language recognised under subsection (1) shall have the status of an official language.

Religious policy of public schools

19. (1) The religious policy of a public school shall be made by the governing body of the school concerned after consultation with the Department, and subject to the approval of the Member of the Executive Council.

(2) The religious policy of a public school shall be developed within the framework of the following principles:

- (a) The education process should aim at the development of a national democratic culture of respect for our country's diverse cultural and religious traditions;
- (b) Freedom of conscience and of religion shall be respected at all public schools.

(3) If, at any time, the Member of the Executive Council has reason to believe that the religious policy of a public school does not comply with the principles set out in the subsection (2) or the provisions of section 7 of the 1996 Act, the Member of the Executive Council may, after consultation with the governing body of the school concerned, direct that the religious policy of the school shall be reformulated in accordance with subsections (1) and (2) and the said section 7.

Freedom of conscience

20. (1) Subject to the provisions of section 19, no person employed at any public school shall attempt to indoctrinate learners into any particular belief or religion.

(2) No person employed at any public school or at any independent school shall in the course of his or her employment denigrate any religion.

(3) Every learner at a public school, or at an independent school which receives a subsidy in terms of section 31, shall have the right not to attend religious education classes and religious practices at that school.

Closure of public schools

21. The Member of the Executive Council may, after consultation with the governing body, organised teaching profession, democratically constituted community structures and other parties concerned with education, if any, at any time close or disestablish a public school or any part thereof.

CHAPTER 4**GOVERNING BODIES****Establishment of school governing bodies for public schools and hostels**

22. (1) The Member of the Executive Council shall establish a governing body for each public school.

(2) If, in the opinion of the Member of the Executive Council, it is not expedient to place a hostel under the supervision of the governing body of a particular public school, the Member may then establish a hostel council for one or more hostels after consultation with the school community and other interested parties.

Composition of a governing body of a public school

23. (1) A governing body at a public school shall include—

- (a) parents of learners at the school who are not employed at the school;
- (b) educators at the school;
- (c) members of staff at the school who are not educators;
- (d) the principal of the school;
- (e) in the case of a secondary school, learners at the school nominated by the SRC of the school; and
- (f) members of the community coopted by the governing body.

(2) Parents of learners at a public school shall comprise the majority of members of a governing body at the school.

(3) The composition of a governing body of a school providing education for learners with special education needs shall also be subject to Chapter 4 of the 1996 Act.

Working committees

24. (1) A governing body may appoint one or more working committees, which, subject to the instructions of that body, shall perform such functions as it may determine.

(2) A governing body shall not be divested of a function which in terms of this section has been assigned to a committee of that body.

Regulations relating to governing bodies

25. The Member of the Executive Council may make regulations as to—

- (a) the constitution, powers, duties and functions and the categories of persons who may serve as members of governing bodies;
- (b) the qualifications for appointment, designation or election as, the terms of office of, and the vacation of their offices by, members of governing bodies, the filling of incidental vacancies in governing bodies;
- (c) the manner of election, powers and functions of chairpersons and vice-chairpersons of governing bodies;
- (d) the convening of, procedure and rules at, and quorum for, meetings of governing bodies and committees of governing bodies and the keeping of minutes of such meetings;
- (e) the dissolution and reconstitution of governing bodies; and
- (f) the designation of persons in the service of the Department to perform the work relating to the performance of the functions of governing bodies.

Continuation of certain bodies or councils

26. (1) A governing body, board of management, local or domestic council, committee, board or other body for the control and management of a public school or a hostel council established and constituted in terms of an Act repealed by this Act and which existed immediately prior to the fixed date, shall from that date be deemed to be—

- (a) a governing body; or
- (b) a hostel council,

respectively, established and constituted under this Act: Provided that the members of the said governing body, board of management, local or domestic council, committee, board or other body shall, after the said date, remain members of the governing body or hostel council referred to in paragraphs (a) and (b), respectively, until their membership ceases or is terminated by the Member of the Executive Council in terms of the provisions of a law governing their election, appointment or constitution, as the case may be.

(2) All assets and liabilities of a body, board, council, committee or other body referred to in subsection (1) shall, as from the fixed date, vest in the corresponding body or council referred to in paragraphs (a) and (b) of that subsection.

CHAPTER 5**INDEPENDENT SCHOOLS****Establishment, conduct or maintenance of independent schools prohibited unless registered**

27. (1) A person, body or bodies may establish, at their own cost, an independent school based on a common culture, language or religion, provided that there shall be no discrimination on the grounds of race or socio-economic status.

(2) No person shall establish, conduct or maintain an independent school unless that independent school is registered in terms of this Act.

(3) No person shall for reward keep in his or her custody or under his or her control 20 or more children of three years or older unless he or she has been registered as an independent school in terms of this Act.

(4) No person shall accept at an independent school keep in his or her custody or under his or her control children to provide specialised education to them for reward unless he or she has been registered as an independent school in terms of this Act.

Application for registration

28. (1) Any person intending to establish, conduct or maintain an independent school shall apply to the Permanent Secretary in writing for the registration of that independent school.

(2) An applicant for the registration of an independent school shall furnish such additional particulars in connection with his or her application as the Permanent Secretary may require.

Consideration of applications for registration of independent schools

29. (1) The Permanent Secretary may grant an application referred to in section 28, if he or she is of the opinion that the provisions of section 34 of the 1996 Act and other prescribed requirements have been complied with.

(2) If the Permanent Secretary refuses an application referred to in section 28, he or she shall notify the applicant in writing of such refusal and the reasons therefor.

Registration of independent schools

30. (1) If the Permanent Secretary grants an application referred to in section 28, he or she shall register the independent school in question and issue to the applicant a registration certificate in such form as he or she may determine. Such registration certificate must be prominently displayed and produced on request.

(2) The registration of an independent school shall be subject to the prescribed conditions.

(3) An independent school registered in terms of a law repealed by this Act and which existed immediately prior to the fixed date, shall from that date be deemed to be an independent school registered in terms of this Act.

(4) The owner of an independent school may manage such school himself or herself or he or she may appoint or authorise any person to manage the school on his or her behalf subject to the provisions of this Act.

(5) Any person who contravenes the provisions of subsections (1) and (2) of section 27 and any person who admits anyone to a school which is not registered or exempted from registration in terms of this Act shall be guilty of an offence.

