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GENERAL NOTICES

NOTICE 712 OF 1997

MINISTRY OF EDUCATION

DRAFT WHITE PAPER ON HIGHER EDUCATION

1. The draft *White Paper on Higher Education* is hereby published for information and comment.
2. All persons concerned are invited to comment in writing on the draft Bill and to send the comment to:

Director-General
Attention: Ms Nolitha Linda
Department of Education
Private Bag X895
PRETORIA
0001

3. The comment may also be faxed to Fax Number (012) 328-6029 at the above address. Alternatively it can be sent by e-Mail to nlinda@nasop3.pwv.gov.za.
4. The comment must reach the Department of Education not later than **23 May 1997**.
5. Please also provide the name, address, telephone number and fax number of a person whom the Department of Education could contact concerning the comment.



No 17944

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DRAFT: FOR DISCUSSION

Draft Education White Paper 3

**A PROGRAMME FOR
HIGHER EDUCATION TRANSFORMATION**

Department of Education

**Pretoria
April 1997**

DRAFT: FOR DISCUSSION

Draft Education White Paper 3

HIGHER EDUCATION TRANSFORMATION A PROGRAMME FOR

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Pretoria
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FOREWORD

This Draft White Paper on higher education is published for comment, alongside the Draft Higher Education Bill.

In May 1997, the Department of Education will invite representatives of the higher education stakeholders to a series of consultations on both documents.

After taking into account all the advice received from the higher education sector and the interested public, the Draft White Paper and the Draft Bill will both be revised and submitted to Cabinet in June 1997 by the Minister of Education, Professor SME Bengu.

The White Paper will then be published as a formal statement of the government's policy on higher education transformation, and the Bill will be prepared for introduction in Parliament during this session. The Bill will then be the subject of public hearings by the Education Committees of the National Assembly and the National Council of Provinces, debated, amended, and hopefully passed.

The entire South African higher education sector will then, for the first time in its history, be governed and developed in terms of a single national law.

Thus will conclude a process which the Minister of Education began with his first White Paper in March 1995, in which he stated that:

"The Ministry...has a responsibility to advise the government on whether this vast infrastructure of intellectual and professional endeavour, substantially supported by public funds, is yielding a good return to the nation, and how it might be assisted to do better."

A Framework for Transformation: The National Commission on Higher Education Report, was submitted to the President by the Chairperson, Professor Jairam Reddy, in August 1996. The Ministry's first response was published in the form of the *Green Paper on Higher Education Transformation* in December 1996.

The Department of Education then undertook two interlinked series of consultations with higher education stakeholders at centres around the country and meetings in Pretoria, which were designed to advise the drafting processes for the White Paper and the Bill. In addition, over 100 written submissions on the Green Paper were received.

Both written and oral advice on the Green Paper have been evaluated and workshopped in the course of preparing the two draft documents which are now published.

On behalf of all officers of the Department of Education, particularly in the Higher Education Branch, and the Department's legislative drafting team led by Adv Eberhard Bertelsmann SC, I express deep appreciation for the quality of the written and oral advice we have received. The criticisms and suggestions have been valued as much as the impressive measure of support which greeted the policy approach and main proposals in the Green Paper. The Department wishes to thank all who have participated so generously in this intensive and exceptionally important period of policy and legislative preparation.

We again request the assistance of all concerned in improving these documents for the last time before they are prepared for submission to Cabinet by Minister Sibusiso Bengu.

NC MANGANYI

DIRECTOR-GENERAL

Department of Education

Pretoria

16 April 1997

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CHAPTER 1

CHALLENGES, VISION AND PRINCIPLES

1. South Africa's transition from minority rule and apartheid to a democratically elected government requires that all existing practices, institutions and values are viewed anew and rethought in terms of their fitness for the new era. Higher education is a vitally important activity in any modern society. In South Africa today the challenge is to ensure that it can succeed in stimulating, directing and using the creative and intellectual energies of the entire population. This White Paper outlines a comprehensive set of initiatives for the transformation of higher education through new planning, governing and funding arrangements.

PURPOSES OF HIGHER EDUCATION

1.2 Higher education has several related purposes:

- It meets the learning needs and aspirations of individuals through the development of their intellectual abilities and aptitudes. It equips individuals to make the best use of their talents and of the opportunities offered by society for self-fulfilment. Higher education is thus a key allocator of life chances.
- It provides the labour market, in a knowledge-driven and knowledge-dependent society, with the high-level competencies and expertise necessary for the growth and prosperity of a modern economy. It teaches and trains people to fulfil specialised social functions, enter the learned professions, or pursue vocations in administration, trade, industry and the arts.
- It is responsible for the socialisation of enlightened, responsible and constructively critical citizens. Citizenship of this nature presupposes a commitment to the common good, but it also implies a reflective capacity and a willingness to review and renew prevailing ideas, policies and practices.
- It is directly engaged in the creation, transmission and evaluation of knowledge. Its purpose is to ensure the continued pursuit of academic scholarship and intellectual inquiry in all fields of human understanding, through research and teaching.

NEEDS AND CHALLENGES

- 1.3 Assessing the current state of higher education in South Africa against the yardstick of these four general purposes, the Ministry finds reason for concern and an imperative for transformation. Despite acknowledged achievements and strengths, the present system of higher education is limited in its ability to meet the moral, social and economic demands of the new South Africa.
- 1.4 The present system perpetuates patterns of inequitable access and participation; it does produce sufficient graduates in crucial fields; it has not succeeded in laying the foundations of a critical civil society with a culture of tolerance and debate; and it remains characterised by teaching and research policies which favour academic insularity and closed-system disciplinary approaches.
- 1.5 Yet this country possesses the most developed and best-resourced system of education and training in Africa, and some higher education institutions have developed internationally competitive research and teaching capacities. Their academic expertise and infrastructure are national assets. It would be detrimental to the national interest and the future provision of quality higher education if the valuable features and achievements of the existing system were not identified, retained and used in the restructuring process.

The policy challenges of transition and globalisation

- 1.6 The transformation of higher education is part of the broader process of South Africa's political, social and economic transition. That broader process includes political democratisation, economic development and reconstruction, and redistributive social policies aimed at equity. This national agenda, is being pursued within a distinctive set of pressures and demands characteristic of the late twentieth century, often typified as globalisation. This refers to the intensification of world-wide social relations and to multiple changes in the economy, culture and communications of advanced economies. The associated 'knowledge society' has particular implications for the higher education system. In the context of higher education, in particular, developments in information technology are breaking down national boundaries and those between institutions. Access to higher education is no longer necessarily determined by physical space and location.

The South African economy

- 1.7 Segregation and apartheid have shaped patterns of ownership, wealth distribution, employment practices and educational arrangements in the South African economy. A core economy has emerged with relatively sophisticated mining, manufacturing and service sectors, a developed technological infrastructure, a relatively skilled labour force and an advanced financial system. Certain features of this core economy affect the challenges to higher education. The performance of the economy has been relatively poor, with per capita income lagging behind the average for middle-income economies world-wide, accompanied by low investment rates. Income distribution in South Africa is among the most unequal in the world. Even when the core economy grew at its fastest, its record in job creation and income distribution was inadequate. South Africa has one of the world's highest unemployment rates. Within the formal employment sector there is an increasing shift towards those with skills developed through education and training, a trend conforming to industrialising and industrialised economies elsewhere.

1.8 These features of the economy create an agenda for higher education policy. Prominent items on this agenda are:

- Human resource development: the mobilisation of human talent and potential through the training and provision of personpower for a changing labour market.
- High-level skills training: the creation through higher education of professionals and knowledge workers with globally equivalent skills to strengthen this country's enterprises, services and infrastructure. In particular, the shortage of highly trained graduates in science, engineering and technology must be addressed. It must be recognised, however, that such an emphasis should not detract from the important contribution of the social sciences and humanities to knowledge production, and to analysis and criticism of social transformation.
- Acquisition and application of new knowledge: national growth and competitiveness depend upon an industrial set-up characterised by continuous technological improvement and innovation, driven by a well-organised, vibrant research and development system.

Globalisation

1.9 The South African economy is confronted with the formidable challenge of integrating itself into the competitive arena of international production and finance with new computer and communication technologies transforming the way people work and consume. As South Africa locates itself in this network, higher education will have to produce the skills and technological innovations necessary for successful economic participation. It must also socialise a new generation with the requisite cultural values and communication competencies to become citizens of an international community.

Transition and transformation

1.10 Higher education policy in South Africa confronts two sets of challenges simultaneously:

- The first set derives from the past. Successful policy will have to overcome an historically determined pattern of fragmentation, inequality and inefficiency, increase access for black students and for women, generate new models of learning and teaching to accommodate a larger and more diverse student population.
- The second set of challenges derives from the present and the future. Successful policy must restructure the higher education system and its institutions to meet the needs of an increasingly technologically-oriented economy. It must also deliver the requisite research, the highly trained people and the useful knowledge to equip a developing society with the capacity to participate competitively in a rapidly changing global context.

1.11 In meeting these challenges, the transformation of higher education in South Africa has three central features:

- There must be increased participation, with an expansion of student enrollments, with students recruited from a broader distribution of social groups and classes.

- Higher education will have to be more responsive to societal interests and needs.
- The new system will emphasise cooperation and partnerships in governance structures and operations of higher education.

VISION

1.12 The Ministry's vision is of a transformed system of higher education that will:

- promote equity of access and fair chances of success to all - irrespective of race, colour, gender, creed, age or class - seeking to realise their potential through higher education
- meet, through well-planned and co-ordinated teaching and learning programmes, the high-skilled employment needs presented by a growing economy aspiring to global competitiveness
- support a democratic ethos and a culture of human rights by educational programmes and practices conducive to critical discourse and creative thinking, cultural tolerance, and a common commitment to a humane, non-racist and non-sexist social order
- contribute to the advancement of all forms of knowledge and scholarship, in keeping with international standards of academic quality, and with sensitivity to the diverse problems and demands of the local, national, southern African and African contexts.

1.13 This vision for higher education is located within the Government's broader view of a future where all South Africans will enjoy an improved and sustainable quality of life; participate in a competitive economy and share in a democratic culture. This vision has been articulated in the Government's Reconstruction and Development Programme (RDP), the Growth and Development Strategy (GDS) and most recently in the macro-economic framework (GEAR). The Ministry's higher education programme also aligns with and reinforces the National System of Innovation (NSI) as outlined in the 1996 White Paper on Science and Technology.

PRINCIPLES

1.14 The Ministry regards the following as fundamental principles that should guide the process of transformation: equity and redress, democratisation, development, quality, effectiveness and efficiency, academic freedom and institutional autonomy, and public accountability.

Equity and redress

- 1.15** A major mechanism to attain equity in the higher education system is redress, which constitutes one of the most significant components of the transformation agenda. Applying the principle of equity implies, on the one hand, a critical identification of existing inequalities, and on the other a programme of transformation with a view to redress. Such transformation includes not only abolishing all existing forms of unjust differentiation, but also measures of empowerment to bring about equal opportunity for individuals and institutions.

Democratisation

- 1.16** The principle of democratisation requires that governance of the system of higher education and of individual institutions should be participatory. Structures and procedures should ensure that those affected by decisions have a say in making them. It requires that decision-making processes are transparent, and that those taking and implementing decisions are accountable for the manner in which they perform their duties and use resources.

Diversity

- 1.17** The principle of diversity is important in enabling choice and in developing responsiveness to varying needs and circumstances. A co-ordinated national system of higher education does not imply uniformity. Rather, the Ministry wishes to see institutions developing distinctive missions and being innovative in teaching, research and the delivery of services.

Development

- 1.18** The principle of development means that conditions must be created to facilitate the adaptation and improvement of the higher education system to enable it to contribute to the common good of society through the production and application of knowledge, the building of human capacity, and the provision of lifelong learning opportunities.

Quality

- 1.19** The pursuit of the principle of quality means maintaining and applying academic and educational standards, both in the sense of specific expectations and requirements that should be complied with and in the sense of ideals of excellence that should be aimed at. These expectations and ideals can differ from context to context, partly depending on the specific purposes pursued. Applying the principle of quality entails evaluating services and products against set standards, with a view to improvement, renewal or progress.

Effectiveness and efficiency

- 1.20** The principles of effectiveness and efficiency are related though distinct. An effective system or institution functions in such a way that it leads to desired outcomes or achieves desired objectives. It does the right things in terms of a given framework of expectations. An efficient system or institution is one which works well, without unnecessary duplication or waste, and within the bounds of affordability and sustainability. It does things correctly in terms of making optimal use of available means.

Academic freedom and institutional autonomy

- 1.21** The principles of academic freedom and institutional autonomy are related though distinct. Academic freedom implies the absence of outside interference, censure or obstacles in the pursuit and practice of academic work. It is regarded as a precondition for critical, experimental and creative thought and therefore for the advancement of intellectual inquiry and knowledge. Institutional autonomy refers to a high degree of self-regulation and administrative independence with respect to student admissions, curriculum, methods of teaching and assessment, research, establishment of academic regulations and the internal management of resources generated from private and public sources.

Public accountability

- 1.22** The principle of public accountability bears upon decision-making, the spending of funds and the achievement of results. Firstly, it requires that individuals or institutions should demonstrate responsible actions to one or more constituencies. Secondly, it requires that individuals or institutions receiving public funds should be able to report how, and how well, money has been spent. Thirdly, it requires that institutions should demonstrate the results they achieve with the resources at their disposal.

CHAPTER 2

STRUCTURE AND GROWTH

A SINGLE COORDINATED SYSTEM

2.1 The Ministry believes that if the legacy of the past is to be overcome and the challenges of reconstruction and development addressed, the higher education system must be planned, governed and funded as a single national coordinated system.

2.2 The single coordinated system will be predicated on a programme-based (as opposed to institution-based) definition of higher education consisting of:

All learning programmes leading to qualifications higher than the proposed Further Education Certificate or the current Standard 10 certificate.

This recognises that the provision of higher education can and does take place in a multiplicity of institutions, sites and media.

2.3 A higher education system that is planned, governed and funded as a single, coherent national system will:

- overcome the fragmentation, inequalities and inefficiencies that characterise the present system
- facilitate the development and articulation of a range of institutional and programme offerings through a single national qualifications framework based on flexible entry and exit points which will enhance horizontal and vertical mobility
- improve the flexibility and responsiveness of the higher education system to social and economic needs in general and labour market opportunities in particular, through regulatory and funding mechanisms and ensure that the expansion of the system is responsibly managed.

EXPANSION AND EQUITY

2.4 There is a need for the expansion of the higher education system if it is to meet the imperatives of equity, redress and development. This will require expanding enrolments to accommodate increased student demand and to cater for a far more diverse student body, including mature students in pursuit of multiskilling and reskilling in the context of lifelong learning. It will also require diversifying the mix of institutional missions and the range of programmes to address the skills needs which are critical to social and economic development.

2.5 The Ministry is committed to the expansion of the system and believes that the twin goals of equity and development can be achieved through:

- changing the composition of the student body to reflect the demographic realities of the broader society. A major focus of any expansion and equity strategy must be on increasing the participation and success rates of Black students in general, and of African and Coloured students in particular, at all levels and in all disciplines

- focusing growth primarily in career-oriented courses at certificate and diploma level and in science, engineering and technology programmes taking into account labour market signals
- encouraging new learning and teaching strategies, in particular, modifying traditional models of discipline-based and sequential courses and qualifications with a flexible credit-based system, with multiple entry and exit points and a range of delivery mechanisms, including distance education and resource-based learning
- expanding enrolments in postgraduate programmes at the masters and doctoral levels to address the high-level skills on which the National System of Innovation will depend and provide for the needs of the academic labour market.

2.6 The focus on science, engineering and technology programmes is necessary to correct present imbalances, in particular, the shortage of trained personnel in these fields. However, the expansion and growth of programmes in science, engineering and technology will not occur at the expense of programmes in the social sciences and humanities. Aside from the fact that the social sciences and humanities contribute to knowledge production, in particular, to the understanding of social and human development, they also play an important role in career-oriented training in a range of fields such as education, law, private and public sector management, social development and the arts. In addition, in the context of the communications and information revolution, the social sciences and humanities must contribute to the development of the analytic, intellectual, cultural and ethical skills and competencies necessary for participation in the knowledge society.

2.7 The expansion of the higher education system must be responsibly managed and planned on the basis of affordability and sustainability. The Council on Higher Education will be expected to advise the Ministry on the development of a three-year rolling national higher education plan which will establish indicative targets for the size and shape of the system, overall growth and participation rates and institutional and programme mixes.

2.8 The development of three-year rolling institutional plans will be a key element in the planning process. The institutional plans will include institutional missions, including programme mixes and enrolment levels, race and gender equity targets and developmental plans for new programmes. They will also include plans for academic development, research development and infrastructural development.

Equity and redress

2.9 The Ministry's commitment to changing the composition of the student body will be effected through the targeted redistribution of the public subsidy to higher education. The relative proportion of public funding used to support academically able but disadvantaged students must be increased.

2.10 In addition, in the present context of limited real growth in public expenditure, making progress in achieving equity and redress goals will require institutions, in turn, to mobilise greater private resources as well as to reallocate their operating grants internally. This is already happening at many institutions in response to the recent rapid increases in Black student enrolments.

- 2.11** The Ministry will require institutions to develop their own equity goals and plans for achieving them. In formulating equity targets, institutions should employ indicative targets for distributing publicly subsidised places rather than apply firm quotas.
- 2.12** Ensuring equity of access must be complemented by a concern for equity of outcomes. Increased access must not lead to a 'revolving door' syndrome for Black students, with high failure and drop-out rates. In this respect, the Ministry is committed to ensuring that public funds earmarked for achieving redress and equity must be linked to measurable progress toward improving quality and reducing the high drop-out and repetition rates.
- 2.13** This highlights the need to attend to the articulation gap between the demands of higher education programmes and the preparedness of school leavers for academic study. The chronic underfunding of Black education during the apartheid era has had deleterious effects on the preparedness of talented Black students for higher education. The Government has launched an ambitious programme to transform the school system in the medium to long term intended to remedy the previous deficiencies and to improve the quality of school education.
- 2.14** In the short term, the higher education system is required to respond systematically to the articulation gap to improve equity of outcomes. The Ministry believes that this requires change at the institutional level with respect to learning, teaching, curriculum and the structure of degree and diploma programmes. It also requires the development and provision of student support services, including career guidance, counselling and financial aid.
- 2.15** The institutional level changes should be underpinned through establishing and strengthening academic development structures at all higher education institutions to promote quality teaching and learning through staff, curriculum and materials development. In addition, the shift in academic development from a narrow focus on access and bridging courses to integrating academic development approaches in mainstream programmes should be supported.
- 2.16** The Ministry will ensure that academic development programmes and extended curricula which enhance student access by providing a sound foundation of knowledge, concepts and academic skills as a basis for further study, are funded through the new funding formula for higher education. Such programmes will be given due weight and status as integral elements of a higher education system committed to improving the quality of learning and teaching.
- 2.17** The Ministry, in conjunction with the CHE, will initiate a thorough review of the structure and duration of all degree, diploma and certificate programmes to ensure a more appropriate fit between the school and higher education systems.

INSTITUTIONAL RESTRUCTURING AND DIVERSIFICATION

- 2.18** The key challenge in relation to the organisational form and institutional landscape of a single coordinated system is to ensure diversity and to offset pressures for homogenisation.

- 2.19** The programme-based approach through ensuring greater articulation between the different tiers of the higher education system, promoting flexibility and diversification in the range of programmes offered and fostering cooperation between institutions will result in structural changes and a reconfiguration of the institutional landscape in the medium to long-term.
- 2.20** In this regard, the Ministry seeks to encourage the development of regional consortia and partnerships involving a range of institutions in the development and delivery of programmes that have emerged recently. This will reduce overlap and duplication in programme provision; help build academic and administrative capacity in Historically Black Institutions (HBIs), refocus the institutional culture and missions of Historically White Institutions (HWIs), and enhance responsiveness to regional and national needs. The real import of such regional collaboration is that insofar as it transcends the current divides in the system, it is a potential harbinger of new institutional and organisational forms.
- 2.21** The Ministry will provide incentives to encourage and facilitate regional planning and coordination.
- 2.22** In addition, the Ministry believes that it is necessary to assess the optimal number and type of institutions needed to meet the goals of a transformed higher education system. There are many institutions which either require consolidation or retooling for new missions and goals, and narrow self-interest cannot be allowed to preclude planning which may lead to institutional mergers and closures and the development of new institutional forms where these are necessary. The new governance and planning systems will enable the Ministry to take purposeful decisions in this regard after the necessary investigations and consultations.

The college sector

- 2.23** The Ministry is committed to developing a large, efficient and viable college sector which is polytechnic in nature - offering a range of programmes across the full spectrum of the education and training system, and characterised by excellence in teaching and scholarship.
- 2.24** The expansion of the college sector will not only increase access to higher education through offering higher education programmes in targeted fields, in particular, access and foundation programmes, but will also encourage career-oriented training that is more relevant to the changing structure of employment. In addition, the flexibility provided by the NQF will ensure that students choosing the college route will not be precluded from pursuing more advanced study leading to degrees.
- 2.25** In terms of the constitutional provision (Schedule 4 of the Constitution of the Republic of South Africa, 1996, Act No. 108) that tertiary education is a national competence, the Ministry is advised that all colleges which offer higher education programmes such as colleges of education, nursing and agriculture, fall under the jurisdiction of the Ministry of Education and will be planned, governed and funded as part of the single coordinated higher education system.

- 2.26** In the case of those colleges such as technical colleges which primarily offer post-compulsory education programmes, these constitute part of the core of the proposed further education sector whose institutional configuration, governance, funding and programme base is presently under investigation by the National Committee on Further Education. They presently offer, and will continue in the future to offer, higher education programmes in targeted fields which will be planned and funded as part of the higher education system.
- 2.27** It is not necessary to transfer immediately all colleges which offer higher education programmes from other ministries to the Ministry of Education. In the interim, they will continue to be administered, controlled and funded by the departments under whose jurisdiction they presently fall. This will ensure stability while their future location is decided. The Ministry has opened discussions with the affected line ministries at both the national and provincial levels and will institute a comprehensive review of the college sector to determine their future role and location.
- 2.28** The Minister of Education will, however, discharge his constitutional responsibility to determine and monitor national policy with regard to all colleges that offer higher education programmes, and in particular to ensure that the necessary accreditation and quality assurance mechanisms are in place.
- 2.29** In the case of colleges of education, these are now a national competence and their transfer to the national level is the subject of preliminary discussions with the provincial ministries. The Ministry will establish a Task Team under the auspices of the Heads of Education Departments Committee (HEDCOM) to take this matter forward.
- 2.30** The Ministry is committed to ensuring that the integration of colleges of education into the higher education system will allow a range of organisational models to evolve based on regional and national needs.

Private institutions

- 2.31** There is a relatively well-developed private higher education sector in South Africa offering programmes under franchise from professional institutes or from local and international universities and in some cases, under their own auspices.
- 2.32** The Ministry believes that private provision should be encouraged as part of a broader policy to increase access and labour market responsiveness, as well as to stimulate quality improvement. The key challenge in expanding the role of private institutions is to create an environment which neither suffocates educationally sound and sustainable private institutions with state overregulation, nor allows a plethora of poor quality, unsustainable 'fly by night' operators into the higher education market.
- 2.33** The Draft Higher Education Bill establishes a regulatory framework to ensure that private institutions providing higher education programmes have the necessary infrastructure and resources to provide quality programmes that are sustainable and to encourage them to offer programmes accredited through procedures established by the South African Qualifications Authority (SAQA) as part of the NQF.