(6) The above provisions shall not apply to—

- (a) a correspondence college registered in terms of the Correspondence Colleges Act, 1965 (Act No. 59 of 1965), and providing tuition exclusively by means of correspondence;
- (b) a school established, maintained or controlled by a church solely for the purposes of providing theological training to prospective ministers of religion or evangelists or any schools providing exclusively, religious tuition;
- (c) any person providing, for reward, informal education which does not lead to the acquisition of any diploma, certificate or statement.

Subsidies to registered independent schools

31. (1) A registered independent school may annually or prior to the prescribed date apply to the Permanent Secretary in writing for the prescribed subsidy.

(2) The Permanent Secretary may at his or her discretion grant or refuse an application referred to in subsection (1), but he or she shall not grant any application if he or she is of the opinion that the registered independent school does not comply with the prescribed requirements for the subsidy.

(3) If, in the opinion of the Permanent Secretary, a condition subject to which a subsidy has been granted under subsection (2) has not been complied with, he or she may at any time terminate or reduce the subsidy from a date determined by him or her: Provided that the Permanent Secretary shall, before he or she terminates or reduces such subsidy, give the owner of the independent school or his or her representative, an opportunity to make written representations to him or her, giving reasons why the subsidy should not be reduced or terminated.

Lapsing or withdrawal of registration

32. (1) The registration of an independent school shall lapse or may be withdrawn under the prescribed circumstances and subject to the prescribed legal requirements.

(2) No withdrawal or lapse of registration of an independent school shall be valid unless the owner of such an independent school has been furnished with written notification and reasons for such lapse or withdrawal.

Appeal against refusal or withdrawal of registration

33. (1) A person who feels aggrieved by the refusal by the Permanent Secretary of an application contemplated in section 28, or the withdrawal of registration in terms of section 32, may, within 30 days after receiving notice of such refusal or withdrawal, appeal to the Member of the Executive Council in writing, setting out the grounds of appeal, against the refusal or withdrawal.

(2) The Member of the Executive Council shall consider an appeal referred to in subsection (1), and may confirm or set aside the decision of the Permanent Secretary.

Regulations relating to independent schools

34. (1) The Member of the Executive Council may make regulations as to—

- (a) the admission of learners of a registered independent school to examinations conducted by, or under the supervision of, the Department;
- (b) the keeping of registers or other documents by a registered independent school;
- (c) the criteria of eligibility for a subsidy, the conditions of a subsidy and the manner in which a subsidy shall be payable to a registered independent school;
- (d) the democratic governance of an independent registered school;
- (e) the lapse or withdrawal of the registration of an independent school; and
- (f) any matter relating to independent schools which shall or may be prescribed by him or her.

(2) Different regulations may be made under subsection (1) in respect of different independent schools.

Declaration of an independent school to be a public school

35. The Member of the Executive Council may enter into an agreement with the owner of an independent school or the governing body thereof in terms of which such a school may be declared to be a public school after consultation with the school community and other interested parties, and—

- (a) no agreement shall be entered into under this section, except with the concurrence of the financial head;
- (b) if an agreement has been entered into under this section, the Member of the Executive Council may by notice in the *Provincial Gazette* declare the independent school concerned to be a public school with effect from a date mentioned in the notice.

Consequences of declaration as a public school

36. (1) As from the date mentioned in the notice contemplated in section 35(b)—

- (a) the school concerned shall be deemed to be a public school established under section 15;
- (b) there shall no longer vest in the previous owner or governing body any rights, powers, duties or functions in respect of the school concerned;
- (c) the rights obtained and obligations incurred by the owner or governing body concerned, for the purposes of or in connection with the school concerned, shall vest in the State; and
- (d) the ownership and control of movable and immovable property which immediately prior to that date vested in the owner or governing body concerned, and which relates to the school concerned, shall vest in the State, unless otherwise agreed upon.

(2) Immovable property vested in the State in terms of subsection (1)(d), shall be transferred to the State without payment of transfer duty, stamp duty or any other moneys or costs, but subject to any existing right, encumbrance, duty or trust on or over that property.

(3) The Registrar of Deeds in whose office the immovable property referred to in subsection (2) is registered shall, on submission to him or her of the title deed concerned, make such endorsements on that title deed and such entries in his or her register as may be required to register the transfer concerned.

(4) The declaration of an independent school to be a public school shall not affect anything legally done by the owner or governing body concerned prior to such declaration.

CHAPTER 6**LEARNERS****Age requirements in respect of specialised education**

37. Except with the approval of the Permanent Secretary—

- (a) a child shall not be admitted to a school for specialised education before he or she has reached the age of three years;

- (b) a person shall not be admitted to a school for specialised education after he or she has reached the age of 19 years; and
- (c) a person shall not attend a school for specialised education after the end of the year in which he or she has reached the age of 21 years.

Admission of children with special education needs at request of parents

38. (1) Subject to the provisions of section 44, the Permanent Secretary may, at the request of the parent of a child, approve that the child be admitted to a school for specialised education.

(2) The Permanent Secretary shall not grant his or her approval under subsection (1), unless he or she is of the opinion that the child concerned is a child in need of special education.

Examinations to identify children with special education needs

39. (1) The Permanent Secretary may cause a child who is subject to compulsory school attendance but is not attending a school for specialised education, and whom he or she suspects to be a learner with special education needs, to be examined in order to determine whether he or she is such a child.

(2) The Permanent Secretary may direct the parent of a child referred to in subsection (1), in writing, to take the child within the period mentioned in the direction, to a place so mentioned for the purposes of such an examination.

Action in case of children with special education needs

40. (1) If the Permanent Secretary, after an examination referred to in section 39(1), finds that the child is a child with special education needs, he or she shall notify the parent of the child in writing—

- (a) that he or she has found the child to be a child with special education needs who should receive specialised education and provide his or her reasons therefor; and
- (b) that the parent may within 30 days from the date of receipt of the notification, appeal to the Member of the Executive Council against the finding.

(2) The Member of the Executive Council shall consider an appeal contemplated in subsection (1)(b), and may confirm or set aside the finding of the Permanent Secretary.

Committal of children with special education needs

41. (1) Unless—

- (a) the parent of a child found to be a child with special education needs in terms of section 38, within the period determined by the Permanent Secretary, takes such steps as in the opinion of the Permanent Secretary are adequate to ensure that the child receives suitable education or treatment; or
- (b) the Permanent Secretary at any time after this period is of the opinion that the child is receiving suitable education or treatment,

the Permanent Secretary may, after consultation with the parent, designate a school for specialised education to which the child shall be sent.