DISTANCE EDUCATION AND RESOURCE-BASED LEARNING

- 2.34** The Ministry believes that distance education based on the principles of open learning and resource-based learning, has a crucial role to play in meeting the challenge of greater access and enhanced quality in a context of resource constraints and a diverse student body. It enables learning to take place in different contexts, at a multiplicity of sites, through a variety of mechanisms and learning and teaching approaches.
- 2.35** In addition, it also results in the quality and success of teaching not being dependent upon staff levels rising in tandem with increased enrolments, and it makes better use of physical and human resources.
- 2.36** Distance and resource-based learning are well placed for expansion given the current distance/correspondence infrastructure in both the public and private sectors. However, the Ministry is concerned about the efficiency, appropriateness and effectiveness of much current distance education provision.
- 2.37** The Ministry supports the development of a national network of regional centres of innovation in course design and development as this would enable the development and franchising of well-designed, quality and cost-effective learning resources and courses building on the expertise and experience of top quality educators in different parts of the country.
- 2.38** The Ministry will also encourage contact and distance education institutions to provide effective learning environments on a continuum of educational provision in which contact, distance, mixed-mode and dual-mode educational opportunities are in principle available to all learners. This development, together with a regional network of learning centres, will not only broaden access, but also facilitate and enhance quality education especially in rural areas and less well-endowed institutions.
- 2.39** The Ministry recognises that if distance education is to fulfill its potential for integrating lifelong learning into the basic shape and structure of higher education, the viability of establishing a coherent framework for distance education and resource-based learning needs to be investigated, including a comprehensive audit of existing distance education institutions and programmes. The Ministry will, in collaboration with the CHE, institute a Task Team to undertake this investigation.
- 2.40** The Ministry will also promote, via its proposed technology enhanced learning initiative (TELI) a cost-effective and co-ordinated method of developing a nation-wide infrastructure to support the introduction and use of appropriate technologies in higher education, and in particular to underpin the enhanced role of distance education and resource-based learning.

A QUALIFICATIONS FRAMEWORK FOR HIGHER EDUCATION

- 2.41** The establishment of SAQA with the full and active participation of higher education providers is a milestone and puts the evolution of the NQF in South Africa in the forefront of such systems world-wide.

- 2.42** The precise modalities of integrating higher education qualifications into the NQF, that is, through unit standards or whole qualifications or otherwise, are being analysed and discussed within the higher education sector and SAQA structures.

A QUALITY ASSURANCE SYSTEM FOR HIGHER EDUCATION

- 2.43** The Ministry considers that the primary responsibility for quality assurance rests with higher education institutions. However, there is a role for an umbrella national quality promotion and assurance authority within the sector.

- 2.44** Accordingly, the Draft Higher Education Bill provides for the coordination of quality assurance in higher education through a Higher Education Quality Committee (HEQC) which will be established as a permanent committee of the CHE. The establishment of the HEQC, its registration with SAQA and its modus operandi will be determined by the CHE within the framework and procedural guidelines developed by SAQA.

- 2.45** The functions of the HEQC will include programme accreditation and institutional auditing. It should operate within an agreed framework underpinned by:

- the formulation of criteria and procedures in consultation with higher education institutions
- a formative notion of quality assurance, focused on improvement and development rather than punitive sanction
- A mix of institutional self-evaluation and external independent assessment.

ADMISSION AND SELECTION PROCEDURES

- 2.46** The Ministry is committed to ensuring that:

- The minimum statutory requirement for entry into all higher programmes will, in the future be a pass in the proposed Further Education Certificate (FEC).
- Institutions will continue to have the right to determine entry requirements as appropriate beyond the statutory minimum. However, in exercising this right, selection criteria should be sensitive to the educational backgrounds of potential students and should also incorporate recognition of prior learning which is an essential concept in the elaboration of the NQF.
- A National Higher Education Information and Admission Service (with regional centres) will be established to facilitate the administration of student applications, satisfy the information needs of applicants, and provide careers guidance, including information on labour market trends.

- 2.47** The Ministry recognises that establishing a national service of this sort will pose considerable problems of design and implementation, and it is therefore unlikely to be in operation in the short term. Accordingly, the Ministry favours regional initiatives that will serve as pilot programmes for a national service.
- 2.48** In the period prior to the full operationalisation of the NQF and the introduction of the FEC, the existing matriculation requirements will remain in force.

EXPANSION, COSTS AND RESOURCES

- 2.49** The transformation of the higher education system to meet growth, equity and quality objectives will involve additional costs. The obvious question is: how are these costs to be met when significant real increases in public expenditure on higher education are unlikely to greatly exceed the real rate of economic growth?
- 2.50** The Department is presently engaged in detailed analyses of costs and financing options. However, it seems clear that neither the more efficient use of public funds nor increasing the flow of private financing are likely in the short term to generate the resources that will be required to increase access and improve quality and efficiency, especially in the historically disadvantaged institutions. A radical shift in budgetary distribution to address the restructuring priorities will result in an unacceptably sharp reduction in operating funds in some institutions and could damage their long-term sustainability.
- 2.51** Consequently, additional resources will need to be mobilised to facilitate the implementation of the transformation strategy.
- 2.52** In addition, there is substantial scope to improve the internal efficiency of the higher education system but this will not necessarily lead to savings in the short term. Internal efficiency measures include, for example:
- Reducing unit costs through more open, transparent, normative cost and performance-based allocation of public funds.
 - Rationalisation to reduce duplication and overlap in institutional, programme and service provision.
 - Introducing new teaching and learning strategies to improve throughput and completion rates.
- 2.53** The Ministry believes that there is a case to be made for maintaining the current levels of public expenditure on higher education as a proportion of GDP. As economic growth rates rise this would result in significant real increases in expenditure. This is necessary if the goals of expansion, transformation and redress are to be met.
- 2.54** While it is possible to achieve rapid enrolment growth without extra expenditure, the penalties for doing so are harsh. In Africa and other developing regions, expansion without new investment has resulted in overcrowded facilities, low morale of academic staff, poor quality programmes, a fall in research output and quality, and, ultimately, a loss of confidence by students, employers and funders in the devalued products of higher education.

- 2.55** Despite national fiscal constraints, and the government's commitment to fiscal discipline, the central role of higher education in developing high-level skills and competencies essential for social and economic development requires sustained financial investment in the higher education system.

A MODEL OF GOVERNANCE

3.1 The Ministry adopts a model of cooperative governance for higher education in South Africa which is founded in the context of autonomous institutions working cooperatively with a proactive government, and in a range of partnerships. Academic freedom and institutional autonomy are key conditions for a vibrant higher education system. Both will be exercised within the new configuration of functions and responsibilities provided by the proposed model of governance.

3.2 Cooperative governance assumes a proactive, guiding and constructive role for government. It also assumes a co-operative relationship between the state and higher education institutions. One implication of this is, for example, that institutional autonomy is to be exercised in tandem with public accountability. Another is that the Ministry's oversight role does not involve responsibility for the micro-management of institutions. The Ministry will drive the transformation of the higher education system through policies and strategies that are guided by this view of the role of the government and its relationship to institutions of higher education.

3.3 The White Paper on Education and Training of 1995 affirmed the Ministry's commitment to uphold both the tradition and the legal basis of autonomous governance of higher education institutions. The Ministry reaffirms its commitment to the principles of academic freedom and institutional autonomy within the framework of public accountability as fundamental tenets of higher education.

GOVERNANCE AT SYSTEM LEVEL

3.4 To give effect to the transformation of higher education the Ministry will establish a Council on Higher Education (CHE) enhance the capacity of the Higher Education Branch of the Ministry and enable reform of the governing structures of higher education institutions. The overall purpose of these measures is to provide opportunities for organised constituencies to express their concerns and to organise their behaviour for the common good.

The Council on Higher Education

3.5 The Council on Higher Education will be a statutory body to provide independent strategic advice to the Minister of Education on matters relating to the development of higher education in South Africa.

3.6 The CHE will be supported by its own professional secretariat and control its own operating budget. The secretariat will be headed by the Executive Officer to the CHE. The legislative provisions will allow the CHE to undertake work on its own volition as well as to respond to references given to it by the Minister.

CHAPTER 3

GOVERNANCE

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3.7 The membership of the CHE will reflect a balance of stakeholder interests and expertise on the basis of knowledge and understanding of higher education issues.

3.8 The membership will comprise:

- a chairperson appointed by the Minister
- 3 students appointed by the Minister from nominations by national organisations representing students
- 3 academic staff appointed by the Minister from nominations by national bodies representing academic staff
- 1 person appointed by the Minister from nominations of national bodies representing non-academic staff
- 2 persons appointed by the Minister from nominations of national bodies representing university principals
- 2 persons appointed by the Minister from nominations of national bodies representing technikon principals
- 2 persons appointed by the Minister from nominations of national bodies representing principals of higher education colleges
- 1 person appointed by the Minister from nominations of national bodies representing private institution principals
- 2 persons appointed by the Minister from nominations of national bodies representing the Further Education sector.
- 2 persons appointed by the Minister from nominations by the National Economic Development and Labour Council (one representing organised labour and one representing organised business)
- 1 person appointed by the Minister and nominated by the National Research Foundation
- 4 persons appointed by the Minister from public nominations and external to the higher education sector
- 2 non-voting members, one nominated by the Director-General of Education and the other nominated by the provincial heads of education
- up to 3 persons coopted by the CHE on account of their experience and expertise.

- 3.9** The CHE will establish an Executive Committee comprising the Chairperson and four other members. The Executive Committee will guide the Chairperson and the Executive Officer of the CHE on the day-to-day performance of the functions of the Councils.
- 3.10** The CHE will be required to provide relevant, timely and independent advice on matters concerning the condition and development of higher education. The Minister will receive advice on any other matters that the CHE deems necessary to advise about and specific matters referred by the Minister from time to time. The Ministry will be looking to the Council to play a leading strategic role in the envisaged transformation of the system, consistent with the vision and goals set out in Chapter 1.
- 3.11** The Minister will consult the CHE on matters involving major changes to the policy framework affecting the development of the higher education system, such as policy regarding public and private financing and provision, the level and distribution of public subsidies to higher education, forms of student financial assistance, and policy affecting the development of the higher education sub sectors. The CHE will be responsible for advising the Minister on:
- a) the mission, needs and priorities, scale and shape of the higher education system, taking into account national economic and social requirements, student demand, demography, regional and national human resource needs, teaching and learning technologies and the availability of public and private resources
 - b) the ways in which new learning, teaching and communication technologies should be harnessed in order to achieve improved integration, equity, cost-effectiveness and quality in the national higher education system
 - c) the research capacity and performance of the system, including postgraduate training and research infrastructure and ways of developing research strength in historically disadvantaged institutions
 - d) language policy, especially the development of languages as academic languages at higher education institutions
 - e) the governance of higher education institutions and the higher education system.
 - f) the policies, principles and criteria that should govern the allocation of public funds among higher education providers
 - g) the policies and mechanisms for student support and academic development throughout the system and in particular for assisting educationally disadvantaged students to begin and complete programmes
 - h) the policies and regulatory frameworks that should govern the private provision of higher education
 - i) the promotion of the quality of the system and quality improvement among individual providers and programmes including the principles and procedures that should govern their accreditation in terms of the South African Qualifications Authority Act, 1995 (No. 58 of 1995)

- j) the qualifications structure of higher education, as part of the National Qualifications Framework
- k) the extent and adequacy of cross-sectoral linkages, including articulation of programmes between schooling, further education and training, and higher education, procedures for the recognition of prior learning, and the portability of credits and qualifications in terms of the National Qualifications Framework
- l) the performance of the system, having regard to available performance indicators, to identify where efficiency gains have been made and need to be made
- m) regional collaboration among providers, and other options for rationalisation of the system, and where appropriate, the merger or closure of institutions
- n) progress being made towards achieving national equity and human resource development goals and measures to overcome impediments to achieving transformation goals.

3.12 The CHE will be required to prepare annually a report to the Minister on the overall condition of the higher education system. This report will be tabled by the Minister in Parliament and made publicly available at an annual consultative conference of higher education stakeholders which will be convened by the Minister and the CHE in order to discuss the health of the system or of a particular sector of higher education.

3.13 The Minister will be obliged to take the advice of the CHE into account and, under normal circumstances provide reasons in writing if he or she does not accept its advice.

3.14 The CHE will be responsible for quality assurance and promotion and will seek delegated authority from SAQA to be responsible for quality assurance and accreditation for the higher education system. (See 2.43 and 2.44 above.) The CHE will make the arrangements it deems appropriate to operate within the policy framework and procedural guidelines established by SAQA.

The Higher Education Branch of the Department of Education

3.15 The Ministry has established a new Higher Education Branch of the Department of Education headed by a Deputy Director-General. The relevant functions of the Department regarding policy development and planning, resource allocation and financing, information collection and analysis, and monitoring and reporting on higher education, have been consolidated in the Branch, supported by other branches of the Department of Education. The Branch will augment its resources by contracting out as well as by the use of secondments from the higher education sector.

3.16 With regard to the objectives of transformation, the Branch in collaboration with other branches in the Department has the following main responsibilities:

- advising the Minister in the light of or in addition to advice already provided by the CHE on policy formulation and national planning for the higher education system
- specifying information to be provided by higher education institutions and the collection, recording, processing and analysis of such information, including the development of comparative performance indicators

- allocating general and specific-purpose funds to institutions, having regard to the planned profiles of student enrolments by fields and levels of study
- allocating earmarked funds for individual and institutional redress and to promote performance improvement
- developing the National Student Financial Aid Scheme (NSFAS)
- appointing the Registrar who will be responsible for enforcing the criteria and procedures for the registration of private providers of higher education as stipulated in the Draft Higher Education Bill
- providing information services, including those required in support of the functions of the CHE
- commissioning research which will assist the Branch in the execution of its functions
- liaising with and providing assistance to organised higher education staff, student and management constituencies.

3.17 The Higher Education Branch and the Council on Higher Education will cooperate in undertaking their respective functions, sharing information and jointly participating in meetings and on projects as appropriate. The Higher Education Branch will also be actively involved in inter-departmental activities that work to improve the coherence of the Government's overall approach to social and economic development, including culture, arts, science and technology, research and development, labour supply and skills formation, health and social justice.

INSTITUTIONAL GOVERNANCE

3.18 It is the responsibility of higher education institutions to manage their own affairs. The Ministry has no responsibility or wish to micro-manage institutions. Nor is it desirable for the Ministry to be too prescriptive in the regulatory frameworks it establishes. Diversity and flexibility are important aspects of institutional responses to varying needs and circumstances.

3.19 The Ministry supports and encourages the establishment of Broad Transformation Forums (BTFs) of institutional stakeholders as interim advisory bodies for restructuring and transformation. The composition, functions and procedures of such forums would vary according to the needs and circumstances of institutions. Where BTFs are not opted for, the Ministry strongly encourages the establishment of alternative stakeholder transformation structures.

3.20 Councils are the highest decision-making bodies of public institutions. They are responsible for the good order and governance of institutions and for their mission, financial position, performance, quality and reputation. The Ministry supports and encourages the ongoing process of institutional reviews of the composition and representativeness of councils. However, the Ministry believes that agreement on codes of conduct and dispute resolution procedures merit urgent and early action where these have not yet been established.

3.21 To sustain public confidence, councils should include a majority of at least 60% of members external to the institution. Councils ought not to be involved in the day-to-day management of institutions as that is the responsibility of their executive management, led by the Principal, who in turn is accountable to the Council. The Ministry encourages the meaningful involvement of students and staff in all permanent governance structures of the institutions including Councils. Their participation in the Broad Transformation Forum is not a substitute for membership and responsible participation in other formal governance structures of the institutions.

3.22 Consistent with the Ministry's responsibility to ensure accountability for the use of public resources and having regard to the reputation of the higher education system, the Minister will have the legal right to seek independent assessments and advice on the condition of a higher education institution when circumstances arise in an institution or institutions which warrant investigation in terms of the procedures prescribed by the Draft Higher Education Bill. An Independent Assessor will be appointed by the Minister. The CHE will prepare a panel of independent assessors from which the Minister will choose. The right to send an assessor to an institution may be exercised where the Council of an institution so requests or in exceptional circumstances that involve financial or other maladministration of a serious nature or which are seriously detrimental to the effective functioning of the institution. An independent Assessor will report to the Minister within 30 days of appointment. The report will be made available to the Council of the institution.

CHAPTER 4

FUNDING

PUBLIC EXPENDITURE ON HIGHER EDUCATION IN SOUTH AFRICA

- 4.1** South Africa's present level of public expenditure on higher education is rather high by international standards and has been growing at a somewhat faster real rate than in many other countries. It is unlikely that the recent trend of public expenditure growth rates in this sector can be sustained over the next decade, given other pressing social needs. However, given projected national economic growth estimates, there would be significant real expenditure increases if current levels of public and private spending on higher education as a proportion of GDP were maintained.
- 4.2** Substantial additional costs are associated with greater student participation, redress of current inequities, and the restructuring of existing programmes. These costs will have to be met from a strategic mix of funding sources. These will include a greater volume of private contributions, system and institutional efficiencies, and increased, redistributed and tightly targeted public sector outlays.
- 4.3** Free higher education for students is not an affordable or sustainable option for South Africa. The knowledge and skills acquired in the course of achieving higher education qualifications generate significant lifetime private benefits for successful students as well as long-range social benefits for the public at large. Moreover, students from middle-class and wealthy families tend to be disproportionately well-represented in higher education institutions. Accordingly, the costs of higher education should be shared equitably between public and private beneficiaries.
- 4.4** It is important, however, that the direct cost to students should be proportionate to their ability to pay. As the profile of student enrolment becomes increasingly representative of the general population, the proportion of eligible students from poor families is rising steeply. Financial need should not be an insuperable barrier to access and success in higher education. A realistic fee structure must therefore go hand-in-hand with a sustainable programme of student financial assistance. This is discussed in more detail at para. 4.31 below.
- 4.5** The strategy for improving the financing of higher education focuses on mechanisms that advance the goals of increased equity in access and outcomes, improved quality and efficiency, and more purposeful linkage between higher education activities and national and regional development needs. The goal is not to attempt to homogenise the higher education system through the funding framework. Diversity of mission, programmes and clientele is an essential feature of a thriving, integrated system. Purposeful and equitable variety in the system will be supported by the funding framework.
- 4.6** The Ministry will adopt goal-oriented incentives as an integral part of the public funding framework. That is, explicit incentives will be used to steer the development of the higher education system in accordance with national goals. This approach will be complemented by harnessing more private resources for higher education through, for example, various forms of employer contributions, bequests and donations, better management of institutional investments, contracts and consultancies, and an expansion of properly-regulated private higher education programmes and institutions.

- 4.16** Funding for an agreed number of publicly subsidised FTE enrolments will be announced three years in advance in order to give institutions a predictable basis for planning. The Ministry of Education will negotiate the number of publicly subsidised FTE places with institutions each year in respect of the following three years of the rolling triennium. Negotiations will take account of publicly available student demand estimates and long-range labour market signals on the one hand, and institutional capacity and performance on the other hand.
- 4.17** Institutions will be able to enrol students in addition to the agreed number of publicly-subsidised FTE student places, but they must be able to do so from funds raised by themselves, not from the government. Failure to meet FTE enrolment planning targets will make an institution liable to forfeit equivalent funds by way of reductions to its operating grants according to a publicly known procedure.
- 4.18** To maximise the flexibility of institutions under the new arrangements, the Government will allow institutions to determine their own tuition prices in respect of the fees they charge for subsidised student places as well as for student places outside the publicly funded quota. The basis on which fee levels are established must be transparent and subject to proper scrutiny within the institution, and must satisfy reasonable equity criteria.
- 4.19** Government funding rates per FTE student place will vary according to the broad field of study and level of study but will be standard for all institutions. They will be based on index-linked estimates of the relative costs of teaching. Prices per student place at research-based levels of postgraduate training, for instance, will include the costs of research supervision, infrastructure and consumables integral to research. Research projects will continue to be funded separately by the National Research Foundation on a competitive peer review basis.
- 4.20** The establishment of a 'funding grid' of rand values against broad fields of study and levels of study requires analysis of the indicative average costs of such teaching and related activities by broad fields and levels of study. These must have academic integrity and represent real cost differences. Prices can then be set for each cell in the grid. These matters, and the relationship between fields and levels of study and the NQF and South African Post Secondary Education (SAPSE) categories, will be referred to the Council on Higher Education for early advice.
- 4.21** The Ministry has considered the possible inclusion of student completions and research publications in the funding grid. While there is a need to improve institutional efficiency and effectiveness, and recognise scholarly productivity, the inclusion of those variables is inappropriate at this time given the different apartheid legacies of existing institutions and the need to adopt a forward-looking approach. In view of the wide variations in need and capacity, as well as the policy objective of encouraging diversity and quality improvement within the system, the Ministry will base its negotiations with institutions on their academic plans and on the progress they are making towards achieving the performance improvement targets outlined in their strategic plans. Student progression, graduation rates and research outputs will be monitored in that context. (Financial support for research capacity is discussed at paras. 4.23, 4.43 and 4.45 below.) Regard will also be given to the assessments of quality provided by the Council on Higher Education.

- 4.22** The Ministry also recognises the considerable cost differentials between teaching students from inadequate educational backgrounds and teaching students from advantaged backgrounds. The Ministry accepts that foundation and extended programs should be incorporated in the funding grid as a level of study. However, incentives to encourage institutional success in improving the progression and graduation of students from disadvantaged backgrounds will be provided on a performance basis through earmarked funding. This approach is consistent with the maintenance of a simple and transparent funding system.
- 4.23** The Government adopts a policy of concentration and selectivity in the funding of research and research training. Negotiations on the number of places to be publicly funded at the research masters and doctoral levels will be informed by performance indicators of research capacity, competitive success and output by faculty. The Ministry will support and assist the expansion of postgraduate training in those parts of institutions (historically advantaged and historically disadvantaged alike) where there is demonstrable strength. In addition, earmarked funding will be applied to research capability development (para. 4.43), and postgraduate training in selected departments at the historically disadvantaged institutions where the research track record has been thin but where there is demonstrable potential to develop and sustain research capacity (para. 4.45).
- 4.24** In preparing for the introduction of the new funding formula, it is necessary to assess the extent of disparities in the current distribution of public recurrent funds among institutions. Preliminary analysis in the Department indicates that such disparities are widespread and, in many cases, extreme. Further work will involve notionally applying the new funding norms against the present profile of student enrolments and identifying aggregate variations among institutions. Where redistribution is necessary to level the field for future formula-based allocation of block grants, a combination of measures, including adjustments to the number of publicly funded places and/or top-up allocations to relatively underfunded institutions, will be applied over the medium term.

EARMARKED FUNDING

- 4.25** Funding formulae cannot take account of all the differences between institutions without becoming too complex and unwieldy. Nor do funding formulae lend themselves to accommodating particular needs, especially if such needs are expected to fluctuate or diminish over time. The mechanism of earmarked funding, however, readily lends itself to meeting specific and often short-term needs, and is therefore the second major component of the proposed new public funding framework.

Earmarked funds for institutional redress

- 4.26** There will be a programme of targeted funding to redress inequities and deficiencies experienced in particular by historically disadvantaged institutions. The function of the redress programme is to target specific needs related to access and capacity which derive from the educational deficits and other forms of deliberate disadvantage suffered by learners or institutions as a result of past government policies. As a mechanism to aid the development of institutions or programmes, it will in time become superseded by the goal-oriented subsidy process and by other categories of earmarked funding.

GOAL-ORIENTED, PERFORMANCE-RELATED PUBLIC FUNDING

4.7 The new public funding framework must be equitable, widely acceptable within the sector, and promote excellence. Over the next several years, the Ministry will establish such a framework, characterised by the following criteria:

- an appropriate balance between institutional autonomy and public accountability, and
- procedures that are simple, transparent, flexible and fair, and which are capable of being managed within the available and foreseeable capability of the Department of Education and the institutional councils, managements and academic leadership.

The Ministry does not expect to depart significantly from the main approach and essential funding principles established in this chapter, but they are open to improvement and modification on the basis of experience and advice, including advice from the CHE.

4.8 Goal-oriented public funding of higher education institutions is intended to result in:

- more equitable student access
- improved quality of teaching and research
- increased student progression and graduation rates, and
- greater responsiveness to social and economic needs.

4.9 The new public funding framework will have two main elements:

- (i) a simplified mechanism for allocating general purpose, block funding to institutions on a rolling triennial basis, and
- (ii) the provision of earmarked funds to achieve specific purposes, including targeted redress of inequities in access and capacity, student financial assistance, staff development, curriculum development, research development, libraries and information technology, capital works and equipment, and planned improvements in operational efficiency.