(2) If the Permanent Secretary has designated a school for specialised education under subsection (1) and the parent concerned fails to send the child to that school within the period determined by the Permanent Secretary, the Permanent Secretary may cause the child to be taken to the school concerned.

Additional powers of children's court in relation to children with special education needs

42. (1) A children's court may, in the case of a child in respect of whom it has made an order in terms of section 15(1) of the Child Care Act, 1983 (Act No. 74 of 1983), direct that the case be referred to the Permanent Secretary in order to determine whether the child is a child with special education needs.

(2) If the Permanent Secretary finds that a child referred to him or her under subsection (1) is a child with special education needs, the Permanent Secretary may approve that the child be admitted to a school for specialised education, for the periods during which specialised education is provided thereat.

Transfer of children with special education needs

43. (1) The Permanent Secretary may, after consultation with the parent of a child attending a school for specialised education, transfer that child to another school for specialised education.

Exemption from attendance of school for specialised education

44. The Permanent Secretary may exempt a child from attendance at a school for specialised education if he or she is of the opinion that the child—

- (a) may benefit sufficiently from the instruction provided in the ordinary course of education; or
- (b) should attend an ordinary class in an ordinary school.

Admission to public schools

45. (1) Subject to the provisions of the Child Care Act, 1983 (Act No. 74 of 1983), the admission of persons to public schools shall be subject to the prescribed conditions and to the provisions of the 1996 Act.

(2) No learner shall be denied access or admission to any public school on grounds of race or socio-economic circumstances.

Age requirements in respect of particular schools

46. Except with the approval of the Permanent Secretary—

- (a) a child shall not be admitted to a pre-primary school before he or she has reached the age of three years;
- (b) a child shall not attend a pre-primary school after the end of the year in which he or she has reached the age of six years;
- (c) a child shall not be admitted to a primary school unless he or she reaches or has reached the age of six years before the first day of July of the year of admission;
- (d) a person shall not be admitted to a school, excluding a school for specialised education, industrial school or reform school, after he or she has reached the age of 20 years; and

- (e) a person shall not attend a school, excluding a school for specialised education, industrial school or reform school, after the end of the year in which he or she has reached the age of 21 years.

Compulsory school attendance

47. There shall be compulsory school attendance in accordance with national policy and the provisions of the 1996 Act.

Exemption from compulsory school attendance

48. The Permanent Secretary may, on receipt of a written application, either entirely or for such period and on such conditions as he or she may determine, exempt a learner in writing from compulsory school attendance introduced under section 47, if—

- (a) he or she is of the opinion—
 - (i) that the child is not yet ready to follow the educational programme concerned;
 - (ii) that the child can derive no benefit or further benefit from an educational programme at a school;
 - (iii) that the child is receiving suitable education or treatment at a place other than a school; or
 - (iv) that the child, as a result of continuous ill-health, is not capable of attending a school;
- (b) the child has reached the age of 15 years and can obtain permanent employment;
- (c) the child is pregnant;
- (d) the child marries;
- (e) for any other reason it will be in the interest of the child to be so exempted; or
- (f) sufficient school facilities are not available.

Medium of instruction at, and character of, schools

49. The medium of instruction at, and the religious and general character of, every public school shall be determined by its governing body in consultation with the parent community of the school concerned.

Control, discipline, suspension and expulsion of learners

50. (1) The control, discipline and suspension of learners at a public school shall be handled in accordance with the provisions of the 1996 Act.

(2) (a) A learner may be expelled from a public school only on grounds of serious misconduct as determined in regulations made by the governing body concerned and adopted in consultation with the Department and the school community.

(b) Any rule formulated by a governing body in terms of paragraph (a) shall take effect only after it has been approved by the Member of the Executive Council.

Exclusion of provisions of Workmen's Compensation Act, 1941

51. No learner at a public school or centre shall, for the purposes of the provisions of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), or any other similar law, be deemed to be a workman or other person entitled to payment of compensation or any other benefit under the said Act.

CHAPTER 7

MISCELLANEOUS

School and boarding fees

52. (1) The parent of a learner admitted to a public school shall pay such school fees (if any) as may be fixed in terms of Chapter 5 of the 1996 Act.

(2) The parent of a learner to whom boarding is provided by the Department shall pay such boarding fees as the Member of the Executive Council, with the concurrence of the financial head, may determine.

(3) (a) Different school fees may be determined in terms of subsection (1)—

- (i) in respect of different public schools and centres;
- (ii) in respect of learners on different levels;
- (iii) in respect of learners with different choices of subjects;
- (iv) depending upon learners' participation in extramural activities; and
- (v) depending upon the number of school attending children in a family.

(b) Different boarding fees may be determined in terms of subsection (2) in respect of different boarding facilities.

(c) The Member of the Executive Council may, with the concurrence of the financial head or the governing body concerned, as the case may be, exempt any learner or category of learners in whole or in part from the payment of any such fees.

Unauthorized person may not visit a public school or enter the school grounds or school premises

53. No person, except—

- (a) a learner, educator or an employee of the school in question;
- (b) the Member of the Executive Council, the Permanent Secretary or any officer or educator authorized in terms of sections 7 and 8;
- (c) a member of the governing body of a school concerned, or of the hostel council of a hostel attached to the school concerned, who acts with the written approval of the chairperson of such governing body or council;
- (d) a parent who, in relation to the education of his or her child, or for the purpose of attending a sports meeting, concert or any other event of the school in which his or her child has an interest;
- (e) a visitor from another school for the purpose of participating in school sports or other school activities; or
- (f) members of the community who attend a particular school activity at the invitation of the principal, or such educational programme as the Permanent Secretary may approve,

may, without the written permission of the Permanent Secretary, visit a public school or any hostel attached to such school or enter the school grounds or premises of such school or hostel.

Offences relating to independent schools

54. Any person who contravenes a prohibition contained in section 27 shall be guilty of an offence and shall on conviction be liable to a fine not exceeding R20 000 or to compulsory community service for a period not exceeding five years or to both such fine and such service.

Offences relating to compulsory school attendance

55. (1) If the parent of a child who is subject to compulsory school attendance fails, without sufficient cause, to send the child to school regularly, he or she shall be guilty of an offence.

(2) Any person who—

(a) during the normal school hours—

- (i) makes use of the services of a learner who is subject to compulsory school attendance for any work, whether for reward or otherwise;
- (ii) without sufficient cause prevents or discourages such a child from attending school; or
- (iii) harbours or conceals such a child;

(b) fails to comply with a direction issued under section 39(2); or

(c) removes a child who needs specialised education from a school for specialised education and who is not exempted under this Act from attendance,

shall be guilty of an offence.

Offences relating to functions of particular persons

56. Any person who—

- (a) hinders or obstructs a person authorized in terms of section 8(1), or a school attendance officer, in the performance of his or her duties in terms of this Act;
- (b) refuses or fails to comply with a directive given or a request made by a person referred to in paragraph (a) in the performance of his or her duties in terms of this Act;
- (c) refuses or fails to answer to the best of his or her ability a question put to him or her by a person referred to in paragraph (a) in the performance of his or her duties in terms of this Act;
- (d) deliberately furnishes false or misleading information to a person referred to in paragraph (a); or
- (e) hinders or obstructs any educator in the performance of his or her duties,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding R500 or to compulsory community service for a period not exceeding six months or to both such fine and such service.

Offences relating to unauthorised persons on school premises

57. Any person who contravenes a prohibition contained in section 53, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding R100 or to compulsory community service for a period not exceeding one month or to both such fine and such service.

Penalties

58. Any person convicted of an offence in terms of this Act shall be liable—

- (a) in the case of an offence referred to in section 30(5), to a fine not exceeding R20 000 or to compulsory community service for a period not exceeding 5 years, or to both such fine and such service;
- (b) in the case of an offence referred to in sections 55(1) and (2)(a) and (c), to a fine not exceeding R2 000, or compulsory community service for a period not exceeding one year, or to both such fine and such service; and
- (c) in the case of an offence referred to in section 55(2)(b), to a fine not exceeding R1 000, or to compulsory community service for a period not exceeding six months, or to both such fine and such service.

Delegation of powers

59. (1) The Member of the Executive Council may, subject to such conditions as he or she may determine, delegate any of his or her powers under this Act, except the power to make regulations and the power to decide an appeal lodged with him or her in terms of this Act, and assign any of his or her duties in terms of this Act, to the Permanent Secretary, or a person employed by the Department, or an outside agent.

(2) (a) The Permanent Secretary may, subject to such conditions as he or she may determine, delegate any of his or her powers under this Act or delegated to him or her in terms of subsection (1), or assign any of his or her duties in terms of this Act or assigned to him or her in terms of subsection (1), to a person employed by the Department.

(b) The Permanent Secretary may delegate powers to institute an inquiry to Regional Directors or Heads of District Offices.

(3) A delegation under subsection (1) or (2) shall not prevent the Member of the Executive Council or the Permanent Secretary, as the case may be, from exercising such power or performing such duty, as the case may be, himself or herself.

Limitation of legal proceedings

60. (1) No legal proceedings shall be instituted against the State or a body or person in respect of an alleged act in terms of this Act or an alleged omission to do anything which in terms of this Act should have been done, unless the legal proceedings are instituted within a period of 12 months after the date on which the plaintiff or the applicant became aware of the alleged act or omission, or after the date on which it could reasonably have been expected that the plaintiff or applicant should have become aware of the alleged act or omission, whichever date is the earlier.

(2) Legal proceedings contemplated in subsection (1) shall not be instituted within a period of one month after the date upon which a written notice of intention to institute those proceedings has been served on the defendant or respondent.

(3) A written notice referred to in subsection (2) shall contain such particulars as may be necessary to identify the alleged act or omission.

Indemnity against loss or damage

61. The State or any school attendance officer shall not be liable for any loss or damage caused by or arising from any reasonable action taken by a school attendance officer under this Act.

Establishment and composition of Finance Committee

62. (1) (a) There shall be established at every school, a subcommittee of the governing body which shall be known as a Finance Committee.

(b) The Finance Committee shall be responsible for the appointment of auditors and the control and administration of school fund contributions.

(2) The composition of the Finance Committee shall be as follows:

- (a) the principal of the school concerned;
- (b) one member of the parent component of the governing body;
- (c) one member of the teacher component of the governing body;
- (d) one student member of the governing body, where applicable; and
- (e) other members of the governing body, to a maximum of five members.

Meetings of a Finance Committee

63. A Finance Committee shall from its members elect a chairperson, vice-chairperson, a secretary and a treasurer who shall hold office for a prescribed period: Provided that its term of office shall correspond with that of a governing body.

Functions of a Finance Committee

64. (1) The principal, in his capacity as accounting officer of the school, shall ensure that the functions of the Finance Committee, as outlined in the manual relating to school funds, are properly executed.

(2) The Finance Committee shall report to the governing body at least twice per annum.

Regulations

65. (1) The Member of the Executive Council may make regulations which are not inconsistent with any law, as to—

- (a) the management and control of educational auxiliary services, centres, teachers' centres, hostels, public schools and the control over the immovable property and equipment of the department;
- (b) (i) the establishment and control of school funds for public schools;
- (ii) the receipt and use of funds or other goods by public schools and hostels attached to such schools, centres and educational auxiliary services, and the books, records and statements to be kept in connection therewith by the bodies or persons mentioned in the regulations; and
- (iii) the manner in which such books, records and statements are to be kept, the auditing thereof and the returns and reports to be submitted in connection therewith;
- (c) any matter which shall or may be prescribed under this Act;

(d) any matter which the Member of the Executive Council may deem necessary or expedient to prescribe in order to achieve the objects of this Act, and the generality of this paragraph shall not be limited by the preceding paragraphs.

(2) The Member of the Executive Council shall not make a regulation relating to moneys or allowances payable to or by any person, or relating to the control of money, except with the concurrence of the financial head.

(3) Different regulations may be made under subsection (1) in respect of different schools.

CHAPTER 8

ADULT BASIC EDUCATION AND TRAINING AND ADULT CONTINUING EDUCATION AND TRAINING

Establishment and maintenance of adult basic education and training centres and adult continuing education and training centres

66. The Member of the Executive Council may, in terms of section 5(1)(c), establish and maintain centres for Adult Basic Education and Training and Adult Continuing Education and Training.

Basic policy for establishment

67. The basic policy of adult basic education and training and adult continuing education and training is to provide a force for social participation and economic development.