4.10 The subsidy formulae for universities and technikons currently determine on average about 85% of the public funding of these institutions. The remainder comprises funds for capital works, loan servicing and other ad hoc property-related charges, and the allocation of student financial aid. The Ministry is conscious of the need for institutions to obtain an adequate level of core funding to sustain their operations. However, it is evident that the current 15% share of funds provided through non-formula funding is too low to address urgent needs and to lay the foundations of a transformed system.

- 4.11** The Ministry therefore intends to increase the proportion of available funds for earmarked funding for each of the budget years 1998, 1999 and 2000. For instance, the level of funding provided for student financial assistance will need to rise. A targeted programme of institutional redress is also required. Several institutions have a backlog of buildings, overcrowded residences, poorly resourced libraries, inadequate information technology and other similarly quantifiable deficiencies. A redress programme must be linked with institutional performance improvement plans and outcomes so that internal inefficiencies are not funded by the programme. Earmarked funds are also needed to drive programme-related capital development, research capacity building, postgraduate development, and information technology development.
- 4.12** Since earmarked funds will include funds for some areas which are currently included in formula-driven subsidies, some reduction in subsidies, or block operating grants, will be required in order to shift resources to the earmarked components. This internal redistribution supplemented by funds from the budget together with external financial support will enable additional funds for earmarked purposes to be allocated. The distribution of earmarked funds among institutions will reflect both need and performance. The new framework does not decrease the total public funding to the sector but distributes it differently. Thus the new allocation system will make the familiar calculation of a-values (or subsidy levels) redundant. The Ministry intends to terminate the use of this indicator.

A NEW PUBLIC FUNDING FORMULA

- 4.13** The new public higher education funding framework will require goal-oriented planning at the institutional as well as at system levels. The Ministry will progressively devise and introduce a new formula for block operating grants to institutions to support their teaching and related recurrent costs. These block grants will be payable to institutions on the basis of their planned (full-time equivalent or FTE) enrolments in different fields and levels of study.
- 4.14** In the context of its broader public administration reforms, in particular its medium-term economic framework and new three-year budget planning, the Ministry intends to start publishing, as soon as the necessary systems are in place within the Department of Education and higher education institutions, three-year forward estimates of budget outlays by programme each fiscal year. The Minister of Education, accordingly, will issue an annual statement in the budget context that provides the estimated level of block grant funding to each higher education institution for each of the next three academic years.
- 4.15** Triennial plans of institutions will report all their planned FTE enrolments, whether supported by public subsidy or not. The plans will show the fields and levels of study in which institutions plan to expand or contract their enrolments according to their missions and goals and in response to changing demands.

4.27 Institutions applying for funding under the redress programme will be required to document the specific needs for which the funds will provide relief or a remedy, and the planned outcomes. For each project for which funding is sought, institutions will need to indicate the measures they will use to evaluate their success in applying the funds to achieve stated outcomes.

4.28 Funds provided through this programme will be available to support improvements in the following areas: staff development, academic development, curriculum development, library holdings, student amenities, buildings and the development of institutional capacity.

4.29 The Ministry will conduct an audit of those institutions eligible for funding through this programme in the 1998-2000 triennium. The audit will be undertaken to establish benchmarks for comparing the relative disadvantages of institutions and reference points for monitoring progress in ameliorating deficiencies. Institutions will be required to produce:

- a financial statement of revenues, expenditures, assets and liabilities
- a profile of staff by post levels and qualifications, age, race and gender
- a profile of student enrolments by race, gender and educational background.

The audit will produce:

- a financial projection and risk assessment
- an inventory of buildings, residences and equipment (including information technology) by age, condition, utilisation and maintenance and replacement costs.

4.30 The allocation of earmarked funds for redress purposes will be based on the needs identified in the institutional audits, the performance improvement plans of institutions and the following criteria:

- a viable business plan, including actions to diversify institutional sources of income
- realistic plans and demonstrable indicators of progress towards rationalising and diversifying program offerings and student enrolments; and
- definite steps towards improvements in internal efficiency.

Earmarked funds for student financial aid

4.31 The Ministry endorses an approach to higher education funding based on a sharing of costs between private beneficiaries (students) and the State, representing the public interest. At the same time the Ministry is aware that there are severe limits on the capacity of many students and their families to pay, particularly first generation students from poor families. To ensure that capable students are not excluded from access to higher education because of their financial means, it is essential to have in place a well-functioning student financial aid scheme.

- 4.32** An adequate and effective programme of financial assistance for students is an essential condition of a transformed, equitable higher education system, operating on businesslike principles in a stable financial environment. Student financial aid is not an optional extra for a viable modern higher education system, but an integral part of the public and private investment in the nation's high-level human resource development. It must therefore be planned and managed professionally, and with an appropriate mechanism for accountability. Neither is student financial aid a substitute for responsible self-help by students, but a valid form of supplementary support, especially for the majority of young South Africans whose family support-systems can bear only a fraction of the cost of current higher education programmes. A sustainable system must be based on transparent and defensible criteria for eligibility, built-in incentives to encourage disciplined effort, rewards for academic success, and sanctions against failure or default.
- 4.33** The Department of Education has benefited by the extensive analysis and consultation on this matter which was undertaken by the National Commission on Higher Education, the advice of the group of eminent business and academic leaders appointed by the Minister to assist him to mobilise domestic and external support, and reports on current provision and future options.
- 4.34** It is now clear beyond doubt that the idea of a single, capitalised public endowment or trust fund, whose proceeds would support annual disbursements and which would be replenished (or even become self-supporting) through loan repayments, is not viable and cannot be supported by the government. The initial capitalisation required would be far too great for the state to contemplate. Actuarial estimates indicate that such a fund, if established, could not be self-sustaining but would require massive periodic re-capitalisation if insolvency were to be avoided. That option is therefore off the table.
- 4.35** The Department of Education, in co-operation with the Department of Finance, is now focusing its attention on the alternative of a public fund similar in concept to the present scheme, based on planned annual budgetary allocations made in terms of the three-year rolling budget framework. The scale of the annual allocations needs to be computed on the basis of far better data and projections of student needs than are currently available, and must be linked to the total goal-generated public subsidy to higher education institutions. The Department is currently working on such projections.
- 4.36** The financial aid offices of higher education institutions, rather than a central funding agency, are best placed to identify those students who most need assistance and will benefit most from it, in terms of publicly known and reasonably uniform criteria. Allocations to institutions by the funding agency from the earmarked fund for student financial aid will need to be based on the equity profiles of institutional enrolments and have regard to their student progression and graduation rates.
- 4.37** A significant proportion of student financial assistance currently flows into institutional revenues as fee payments. The inter-relationship of the scale of student assistance per institution, the level of fee tariffs, the financial health and (in some cases) the viability and social stability of an institution, argue for an increase in the volume of student financial assistance from public funds.

- 4.38** The Ministry of Education bears no liability for debts contracted between students and their institutions or funding agencies, but accepts that a study of the scope and dynamic of student debt in relation to institutional debt and liquidity has become necessary. The Department of Education will therefore build this element into its investigation of student finance.
- 4.39** Annual budgetary allocations are only one element in a complex equation, and the Ministry accepts that a multifaceted approach to student financial aid is essential. A sustainable long-term scheme will include loans, scholarships, work-study agreements and other initiatives. The most suitable mechanism of collecting loan repayments is still under examination. Not enough is known about the current scale of privately-funded sponsorships and bursary programmes, both domestic and from external sources, or of student loans financed by the commercial banking sector for those who can provide the required security and are prepared to contemplate the terms of repayment. With a well-considered advocacy and marketing approach, the scale of private sector investment in higher education students through loans, bursaries and sponsorships might well increase substantially.
- 4.40** The Department's studies, which will underpin the policies discussed in this section, are expected to be completed during 1997 or early 1998. Until an amended or a substitute scheme is in place, the Ministry will continue to operate the National Student Financial Aid Scheme (NSFAS), and has reappointed the Tertiary Education Fund of South Africa (TEFSA) to administer the allocation of loans and bursaries from government and donor funds. TEFSA operates under a Board which is extensively representative of stakeholder interests, and has achieved significant expertise in the administration of student assistance, as well as in institutional capacity-building. Without pre-empting the shape of the new system, the Department expects to draw on the experience of the TEFSA Board and its professional staff in developing its proposals for the future NSFAS.

Earmarked funds for other specific purposes

- 4.41** In addition to funding for redress and student financial aid, there is a need to encourage innovation and adaptation, and to build capacity in new areas. Institutions applying for funds through this programme will be required to relate their submissions to their strategic plans.
- 4.42** For the triennium 1998-2000, funding through this programme will focus on four specific purposes: research capability development, postgraduate training, capital works and management information systems development.
- 4.43** *Research capability development.* The development of research capability in South Africa's higher education institutions is of fundamental importance to national self-reliance. However, good scholarship (which should characterise all higher education academic staff) is not the same as research competence (which a minority of academic staff in the sector as a whole will either need or possess). While individual excellence in teaching is often assisted by and associated with an active research portfolio, it is not dependent on research experience. This is particularly, but not exclusively the case in the college sector of higher education, where good teaching is particularly important but research is not a common part of the college mission.

4.44 In view of the national strategic importance of research, and in order to ensure that the relatively scarce funds available for the development of research capability are well targeted, public funds for participation in research, whether basic or applied, should not be spread across all faculties or schools in all institutions but should rather be concentrated in those areas where there is demonstrable research capacity or potential. To give practical effect to this view, the Ministry will provide earmarked funds:

- to preserve and strengthen existing areas of research excellence
- to develop new areas and centres of research excellence
- to develop research links with industry and to facilitate industry-related collaborative research, and
- to facilitate inter-institutional research collaboration.

4.45 The Ministry recognises the need for the co-ordination of research activities and their funding in higher education. The White Paper on Science and Technology, in particular, the National System of Innovation, provides a framework for the development of a national research plan. The Ministry will engage with the Department of Arts, Culture, Science and Technology and the proposed National Research Foundation (NRF) on developing collaborative mechanisms in this regard.

4.46 *Postgraduate training.* The Government recognises the urgent need to increase the supply of postgraduates to the academic and general labour markets. The attrition and aging of well-qualified academic staff and the emigration of graduate labour compels attention. Current low levels of enrolment in and graduation from doctoral programmes are insufficient to satisfy future requirements. Gross race and gender inequities are obvious at the postgraduate level. Mobility of students nationally and internationally to undertake postgraduate studies is an important means of adding to the skills base. While the new block funding mechanism will support student places at research-based postgraduate levels of study in fields where institutions have demonstrable research training capacity, institutions will be able to apply for earmarked funds to enhance the infrastructure necessary to support expanded postgraduate training.

4.47 *Capital works.* The expansion and diversification envisaged for the higher education sector requires new capital works projects. The existing capital stock needs to be adequately managed, efficiently utilised and maintained. Funding for capital works will be contingent on institutions developing a capital management plan which describes the total floor area, its condition and usage, its replacement value, and planned expenditures for maintenance and refurbishment and cash flow requirements for new construction projects.

4.48 *Management information systems development.* The new funding framework establishes new requirements for planning and information collection, analysis and reporting. These demand more sophisticated information systems for institutional and system management. An element of the earmarked funding programme will therefore be directed to assisting institutions to improve their technical capacity and management information systems.

ACCOUNTABILITY

- 4.49** The basis for improving public accountability in higher education is making public funding for institutions conditional on their Councils providing strategic plans and reporting their performance against their goals. The plans will provide a framework for continuous improvement within institutions and a reference point for quality assurance.
- 4.50** The provision of goal-oriented public funding is intended to result in more equitable student access, improved teaching, learning and research, increased student progression and graduation rates, and greater responsiveness to social and economic needs. Public funding will be conditional on institutions developing plans for their future development and providing evidence of the progress they are making to realise these goals. Institutions will be required to prepare a comprehensive strategic plan comprising:
- a distinctive mission statement
 - an academic development plan (including three-year forward projections of student enrolments and graduations by field and level of study)
 - an equity plan
 - a capital management plan, and
 - a performance improvement plan.
- 4.51** The plans will contain measurable goals and target dates supported by key performance indicators. The Ministry, in consultation with the Council on Higher Education, will publish guidelines for the development of and reporting on these plans. Copies of the plans will be held by the institution, the Ministry and the Council on Higher Education.