Design of programmes

68. Adult basic education and training and adult continuing education and training programmes shall be designed around a common core of fundamental concepts, knowledge and skills on which further learning, knowledge and skill formation could be built.

Partnerships

69. Partnerships of all constituencies with a vital interest in adult basic education and training and adult continuing education and training, including non-governmental, labour and business stakeholders may undertake the planning and development of resources for the programmes in partnership with governmental institutions.

Needs analysis and curriculum

70. (1) Adult basic education and training and adult continuing education and training programmes shall be established after a needs analysis has been done with regard to personnel, facilities and infrastructure. This together with submissions made from amongst the learner community shall be employed to establish an appropriate adult basic education and training and adult continuing education and training curriculum for each centre whose standards will be fully incorporated in the National Qualification Framework.

(2) The Member of the Executive Council shall set criteria for the recognition of learning achievements.

Role of Provincial Qualification Authority

71. The Provincial Qualification Authority shall monitor all adult basic education and training as well as adult continuing education and training programmes of all governmental and non-governmental organisations in the Province.

Training centres

72. Industry, commerce and agriculture may establish adult basic education and training and adult continuing education and training centres: Provided that such centres shall be monitored by the Provincial Qualification Authority, where accreditation by the Provincial Qualification Authority is required.

Closure of centres

73. The Member of the Executive Council may, after consultation with the community and governing body concerned, close an adult education and training centre or an adult continuing education centre, or any part thereof, on such conditions as he or she may determine.

CHAPTER 9

REPEAL OF LAWS AND SHORT TITLE

Repeal of laws and savings

74. (1) Subject to the provisions of subsection (2), the laws mentioned in the first column of the Schedule are hereby repealed to the extent indicated in the third column thereof.

(2) Anything done or deemed to have been done in terms of a provision of a law repealed by subsection (1) and which may or shall be done in terms of this Act, shall be deemed to have been done in terms of the corresponding provision of this Act.

(3) (a) All regulations, notices and directives made or issued under any law repealed by this Act and which were in force immediately prior to the fixed date shall, notwithstanding such repeal, remain in force except in so far as they are incompatible, or in conflict, with this Act.

(b) Such regulations, notices and directives shall remain in force until repealed, withdrawn or amended by the Member of the Executive Council by regulation, notice or directive, in terms of this Act.

Short title and commencement

75. This Act shall be called the Eastern Cape Schools Education Act, 1996 (Eastern Cape), and shall come into operation on a date to be fixed by the Premier by proclamation in the *Provincial Gazette*.

SCHEDULE

LAWS REPEALED (SECTION 74)

| Number and year of law | Title | Extent of repeal |
|--------------------------------|---|---|
| 1. Ordinance No. 20 of 1956 | Education Ordinance, 1956 | Part C. |
| 2. Act No. 47 of 1963 | Coloured Persons Education Act, 1963 | The whole, excluding sections 1A, 8 to 20, 26 and 28 to 31, except in so far as it relates to technical colleges and colleges. |
| 3. Act No. 61 of 1965 | Indians Education Act, 1965 | The whole, excluding sections 1B, 3B, 8 to 20, 26, 28, 29, 31 and 33(1)(g), except in so far as it relates to technical colleges and colleges of education. |
| 4. Act No. 90 of 1979 | Education and Training Act, 1979 | The whole, excluding sections 1A, 3, 4, 11 to 29, 31, 32, 43 and 44(1)(h), except in so far as it relates to technical colleges and colleges of education. |
| 5. Act No. 26 of 1983 | Private Schools Act (House of Assembly), 1986 | The whole, excluding sections 3 to 32 and 35, except in so far as it relates to technical colleges and colleges of education. |
| 6. Act No. 104 of 1986 | Education Affairs Act (House of Assembly), 1986 | The whole, excluding section 1A. |
| 7. Act No. 70 of 1988 | Education Affairs Act (House of Assembly), 1988 | The whole, excluding sections 3 and 65 and Chapter 7, except in so far as it relates to colleges of education. |
| 8. Decree No. 22 of 1992 | Ciskei Education Decree, 1992 | The whole, except in so far as it relates to technical colleges and colleges of education. |

EXPLANATORY MEMORANDUM ON THE PROVISIONS OF THE EASTERN CAPE SCHOOLS EDUCATION BILL, 1996

PART 1

(Principles)

1. South Africa has had a long history of racially-based and apartheid-based education. Presently schools education in the Province is regulated by eight laws. Five of these laws are based on race classification. Two of the laws are applicable in the Transkei and Ciskei.
2. The national government has put in motion a process to devise a new education system for South Africa. A consultative process was embarked upon. This led to a number of public hearings being held, some of them were held in the Province.
3. A number of discussion papers were produced and, finally, a White Paper was also produced. This consultative process led to the introduction of the South African Schools Bill. This Bill is now serving before Parliament.
4. The Province has tackled the amalgamation or rationalisation of the two systems in stages. Last year a new law providing for the conduct of examinations under a single, uniform system was promulgated. This Bill goes one step further and effectively amalgamates the disparate education systems in the Province.
5. The Bill restructures the manner in which schools are governed and managed in the Province.

The Bill seeks to promote a partnership between communities and school authorities in the management of schools. There will be two categories of schools, viz public schools and independent schools.

6. The following are the main features of the Bill:
 - 6.1 All schools in the Province will be governed by a single legislative framework which will replace all education legislation previously designed to ensure racial segregation;
 - 6.2 the basic human rights of all individuals applicable to education are ensured, *inter alia*, by the recognition of—
 - (a) the rights relating to language, including sign language, religion and also the right to freedom of conscience of learners;
 - (b) the rights of educators as they pertain to educational matters;
 - (c) the right to all educational information as well as the right to consultation, the involvement of all stakeholders in negotiation processes and, also, the right to administrative justice is given due recognition;
 - 6.3 democratically elected governing bodies are established in all schools;
 - 6.4 consultative structures are established at central, regional, district and local level;
 - 6.5 learners with specialised educational needs as well as learners at farm schools are given special attention; and

- 6.6 the responsibilities and obligations of the Department are clearly outlined in several sections of the Bill, particularly its role in the protection of the rights of the learners.
7. South Africa is one country. In the drafting of the Bill recourse was had to the following:
- (a) The Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);
 - (b) the South African Schools Bill, 1996;
 - (c) two Constitutional Court judgements on the Constitutionality of certain Bills relating to education matters introduced in Gauteng and in Parliament;
 - (d) the National Policy Education Act, 1996 (Act No. 27 of 1996); and
 - (e) the White Paper on the organisation, governance and funding of schools.
- The control of education in the Province is the responsibility of the member of the Executive Council responsible for education. This responsibility must be discharged in accordance with the national legislation and policies on schools education.
8. Another important provision relates to the role of learners in the affairs of the schools. The Bill acknowledges that the SRC system is the best method of promoting cooperative governance in schools. The Bill also deals with the all-important aspects of compulsory education, liability for the payment of fees and admission requirements. Other issues such as the medium of instruction and discipline are also dealt with. Consideration is also given to adult basic education.
9. The evaluation of comments received from various stake-holders is attached hereto.
10. The explanatory memorandum on the objects of the South African Schools Bill, 1996, is also attached hereto.