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These plans will

be prepared

by

3. The Council on Higher Education

4. The Council on Higher Education

5. The Council on Higher Education

6. The Council on Higher Education

7. The Council on Higher Education

8. The Council on Higher Education

NOTICE 713 OF 1997

MINISTRY OF EDUCATION

DRAFT HIGHER EDUCATION BILL, 1997

1. The draft *Higher Education Bill, 1997* is hereby published for information and comment.
2. All persons concerned are invited to comment in writing on the draft Bill and to send the comment to:

Director-General
Attention: Mrs S Boshoff
Department of Education
Private Bag X895
PRETORIA
0001

3. The comment may also be faxed to Fax Number (012) 323-7532 at the above address.
4. The comment must reach the Department of Education not later than **23 May 1997**.
5. Please also provide the name, address, telephone number and fax number of a person whom the Department of Education could contact concerning the comment.

DRAFT HIGHER EDUCATION BILL, 1997
MINISTRY OF EDUCATION
NOTICE 713 OF 1997
DRAFT FOR DISCUSSION

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DRAFT: FOR DISCUSSION

REPUBLIC OF SOUTH AFRICA

HIGHER EDUCATION BILL

(as introduced)

(MINISTER OF EDUCATION)

16 APRIL 1997

DRAFT FOR DISCUSSION

REPUBLIC OF SOUTH AFRICA

HIGHER EDUCATION BILL

(as introduced)

(MINISTER OF EDUCATION)

18 APRIL 1997

DRAFT HIGHER EDUCATION BILL, 1997

To change the law governing higher education and, for that purpose, to provide for the establishment, composition and functions of a Council on Higher Education; to provide for the establishment of a single, co-ordinated system of higher education while encouraging diversity within such system; to provide for funding of the higher education system; to provide for the effective, efficient and optimal utilisation of resources in the higher education system; to provide for programme-based higher education; to provide for the registration of private and foreign institutions of higher education; to provide for quality assurance, promotion and certification in higher education; to provide for regional co-operation in higher education; to provide for the appointment of an independent assessor; to amend or repeal existing legislation affecting the higher education system; and to provide for matters incidental thereto

PREAMBLE

WHEREAS IT IS DESIRABLE that institutions providing higher education -

PROMOTE the redress of past discrimination and ensure representivity;

PROVIDE optimal opportunities for learning and the generation of knowledge;

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

RESPECT freedom of religion, belief and opinion;

RESPECT and encourage democracy, academic freedom, freedom of speech, freedom of expression, artistic creativity, scholarship and research;

PURSUE excellence, combat discrimination, promote the full realisation of the potential of every student and employee, tolerance of ideas and appreciation of diversity;

RESPOND to the developmental needs of the Republic and of the communities served by them;

ENJOY freedom and autonomy in their relationship with the State within the context of public accountability and the national need for advanced skills and scientific knowledge;

AND accordingly, it is desirable to establish a single co-ordinated higher education system and restructure programmes and institutions to better respond to the human resource and economic needs of the Republic of South Africa

NOW THEREFORE, the Parliament of the Republic of South Africa provides as follows:

DRAFT HIGHER EDUCATION BILL, 1997

To change the law governing higher education and, for that purpose, to provide for the establishment, composition and functions of a Council for Higher Education; to provide for the establishment of a single co-ordinated system of higher education while encouraging diversity within that system; to provide for the regulation of private and foreign institutions of higher education; to provide for quality assurance, promotion and certification in higher education; to provide for regional co-operation in higher education; to provide for the appointment of an independent assessor to monitor or report on legislation affecting the higher education system; and to provide for such other matters as may be necessary.

WHEREAS it is desirable that institutions providing higher education

PROMOTE the values of past discrimination and, in the process, to

PROVIDE optimal opportunities for learning and the development of knowledge;

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

RESPECT freedom of religion, belief and opinion;

RESPECT and encourage democracy, academic freedom, freedom of speech, freedom of expression, artistic creativity, scholarship and research;

PURSUE excellence, combat discrimination, pursue the full realisation of the potential of every student and support the careers of graduates and application of research;

MEET the educational needs of the Republic and of the communities served by them;

ENJOY freedom and autonomy in their relationship with the State within the context of public accountability and the national need for advanced skills and scientific knowledge;

AND accordingly it is desirable to establish a single co-ordinated higher education system and restructure programmes and institutions to better respond to the human resource and economic needs of the Republic of South Africa.

NOW ENACTED by the Parliament of the Republic of South Africa as follows:

ARRANGEMENT OF ACT

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CHAPTER 1

DEFINITIONS, APPLICATION AND DETERMINATION OF POLICY

1. Definitions

In this Act, unless the context otherwise indicates -

"academic employee" means a person appointed to a teaching or research post at an institution of higher education and any other employee designated as such by the council of that institution;

"applicant" means any person who makes any application referred to in Chapter 6;

"college" means a higher education institution -

(a) established in terms of section 20; or

(b) declared to be a college by the Minister in terms of section 21;

"CHE" means the Council on Higher Education established under section 4 of this Act;

"council" means the governing body of a public higher education institution;

"Department of Education" means the government department responsible for education at national level;

"Director-General" means the Director-General of the Department of Education;

"financial year" means a year commencing on the first day of January of every year and ending on the thirty-first day of December of the same year;

"Grade 12" means the highest grade in which education is provided by a school as defined by the South African Schools Act, 1996 (Act No. 84 of 1996);

"higher education" means any learning programme of a level higher than Grade 12 or its equivalent;

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

(a) established in terms of section 20;

(b) deemed to be established in terms of section 69;

(c) declared to be a higher education institution in terms of section 21;

(d) registered as a private higher education institution in terms of Chapter 6;

"institutional statutes" means any statutes made by a council of a public higher education institution in terms of section 31;

"Minister" means the Minister of Education;

"organ of state" means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"person" means a natural person or legal person;

"prescribed" means prescribed by regulation;

"principal" means the chief executive officer of a public higher education institution;

"private higher education institution" means any higher education institution which is registered or provisionally registered in terms of Chapter 6 and includes an institution of higher education which provides programmes of higher education to students within the Republic which -

(a) has its main seat or campus outside the Republic;

(b) has its structure of governance outside the Republic; and

(c) is controlled financially and administratively from outside the Republic;

"public higher education institution" means any higher education institution that is established, deemed to be established or declared as a public higher education institution in terms of this Act;

"registrar" means an employee of the Department of Education designated by the Minister to perform the functions of registrar in terms of Chapter 6;

"SAQA" means the South African Qualifications Authority established under section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

"senate" means the body contemplated in section 28;

"student" means a person registered as a student at a higher education institution;

"technikon" means any technikon established or deemed to be established by this Act;

"this Act" includes any regulation made under section 78 of this Act;

"university" means any university established by this Act or any other Act of Parliament.

2. Application

This Act applies to higher education in the Republic of South Africa.

3. Determination of higher education policy

- (1) The Minister determines policy on higher education after consulting the CHE in terms of section 5 of this Act.

- (2) The Minister must -

- (a) publish such policy by notice in the *Government Gazette*; and
- (b) table such policy in Parliament.

CHAPTER 2

COUNCIL ON HIGHER EDUCATION

4. Establishment of Council on Higher Education (CHE)

- (1) The Council on Higher Education is hereby established.
- (2) The CHE is a legal person with capacity to perform its functions under this Act.

5. Functions of CHE

- (1) The CHE must -
 - (a) advise the Minister on higher education -
 - (i) on its own initiative; or
 - (ii) at the request of the Minister;
 - (b) arrange and co-ordinate conferences and publish an annual report on the state of higher education;
 - (c) through its permanent committee, the Higher Education Quality Committee -
 - (i) promote quality assurance in higher education;
 - (ii) audit the quality assurance mechanisms of higher education institutions; and
 - (iii) accredit programmes of higher education;
 - (d) publish information regarding developments in higher education on a regular basis;
 - (e) promote the access of students to higher education institutions;
 - (f) perform any other function -
 - (i) assigned to it in terms of this Act;
 - (ii) delegated or assigned to it by the Minister by notice in the *Government Gazette*.
- (2) The advice contemplated in subsection (1)(a) includes advice on -
 - (a) quality promotion and assurance;
 - (b) research;
 - (c) the structure of the higher education system;
 - (d) a mechanism for the allocation of public funds; and
 - (e) governance of individual institutions and the higher education system.
- (3) The Minister must -
 - (a) consider the advice of the CHE; and
 - (b) if the Minister does not accept the advice, provide reasons in writing therefore.
- (4) The Minister may act without the advice referred to in this section -
 - (a) in cases of urgency; or
 - (b) if the CHE has failed to provide the advice within a reasonable time.

6. Information provided to CHE

The Department of Education, every publicly funded research council and every institution of higher education must provide the CHE with such information as the CHE may reasonably require for the performance of its functions in terms of this Act.

7. Quality promotion and assurance functions of CHE

(1) The CHE must -

- (a) establish the Higher Education Quality Committee as a permanent committee in terms of section 14, to perform the quality promotion and assurance functions of the CHE in terms of this Act; and
- (b) comply with the policies and criteria formulated by SAQA in terms of section 5(1)(a)(ii) of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).

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

(3) The delegation under subsection (2) -

- (a) must be in writing and published by notice in the *Government Gazette*;
- (b) is subject to such conditions as the Higher Education Quality Committee may determine; and
- (c) does not prevent the performance of such functions by the Higher Education Quality Committee.

(4) Despite the provisions of any other law, a statutory body empowered with quality assurance or quality promotion functions in higher education, must perform those functions within the framework determined by the Higher Education Quality Committee.

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

(6) The CHE may request the Minister to publish regulations prepared by the Higher Education Quality Committee relating to any matter that the Higher Education Quality Committee believes is necessary to give effect to quality promotion and assurance in terms of this Act.

8. Membership of CHE

(1) The CHE consists of -

- (a) a chairperson appointed by the Minister;
- (b) 3 students appointed by the Minister from nominations by national organisations representing students;
- (c) 3 academic employees appointed by the Minister from nominations by national organisations representing academic employees;
- (d) 1 non-academic employee appointed by the Minister from nominations by national organisations representing non-academic employees;
- (e) 2 persons appointed by the Minister from nominations by national bodies representing principals of the college sector;
- (f) 2 persons appointed by the Minister from nominations by national bodies representing university principals;
- (g) 2 persons appointed by the Minister from nominations by national bodies representing technikon principals;
- (h) 1 person appointed by the Minister from nominations by national bodies representing private institution principals;

- (i) 2 persons appointed by the Minister from nominations by national bodies representing further education;
 - (j) 1 person appointed by the Minister from nominations by the National Research Foundation;
 - (k) 1 person appointed by the Minister from nominations by the heads of provincial departments of education;
 - (l) 2 persons appointed by the Minister from nominations by the National Economic Development and Labour Council (NEDLAC) established by section 2 of the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994), one representing organised labour and one representing organised business;
 - (m) no more than 4 persons not directly involved in higher education appointed by the Minister from nominations by the public;
 - (n) 1 representative from the Department of Education designated by the Director-General; and
 - (o) no more than 3 additional persons co-opted by the CHE on account of their experience and expertise in matters relating to the functions of the CHE.
- (2) For the purpose of nominations contemplated in subsection (1), the Minister must give notice in the *Government Gazette*, in two national newspapers and by any other means deemed necessary by the Minister of the intention to appoint members of the CHE and request the nomination of persons who, on account of their experience and expertise in matters relating to the functions of the CHE, are suitable candidates for appointment as members of the CHE.
- (3) Members referred to in subsection (1)(k) and (n) have no voting powers.
- (4) A co-opted member of the CHE has the same rights, powers and duties as any voting member of the CHE.

9. Terms of office of members

- (1) The chairperson of the CHE holds office for a period of 5 years.
- (2) Every student member of the CHE holds office for a period of 2 years.
- (3) Every other member of the CHE holds office for a period of 4 years.
- (4) The CHE may determine that a co-opted member holds office for a period of less than 4 years.
- (5) Every member of the CHE is eligible for re-appointment at the end of that member's period of office for one additional term.