PART II

(Clause by clause analysis)

- CLAUSE 1: Definitions
- CLAUSE 2: Deals with application of the Act
- CLAUSE 3: Deals with the control of school education by the Member of the Executive Council
- CLAUSE 4: Deals with the determination of provincial education policy
- CLAUSE 5: Sets out the general functions of the Member of the Executive Council
- CLAUSE 6: Sets out the general functions of the Permanent Secretary
- CLAUSE 7: Provides for the administrative inspection of schools and hostels and other official visits
- CLAUSE 8: Provides for inquiry at instance of the Permanent Secretary
- CLAUSE 9: Deals with submission of information
- CLAUSE 10: Provides for appointment of school attendance officers

-
- CLAUSE 11: Sets out the functions of school attendance officers
- CLAUSE 12: Deals with the establishment and functions of the Provincial Board of Education and Training
- CLAUSE 13: Establishes Regional Boards and Sub-regional Boards of Education and Training
- CLAUSE 14: Provides for the payment of allowances to Board members
- CLAUSE 15: Deals with the establishment and maintenance of public schools
- CLAUSE 16: Deals with language policy of public schools
- CLAUSE 17: Deals with language and discrimination
- CLAUSE 18: Provides for the recognition of sign languages
- CLAUSE 19: Deals with the religious policy of public schools
- CLAUSE 20: Provides for the exercise of freedom of conscience
- CLAUSE 21: Provides for the closure of public schools
- CLAUSE 22: Establishes School Governing Bodies for public schools and hostels
- CLAUSE 23: Sets out the composition of a government body of a public school
- CLAUSE 24: Provides for the appointment of Working Committees by a governing body
- CLAUSE 25: Deals with regulations relating to governing bodies
- CLAUSE 26: Provides for the continuation of certain government bodies
- CLAUSE 27: Deals with the establishment, conduct or maintenance of independent schools prohibited unless registered
- CLAUSE 28: Provides for the application for the registration of independent school
- CLAUSE 29: Deals with the consideration of applications for the registration of independent schools
- CLAUSE 30: Provides for the registration of independent schools
- CLAUSE 31: Provides for the application for subsidies by independent schools
- CLAUSE 32: Deals with the lapsing or withdrawal of registration
- CLAUSE 33: Provides for appeal against refusal or withdrawal of registration
- CLAUSE 34: Provides for the regulations relating to independent schools
- CLAUSE 35: Deals with the declaration of an independent school to be a public school
- CLAUSE 36: Sets out the consequences of declaration of an independent school as a public school
- CLAUSE 37: Set out the age requirements in respect of specialised education
- CLAUSE 38: Deals with the admission of children with special education needs at request of parents
- CLAUSE 39: Provides for an examination to identify children with special education needs

- CLAUSE 40: Deals with action to be taken with regard to children with special education needs
- CLAUSE 41: Deals with the committal of children with special education needs
- CLAUSE 42: Sets out the powers of the children's court in relation to children with special education needs
- CLAUSE 43: Provides for the transfer of children with special education needs
- CLAUSE 44: Grants exemption from the attendance of a school for specialized education
- CLAUSE 45: Deals with admission to public schools
- CLAUSE 46: Deals with age requirements in respect of particular schools
- CLAUSE 47: Deals with compulsory school attendance
- CLAUSE 48: Provides for exemption from compulsory school attendance
- CLAUSE 49: Deals with the medium of instruction and character at schools
- CLAUSE 50: Sets out the grounds on which the control, expulsion, suspension and discipline of pupils may take place
- CLAUSE 51: Provides for the exclusion of pupils from the provisions of the Workmen's Compensation Act, 1941
- CLAUSE 52: Deals with school and boarding fees
- CLAUSE 53: Provides that unauthorised persons may not visit a public school without written consent of the Permanent Secretary
- CLAUSE 54: Deals with offences relating to compulsory school attendance
- CLAUSE 55: Deals with offences relating to compulsory school attendance
- CLAUSE 56: Deals with offences relating to the functions of particular persons
- CLAUSE 57: Deals with offences relating to unauthorised persons on school premises
- CLAUSE 58: Provides for penalties
- CLAUSE 59: Deals with the delegation of powers
- CLAUSE 60: Deals with the limitation of legal proceedings
- CLAUSE 61: Provides for indemnity against loss or damage
- CLAUSE 62: Deals with the establishment and composition of finance Committee at schools
- CLAUSE 63: Provides for meetings of Finance Committee
- CLAUSE 64: Sets out the functions of a Finance Committee
- CLAUSE 65: Deals with regulations
- CLAUSE 66: Provides for the establishment of adult basic education and training and adult continuing education and training
- CLAUSE 67: Deals with the objective policy of adult basic education and training and adult continuing education and training

- CLAUSE 68: Provides for skill formation in adult basic education and training and continuing education and training
- CLAUSE 69: Allows for the establishment of partnerships in adult basic education and training and continuing education and training
- CLAUSE 70: Provides for the conducting of a needs analysis
- CLAUSE 71: Provides for the establishment of a provincial qualification authority
- CLAUSE 72: Deals with the involvement of industry, commerce and agriculture in adult basic education and training and adult continuing education and training
- CLAUSE 73: Deals with the closure of adult centres
- CLAUSE 74: Deals with the repeal of laws and savings
- CLAUSE 75: Short title and date of commencement

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN SCHOOLS BILL, 1996

GENERAL

1. The South African Schools Bill was prepared with preference to three important documents, namely—

- ▶ the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);
- ▶ the Ministry of Education's first White Paper, *Education and Training in a Democratic South Africa: First Steps to Develop a New System* (Notice 156 of 1995);
- ▶ the Ministry of Education's second White Paper, *The Organisation, Governance and Funding of Schools* (Notice 130 of 1996).