10. Vacation of office by members

A member of the CHE must vacate office if the member -

- (a) resigns by giving written notice to the chairperson;
- (b) is absent from three consecutive meetings of the CHE without the leave of the chairperson;
- (c) becomes insolvent or is convicted of an offence for which the member is imprisoned without the option of a fine; or
- (d) becomes unable to attend to his or her personal affairs.

11. Filling of vacancies

- (1) If a member vacates his or her office, that office must be filled by a person representing the same category who must be nominated, appointed or co-opted as provided in this Act.
- (2) A decision of the CHE is not invalid by reason only of a vacancy on the CHE.

12. Executive officer and employees of CHE

- (1) The CHE must appoint an executive officer, who must -
 - (a) perform the functions determined by the CHE;
 - (b) supervise the employees of the CHE; and
 - (c) account for the assets and liabilities of the CHE.
- (2) The CHE may appoint such other employees as it deems necessary to assist the executive officer.
- (3) The CHE, with the approval of the Minister, determines the conditions of service of the executive officer and any other employee of the CHE.

13. Executive committee of CHE

- (1) The CHE must establish an executive committee and determine its functions.
- (2) The executive committee consists of -
 - (a) the chairperson of the CHE; and
 - (b) four other members appointed by the CHE.
- (3) A decision of the executive committee is deemed to be a decision of the CHE, unless such decision is revoked at the next meeting of the CHE.
- (4) Anything done in consequence of a decision of the executive committee is not invalid by reason only of the fact that the decision is revoked by the CHE in terms of subsection (3).

14. Committees of CHE

- (1) The CHE must establish the Higher Education Quality Committee and may establish other committees to assist it in the performance of its functions, and may include as members of such committees persons who are not members of the CHE.
- (2) The chairperson of a committee established in terms of subsection (1) must be appointed by the CHE from among its members.

15. Meetings of CHE and committees

- (1) Meetings of the CHE and its committees are held at such times and places as determined by the respective chairperson.
- (2) Whenever the chairperson is absent from any meeting of the CHE or a committee of the CHE, the members present must elect a person from among themselves to preside at that meeting.
- (3) The CHE may, with the approval of the Minister, make rules relating to the procedure at meetings of the CHE and its committees, including the quorum for such meetings, and any other matter necessary or expedient for the performance of its functions.
- (4) The proceedings of the CHE or of a committee are not invalid by reason only of the fact that a vacancy exists on the CHE or such committee, as the case may be.

16. Funds of CHE

- (1) The funds of the CHE consist of -
 - (a) money appropriated by Parliament;
 - (b) donations, contributions and other income received by the CHE from whatever source; and
 - (c) money payable by higher education institutions for services rendered by the CHE or the Higher Education Quality Committee.

- (2) The CHE must in each financial year, at such time and in such form as the Minister may determine, submit a statement of its estimated income and expenditure for the ensuing financial year to the Minister for approval.
- (3) If the Minister fails to approve the CHE's statement of its estimated income and expenditure, the Minister must request the CHE to provide a revised statement within a reasonable period.
- (4) The money contemplated in subsection (1) must be used by the CHE in accordance with the approved statement referred to in subsection (2), and any unexpended balance must be carried forward as a credit to the following financial year.
- (5) Subject to the provisions of subsection (4), the CHE may invest any portion of its funds in such manner as the Minister, with the agreement of the Minister of Finance, may approve.

17. Remuneration and allowances of members of CHE and committees

The Chairperson of the CHE, every other member and any person appointed as a member of a committee who is not in the full-time service of the State may, in respect of services rendered by him or her in connection with the affairs of the CHE or a committee, be paid by the CHE -

- (a) such travelling, subsistence and other allowances; and
- (b) in the case of the chairperson of the CHE, such additional remuneration, as the Minister with the concurrence of the Minister of Finance may determine.

18. Annual audit

The books of account and financial statements of the CHE must be audited at the end of each financial year by the Auditor-General.

19. Annual report to Parliament

- (1) The CHE must, not later than three months after the end of each financial year, submit to the Minister a report on the performance of its functions during the financial year.
- (2) The Minister must table copies of the report in Parliament within 14 days after the receipt thereof if Parliament is in ordinary session, or, if Parliament is not in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

CHAPTER 3

PUBLIC INSTITUTIONS OF HIGHER EDUCATION

20. Establishment of public higher education institutions

- (1) The Minister may, after consultation with the CHE, by notice in the *Government Gazette*, and from money voted for this purpose by Parliament, establish public institutions of higher education to provide higher education programmes.
- (2) The Minister may establish a university, technikon, or college in terms of subsection (1).
- (3) Notwithstanding subsections (1) and (2), a university may be established by an Act of Parliament.
- (4) The notice contemplated in subsection (1) must determine the -
 - (a) date of establishment of the institution;
 - (b) type and name of the institution; and
 - (c) official address of the institution.
- (5) Every institution of higher education established, deemed to be established or declared as a public higher education institution in terms of this Act, is a legal person.
- (6) Every public institution of higher education may, subject to the provisions of this Act, purchase or otherwise acquire, hold, let, sell, exchange or otherwise alienate any movable or immovable property or grant to any person any real right in or servitude on its property and invest, lend and borrow money, but no such institution may without the approval of the Minister, dispose of or alienate in any fashion, immovable property acquired with the financial assistance of the State or grant to any person any real right therein or servitude thereon.

21. Declaration of institution as public higher education institution

- (1) The Minister may, after consulting the CHE and by notice in the *Government Gazette*, declare any education institution as -
 - (a) a university, technikon or college; or
 - (b) a subdivision of a university, technikon or college.
- (2) The notice contemplated in subsection (1) must determine -
 - (a) the date on which the education institution becomes a public higher education institution or a subdivision of a public higher education institution, as the case may be;
 - (b) the type and name of the public higher education institution; and
 - (c) the official address of the institution.
- (3) The Minister may only act under subsection (1) -
 - (a) after consulting -
 - (i) the governing body of the education institution concerned, if it is a public institution;
 - (ii) the council of the public higher education institution concerned, if the education institution is to be declared a subdivision of an existing public higher education institution;
 - (iii) the responsible Minister, Member of the Executive Council or authority, if the education institution was established by or is administered, controlled or funded by an organ of state other than the Department of Education;
 - (b) with agreement of the owner of the education institution, if it is a private institution.

(4) Nothing contained in this Act or any other law may be construed as obliging the Minister to declare an education institution to be a public higher education institution in terms of this section.

(5) An education institution may only be declared a public higher education institution after the employer of employees at the institution has consulted such employees regarding such declaration.

22. Consequences of declaration as public higher education institution

(1) As from the date determined in terms of section 21(2)(a) -

(a) the education institution is deemed to be a public higher education institution established under this Act or a subdivision of such public higher education institution;

(b) the assets, liabilities, rights and obligations of the education institution devolve upon the public higher education institution concerned; and

(c) any agreement lawfully entered into by or on behalf of the education institution, is deemed to have been concluded by the public higher education institution concerned.

(2) Immovable property devolving upon the public higher education institution concerned in terms of section 22(1)(b) must, subject to the approval of the Minister of Finance, be transferred to such institution without payment of transfer duty, stamp duty or other money or costs, but subject to any existing right, encumbrance, duty or trust on or over that property.

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

(4) The declaration of an education institution as a public higher education institution under section 21(1) does not affect anything lawfully done by the education institution prior to the declaration.

(5) All funds, which immediately prior to the date referred to in section 21(2), were vested in the education institution concerned by virtue of a trust, donation or bequest must be applied by the public higher education institution concerned in accordance with the trust, donation or bequest, as the case may be.

23. Minister may approve provision of higher education programmes

(1) The Minister may approve the provision of a higher education programme by an organ of state other than the Department of Education.

(2) The Minister may impose any reasonable conditions on the approval contemplated in subsection (1).

(3) The Minister may, after consulting the Minister, Member of the Executive Council or authority responsible for the organ of state concerned, vary or cancel any condition imposed in terms of subsection (2) or impose new conditions on such approval.

24. Closure or merger of public higher education institutions

(1) The Minister may, by notice in the *Government Gazette*, -

(a) close a public higher education institution; or

(b) merge two or more public higher education institutions.

(2) The Minister may not act under subsection (1) unless -

(a) the Minister has -

(i) given notice of at least 180 days of his or her intention to do so to every public higher education institution concerned;

(ii) published a notice in all the official languages used as mediums of instruction by every public higher education institution concerned in one or more daily newspapers circulating in the area in which such public higher education institution provides programmes;

(iii) given the community in the area or areas in which the institution operates an opportunity to make representations; and

(iv) considered such representations;

(b) the Minister is satisfied that every employer of employees at every public higher education institution concerned, has consulted with the employees at such public higher education institution regarding the closure or merger, as the case may be.

25. Consequences of merger or closure of public higher education institutions

(1) If a public higher education institution is closed in terms of section 24(1)(a), all assets and liabilities of such public higher education institution must after closure be dealt with as determined by the Minister.

(2) If public higher education institutions are merged in terms of section 24(1)(b), section 22, read with the changes required by the context, applies.

CHAPTER 4

GOVERNANCE OF PUBLIC HIGHER EDUCATION INSTITUTIONS

26. Institutional governance structures

Every public higher education institution must establish the following structures and offices of institutional governance -

- (a) a council;
- (b) a senate;
- (c) a student representative council;
- (d) a principal; and
- (e) such other structures and offices prescribed by institutional statutes.

27. Council of public higher education institution

- (1) The council governs the public higher education institution, subject to this Act, any other law and the institutional statutes.
- (2) Every council must consist of -
 - (a) the principal;
 - (b) persons appointed by the Minister, who may not exceed 5;
 - (c) members of the senate elected by the senate;
 - (d) academic employees elected by the academic employees;
 - (e) members of the students' representative council elected by the students' representative council;
 - (f) non-academic employees elected by the non-academic employees; and
 - (g) such additional persons as may be prescribed by institutional statutes.
- (3) The number of persons contemplated in subsection (2) and the manner of their election, where applicable, are as prescribed by institutional statutes.
- (4) At least 60 percent of the members of the council must be persons who are not employed by the institution or students of the institution.
- (5) Any person who holds public office or is in the full-time employment of the State may not be a member of the council or be appointed as chancellor of a higher education institution.
- (6) Members of a council must -
 - (a) be persons with knowledge and experience relevant to the interests and governance of the institution concerned; and
 - (b) participate in the deliberations of the council in the best interests of the higher education institution concerned.

28. Senate of public higher education institution

- (1) A senate must consist of -

- (a) the principal;
- (b) academic employees;
- (c) non-academic employees;

- (d) members of the council;
 - (e) members of the students' representative council; and
 - (f) such additional members as may be determined by institutional statutes.
- (2) The numbers of persons contemplated in subsection (1) and the manner of their appointment or election, as the case may be, are as prescribed by institutional statutes.
- (3) The senate of a higher education institution is responsible for the academic functions of the higher education institution and performs such functions as are delegated or assigned to it by the council, in accordance with institutional statutes.

29. Committees of council and senate

- (1) The council may appoint one or more committees, which may, subject to the directions of the council, perform those functions of the council that the council may determine.
- (2) The council may appoint persons who are not members of the council to such committees and may at any time dissolve or reconstitute such a committee.
- (3) The council is not divested of responsibility for the performance of any function assigned to a committee in terms of this section.
- (4) Any decision taken by any such committee in the performance of any function so assigned, must be presented for ratification to the council at its first meeting after the decision was taken.
- (5) The senate may establish committees to perform any of its functions and may appoint persons, who are not members of the senate, as members of such committees.
- (6) The council and the senate may nominate committees, to be known as joint committees, to perform functions that are common to the council and the senate.
- (7) The constitution, manner of election, functions, procedure at meetings and dissolution of a joint committee are as prescribed by the rules of the institution.

30. Principal of public higher education institution

The principal is the chief executive officer responsible for the management and administration of the public higher education institution.