2. Education White Paper 2 expresses the policy of the Government National Unity on which the present Bill is based. This policy was substantially influenced by the *Report of the Committee to Review School Organisation, Governance and Funding* (31 August 1995), known as the Hunter Report.

3. Since the Bill provides for the alteration of certain existing rights, powers and functions of governing bodies of public schools, the Government has been obliged by section 247 of the Constitution to enter into *bona fide* negotiations with such governing bodies, with a view to reaching agreement on the proposed alterations. This has been done, in the manner described in the Ministry of Education's document. *Proposed Alterations to the Rights, Powers and Functions of Public School Governing Bodies* (Notice 502 of 1996).

4. The Bill provides for the rights and obligations of learners and their parents.

5. Subject to the Constitution, the Bill creates a unified national school system comprising two categories, public schools and independent schools. Most of the Bill is addressed to the public school category. All public schools will be juristic persons. The will be governed by representative governing bodies which will exercise functions according to their capacity. The immovable property of former "Model C" state-aided schools reverts to the State. Otherwise, a public school may be situated on private property, subject to an agreement between the owner and the provincial authorities.

6. Schedule 2 to the Bill amends the Educators' Employment Act, 1994, in order to bring it up to date. Among other changes, the education departments become the employers of educators who are employed on the fixed establishment of former state-aided schools.

THE CLAUSES OF THE BILL

7. The Bill sets norms and standards for the organisation, governance and funding of schools which must apply uniformly throughout the Republic, in order to create the basis for an education system of high quality and to establish a partnership between school communities and the State for the good governance of schools.

The Bill provides for the following matters:

- ▶ Provincial education authorities are required to exercise the powers conferred on them in the light of relevant national education policy. The competence of provincial legislature to make laws for school education in their provinces is confirmed.
- ▶ Parents must ensure that their children attend school from the beginning of the year a child turns seven until the end of the year in which the child turns 15, or obtains the ninth grade, whichever occurs sooner. (This establishes the national norm for compulsory attendance. Provinces will be free to extend but not diminish the period of compulsory attendance.) Failure to comply renders a parent or any other person who prevents a learner to attend school, liable to a fine or imprisonment for up to six months.
- ▶ Provincial authorities have the duty to ensure that there are sufficient places to accommodate all eligible children, and must report progress in achieving this goal to the Minister. Provision is made for exemptions from compulsory attendance.
- ▶ The rights of learners to admission to public schools and basic procedures for admission are laid down.
- ▶ A governing body is required to determine a school's admission policy in terms of the Bill and any applicable provincial law.
- ▶ The rights and wishes of parents of learners with special education needs must be taken into account.
- ▶ The right of learners to receive education in the official language or languages of choice, and the duty of the State in giving effect to this right are provided for. Governing bodies may determine language policy for their schools subject to the Bill and any applicable provincial law provided that no racial discrimination is practised.
- ▶ The governing body of a public school is made responsible for establishing equitable rules for voluntary religious observances at a school, subject to provincial law.
- ▶ Every public school governing body, after consultation, must adopt a mandatory code of conduct for learners aimed at improving and maintaining the quality of learning in the school.
- ▶ Procedures for the suspension or expulsion of a learner are set out.
- ▶ Corporal punishment of learners is prohibited and contravention is made an offence.

- ▶ Representative councils of learners must be established in every public school enrolling learners in Grade 8 and above. A public school for learners with special education needs may be exempted from this requirements by the Member of the Executive Council if it is not reasonably practicable to implement it.
- ▶ The provision of public schools is a duty of the Member of the Executive Council in a province. Such schools may be ordinary public schools, or public schools for learners with special education needs. However, where reasonably practicable, education for learners with special education needs and relevant education support services must be provided at ordinary public schools.
- ▶ Public schools may be situated on private property under certain conditions. They may also be gender-specific.
- ▶ A public school situated on State land has the right to occupy and use the immovable property for the school's educational purposes so long as the school exists.
- ▶ Schools such as church schools, farm schools, mine schools and plantation schools, which exist under private ownership, may be run as public schools only in terms of an agreement between the Member of the Executive Council and the owner of the property. The matters to be provided for in such an agreement are set out. These are intended to provide protection for the legitimate rights and interests of learners and owners, the security of occupation of the school, and access to the school by interested parties.
- ▶ Every public school is a juristic person with the legal capacities which are provided for in the Bill.
- ▶ The governance of a public school is vested in its governing body.
- ▶ The professional management of a public school is vested in the Head of the provincial Department of Education, who must delegate sufficient powers to public school principals.
- ▶ A governing body may serve more than one school if the Head of Department so determines.
- ▶ A list of issues to be addressed in the constitution of the governing body is provided.
- ▶ Heads of Departments have a duty to establish training programmes to prepare governing bodies to fulfil their functions effectively.
- ▶ Provision is made for functions which governing bodies must exercise under the new system.
- ▶ A list of allocated functions which a public school governing body may undertake with the approval of the provincial Head of Department, is also included.
- ▶ The Bill provides that the Head of Department may withdraw a governing body's functions on reasonable grounds, subject to appeal to the Member of the Executive Council.
- ▶ The framework of a uniform system of representative school governance is established, Governing bodies will comprise elected members of the parents, educators, learners and other school staff, together with the principal, and non-voting members who may be co-opted from the community. Parents must comprise the majority of voting members.

- ▶ Provision is made for the representation of special education needs interests on governing bodies of ordinary public schools and of public schools for learners with special education needs, respectively.
- ▶ If a governing body ceases to fulfil its functions, the Head of Department must appoint a substitute governing body for a period or periods not exceeding one year; and ensure that a new election takes place.
- ▶ Provision is made for conflict of interest; remuneration and reimbursement of governing body members; election of members of governing bodies; office-bearers of governing bodies; election of committees by governing body; term of office of members and office bearers of governing bodies.
- ▶ A member of a governing body who is still a minor is specially protected.
- ▶ A public school may be closed by the Member of the Executive Council only after representations have been invited and a public hearing conducted.
- ▶ The State has a duty to fund public schools equitably within its available resources so that learners' rights to education may be exercised. Sufficient information about State funding must be given to public schools every year, so that they can prepare their school budgets in time.
- ▶ After appropriate consultation with the Minister of Finance, the Minister may set norms and standards for the funding of public schools.
- ▶ Governing bodies have a duty to do everything reasonably possible to supplement State funding to their schools, in order to improve the quality of education.
- ▶ Every governing body must establish a school fund into which all its cash income must be paid, except that any condition attaching to a gift to the school must be observed. All assets acquired by the school are the school's property. All the school's funds and assets must be used only for educational purposes at, or in connection with, the school. The school fund must be administered in accordance with directions issued by the Head of Department.
- ▶ A governing body must prepare an annual income and expenditure budget according to directions issued by the Head of Department, and present it for approval to a general meeting of parents.
- ▶ A governing body may charge school fees if a resolution to do so is taken by a majority of parents attending the general parents' meeting at which the budget is presented and approved. The Minister must make regulations which determine equitable procedures for exemption from payment.
- ▶ If a governing body decides to charge fees, a parent is obliged to pay them unless exempted from doing so, and a governing body may enforce payment by process of law. A parent may appeal to the Head of Department against a governing body's decision on exemption.
- ▶ A governing body is required to prepare an annual budget, keep financial records, and draw up annual financial statements according to directions issued by the Member of the Executive Council. These financial records and statements must be audited or examined every year, and a copy of the audited or examined financial statements must be sent to the Head of Department.
- ▶ The financial year of a public school is from 1 January to 31 December.
- ▶ Any person may establish an independent school at his or her own cost, subject to the Bill and any applicable provincial law.

- ▶ The Member of the Executive Council must determine grounds for the registration of independent schools, which must be applied by the Head of Department. It is an offence to establish or maintain an unregistered independent school.
- ▶ Any withdrawal of registration must be done by due process specified in the Bill, and an aggrieved owner has the right of appeal to the Member of the Executive Council.
- ▶ The Members of the Executive Council may grant a subsidy to independent schools. A procedure for the termination or reduction of such a subsidy by the Head of Department is laid down, subject to appeal to the Member of the Executive Council.
- ▶ Provision is made for an independent school to become a public school by agreement between the owner and the Member of the Executive Council, with the concurrence of the Member of the Executive Council responsible for finance.
- ▶ The Member of the Executive Council has a duty to determine requirements for independent schools concerning admission of learners to examinations, keeping of registers and other documents, subsidies, and other matters, permitted by the Bill. Affected parties must be given a reasonable period to comment before any such determination is made.
- ▶ A parent may apply to have his or her child registered to receive education at home, and the Head of Department must register such a learner if such registration is in the interest of the learner and other conditions are met. A procedure for the withdrawal of registration, and a right of appeal to the Member of the Executive Council are provided for.
- ▶ The transitional provisions deal with alterations to the status and rights of schools which exist under laws immediately prior to the commencements of the Act. They prescribe how all such existing schools are brought within the scheme of the Act at the time the Act becomes effective.
- ▶ Any school, other than a registered private school, which was established or deemed to have been established under law, is deemed to be a public school.
- ▶ On becoming a public school, assets and liabilities which had vested in the school will continue to vest in the school. Funds and other moveable assets of a school which belonged to the State will remain at the disposal of the school, and will devolve on the school on a date fixed by the Minister after consultation with the Council of Education Ministers.
- ▶ Certain transactions entered into with effect of transferring the funds or other assets of such a school to another person or body without value, are invalid.
- ▶ A private school legally registered or deemed to have been registered is deemed to be an independent school.
- ▶ After consulting the Member of the Executive Council, the Minister must fix a date by which all governing body elections in a province must be completed, and a date from which such governing bodies function.
- ▶ The Bill ensures that there will be no undue break in the exercise of governance functions at public schools. Any current governing body will continue to function until the date when the new governing body takes over. Any legal function of a current governing body which is covered by this Bill, will continue to be performed by the new public school governing body.

- ▶ Under the previous system, most public schools which functioned under laws of the former House of Assembly were converted into state-aided schools (Model C schools), and the immovable property of those schools was vested in the schools as juristic persons. The Bill provides for the reversion to State ownership of the immovable property of former Model C schools on a date determined by the Minister, after a period of due notice for the receipt and consideration of submissions by all interested parties.
 - ▶ The rights of third parties in such immovable property are protected. The Member of the Executive Council retains control over the immovable property until it returns to the State.
 - ▶ The Bill requires the Member of the Executive Council to conclude an agreement as soon as possible with the owner of a public school on private property. On the request of the owner of the private property, the distinctive religious character of such a school is protected.
 - ▶ The Member of the Executive Council is empowered to expropriate land or real rights in or over land for any purpose related to school education in the province. The clause also provides for the procedures to be followed in the event of such expropriation and for the determination of compensation.
 - ▶ Schools are obliged to make available all information which is required for the exercise and protection of a person's rights.
 - ▶ Reasonable requests by the Head of Department for information about a school must be complied with.
 - ▶ The Bill protects a public school against claims for damage or loss in connection with its educational activity and provides for State liability in this regard.
 - ▶ Education laws of the previous apartheid system are repealed to the extent necessary for the coming into operation of the new national system of schools provided in this Bill.
 - ▶ The Educator's Employment Act, 1994, is amended so as to take into account the Labour Relations Act, 1995, and the National Education Policy Act, 1996, as well as the provisions of this Bill as they affect the employment of educators.
 - ▶ A transitional arrangement to be inserted in the Educator's Employment Act, 1994, will enable former state-aided schools (in particular community schools, church schools and Model C schools) to continue to create unsubsidized posts and employ educators in such posts (out of school funds) until 31 December 1997 and no later. No contract with an educator employed in such a post shall be valid beyond that date.
 - ▶ In incorporating this transitional arrangement, the Ministry of Education has taken account of the developments in progress in relation to the Labour Relations Act, 1995, the envisaged amendments to the Public Service Act, 1994, and the preparation of the Minimum Conditions of Employment Bill, 1996. All three measures are likely to have implications for the employment of staff at public schools whose posts are additional to the fixed establishment, and paid by the school.
-

CONTENTS

| <i>No.</i> | <i>Page No.</i> | <i>Gazette No.</i> |
|---|---------------------|------------------------|
| PROVINCIAL NOTICE | | |
| 17 Eastern Cape Schools Education Bill, 1996: For general information and comment | 1 | 200 |