31. Institutional statutes and institutional rules

- (1) The council may make -
- (a) institutional statutes to give effect to any law relating to the higher education institution and to promote the effective management of the higher education institution in respect of matters not expressly prescribed by any law; and
 - (b) institutional rules to give effect to the institutional statutes.
- (2) Institutional statutes or rules in connection with -
- (a) the composition of a senate may not be made, amended or repealed except on the recommendation of such senate;
 - (b) the studies, instruction, examinations of the students of a higher education institution may not be made, amended or repealed except with the agreement of the senate of that institution; and
 - (c) the composition, manner of election, functions and privileges of a students' representative council may not be made, amended or repealed except with the agreement of such council.

32. Institutional statutes to be approved by Minister

- (1) Any institutional statutes which a council proposes to make in terms of this Chapter must be submitted for the approval of the Minister, and if so approved must be promulgated in the *Government Gazette* and come into operation on the date of such promulgation.
- (2) Any institutional statutes made under section 31 must be tabled in Parliament by the Minister within 14 days after promulgation thereof, if Parliament is in ordinary session or, if Parliament is not in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

33. Public higher education institutions without institutional statutes

The Minister must prescribe standard institutional statutes which apply to every public higher education institution that has not made institutional statutes until such time as the council of such higher education institution makes its own institutional statutes in terms of section 31.

34. Appointment, conditions of service and salaries of employees of public higher education institution

- (1) The council appoints the principal, academic employees and all other employees that it may consider necessary for the efficient instruction of students and the administration of the public higher education institution.
- (2) Subject to the Labour Relations Act, 1995 (Act No. 66 of 1995) and notwithstanding anything to the contrary in any other law, the conditions of service, provisions regarding discipline, privileges and functions of the principal and any academic or other employee of a public higher education institution are determined by the council of such institution.

35. Students' representative council

The establishment and composition, manner of election, terms of office, functions and privileges of the students' representative council must be prescribed by institutional statutes.

36. Disciplinary measures

A student at a public higher education institution is subject to such disciplinary measures and disciplinary procedures as prescribed by institutional statutes made after consultation with the senate of such institution.

37. Admission to public higher education institutions

- (1) Subject to this Act, the council may determine the admission policy of a public higher education institution and prescribe such policy by institutional statutes.
- (2) The admission policy of any public higher education institution must not unfairly discriminate in any way.
- (3) Subject to this Act, the council may, with the agreement of the senate -
 - (a) prescribe entrance requirements in respect of particular programmes of higher education;
 - (b) determine the language policy of the higher education institution, within the framework determined by the Pan South African Language Board;
 - (c) determine the number of students who may be admitted for a particular higher education programme;
 - (d) prescribe the minimum requirements for re-admission to study at the higher education institution; and
 - (e) refuse re-admission to a student who fails to satisfy such minimum requirements for re-admission.
- (4) The council, with the agreement of the senate, determines the official language or languages of instruction at a public higher education institution.

(5) The language policy, determined by the council, with the agreement of the senate, must -

(a) be published in the institutional rules; and

(b) may not constitute a barrier to the admission of students.

38. Regional co-operation between higher education institutions

(1) Higher education institutions may co-operate with each other in any sphere to achieve the optimal utilisation of resources and the fulfilment of their functions.

(2) Higher education institutions may establish regional structures to assist and facilitate the co-operation referred to in subsection (1).

(3) The Minister may provide financial incentives to such structures and to public higher education institutions participating in such structures to achieve the aims of such co-operation.

CHAPTER 5

FUNDING OF PUBLIC HIGHER EDUCATION

39. Minister allocates funds

- (1) The Minister, after consulting the CHE, by notice in the *Government Gazette*, must determine policy on the funding of higher education.
- (2) The Minister, subject to the policy determined in subsection (1), must allocate public funds to higher education on an open and transparent basis.
- (3) The Minister may -
 - (a) impose any reasonable condition on an allocation contemplated in subsection (2); and
 - (b) impose different conditions on different public higher education institutions, different instructional programmes or different allocations, if there is a reasonable basis for such differentiation.
- (4) The Minister may, at any time, -
 - (a) amend or withdraw any condition imposed under this section; and
 - (b) impose further conditions on any allocation of funds under this section.
- (5) The Minister may not act under subsection (4) unless -
 - (a) every public higher education institution affected has been furnished with notice of the Minister's intention so to act, stating the reasons why such action is contemplated;
 - (b) every public higher education institution affected has been granted an opportunity to make written representations regarding such action; and
 - (c) any such representations have been duly considered by the Minister.

40. Funds of a public higher education institution

The funds of a public higher education institution consist of -

- (a) funds allocated by the Minister in terms of section 39 for purposes of higher education;
- (b) any donations or contributions received by the institution;
- (c) money raised by the institution;
- (d) money raised by means of loans;
- (e) income derived from investments;
- (f) money received for services rendered to any other institution or person;
- (g) money payable by students for higher education programmes provided by the institution; and
- (h) money received from students or employees of the institution for accommodation or other services provided by the institution.

41. Records to be kept and information to be furnished by council

Every council must -

- (a) cause true and correct records to be kept of all its proceedings and true and correct accounts of all money received and paid by or on behalf of the institution;
- (b) transmit to the Minister, in respect of the preceding year -
 - (i) a report on the overall governance of the institution; and
 - (ii) a duly audited statement of income and expenditure, and a balance sheet;

- (c) furnish the Minister with the information that must be provided in terms of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992); and
- (d) provide the Minister with such additional information as the Minister may reasonably require.

42. Action on failure of council to comply with this Act or certain conditions

- (1) If any council fails to comply with any provision of this Act under which an allocation from money voted by Parliament is paid to such institution or with any condition subject to which any such allocation is paid to such institution, the Minister may call upon such council to comply with the said provision or condition within a specified period.
- (2) If such council thereafter fails to comply with the said provision or condition, the Minister may, notwithstanding anything to the contrary in any law contained, withhold payment of the whole or any portion of the allocation voted by Parliament in respect of the public higher education institution concerned.
- (3) Before taking action under subsection (3), the Minister must -
 - (a) give notice to the public higher education institution concerned of the intention so to act;
 - (b) provide the council of such higher education institution a reasonable opportunity to make representations; and
 - (c) consider such representations.

CHAPTER 6

PRIVATE HIGHER EDUCATION INSTITUTIONS

43. Designation of registrar

- (1) The Director-General must designate an employee of the Department of Education as the registrar of private higher education institutions to perform the functions of registrar in terms of this Act.
- (2) The Director-General may designate any number of other employees of the Department of Education as deputy registrars to assist the registrar to perform the functions of registrar in terms of this Act.
- (3) A deputy registrar may exercise any of the functions of the registrar that have been generally or specifically delegated to the deputy.

44. Registration of private higher education institution

Any higher education institution other than a public higher education institution or an organ of state contemplated in section 23 must be provisionally registered or registered as a private higher education institution in terms of this Act.

45. Application for provisional registration

Any person who intends providing a programme of higher education may apply to the registrar for provisional registration in the prescribed form and manner, subject to payment of the prescribed fee.

46. Requirements for provisional registration

- (1) The registrar may not grant provisional registration unless the registrar is satisfied that the applicant -
 - (a) is financially capable of satisfying its obligations to prospective students; and
 - (b) will -
 - (i) not discriminate on grounds of race;
 - (ii) maintain standards of higher education provision that are not inferior to standards at comparable public higher education institutions;
 - (iii) present its programmes for accreditation;
 - (iv) maintain an acceptable quality assurance system; and
 - (v) comply with any other reasonable requirement determined by the registrar.
- (2) The registrar may require further information, particulars and documents in support of any application for provisional registration.

47. Application for registration

Every private higher education institution provisionally registered in terms of section 44 may, within the period stipulated in its certificate of provisional registration, apply to the registrar for registration -

- (a) in the prescribed form and manner; and
- (b) pay the prescribed fee.

48. Requirements for registration

- (1) The registrar may not register a private higher education institution unless the registrar is satisfied that the institution-
 - (a) has satisfied the requirements of its provisional registration contemplated in section 44;
 - (b) has complied with any condition attached to such provisional registration; and
 - (c) complies with any reasonable requirements determined by the registrar.
- (2) The registrar may require further information, particulars and documents in support of any application for registration.

49. Determination of application for registration or provisional registration

- (1) The registrar must consider any application for registration or provisional registration and any further information, particulars or documents provided by the applicant and must register or provisionally register the higher education institution if the relevant requirements for registration or provisional registration are met to the registrar's satisfaction.
- (2) If the registrar decides -
 - (a) to grant the application, the registrar must -
 - (i) enter the applicant's name in the appropriate register of private higher education institutions;
 - (ii) issue a certificate of registration, stating the terms of such registration and, in the case of provisional registration, the duration of such registration;
 - (iii) provide the certificate to the applicant;
 - (iv) as soon as practicable after the decision, publish the certificate of registration in the *Government Gazette*;
 - (b) not to grant the application, the registrar must advise the unsuccessful applicant in writing of the decision and provide the applicant with written reasons for his or her decision.

50. Registration certificate must be displayed

A private higher education institution must conspicuously display -

- (a) a copy of its certificate of provisional registration or registration on its premises; and
- (b) its registration number on its official documents.

51. Access to information

- (1) Any person may inspect -
 - (a) the register of private higher education institutions;
 - (b) the certificates of registration of private higher education institutions;
 - (c) the financial statements and auditor's report provided in terms of section 52 of this Act.
- (2) The registrar must provide a certified copy of, or extract from, any of the documents referred to in subsection (1) to any person who has paid the prescribed fee.

52. Records and audits to be provided

- (1) Every private higher education institution must, to the standards of generally accepted accounting practice, principles and procedures -
 - (a) keep books and records of income, expenditure, assets and liabilities;

- (b) within six months of the end of its financial year, prepare financial statements, including at least -
 - (i) a statement of income and expenditure for the previous financial year; and
 - (ii) a balance sheet showing its assets, liabilities and financial position as at the end of the previous financial year.

(2) Every private higher education institution must -

- (a) ensure an annual audit of its books and records of account and its financial statements by an auditor, who must conduct the audit in accordance with generally accepted auditing standards;
- (b) provide to the registrar, by 31 March each year, a copy of its financial statements and a certified copy of the auditor's report in respect of those financial statements; and
- (c) provide to the registrar any additional information, particulars or documents -
 - (i) required by the registrar; and
 - (ii) in a form and manner determined by the registrar.

53. Amendment of registration

A private higher education institution may apply to the registrar to amend its registration or provisional registration -

- (a) in the prescribed form and manner; and
- (b) by paying the prescribed fee.

54. Requirements for amendment to registration

- (1) The registrar may not amend the registration of a private higher education institution unless the registrar is satisfied that such amendment is in the interests of higher education and complies with the provisions of this Act.
- (2) The registrar may require further information, particulars or documents in support of any application for amendment.

55. Registrar may impose conditions

- (1) The registrar may impose any reasonable condition on a private higher education institution in respect of -
 - (a) its provisional registration;
 - (b) its registration; or
 - (c) any amendment to its provisional registration or its registration.
- (2) The registrar may impose different conditions in terms of subsection (1) in respect of different institutions, if there is a reasonable basis for such differentiation.

56. Registrar may vary or cancel condition

The registrar may, on reasonable grounds, vary or cancel any condition imposed in terms of section 55 or impose new conditions in terms of that section.

57. Registrar may cancel registration

- (1) The registrar may, on reasonable grounds, cancel any registration or provisional registration in terms of this Act.
- (2) If the accreditation of any programme offered by the private higher education institution is withdrawn, the registrar must review such institution's registration.

58. Consideration by registrar before variation or cancellation

The registrar may not act under sections 55 or 56 unless the registrar -

- (a) has informed the private higher education institution of the intention so to act and the reasons therefore;
- (b) has granted the private higher education institution an opportunity to make representations to the registrar in relation to such action; and
- (c) has considered such representations.

59. Appeal to Minister

- (1) An applicant may appeal to the Minister against any decision of the registrar in terms of this Chapter.
- (2) An appeal contemplated in terms of subsection (1), must be lodged with the Minister within 60 days of-
 - (a) the date of the registrar's decision; or
 - (b) if written reasons for the decision are required, the date of those reasons.
- (3) The Minister, on good cause shown, may extend the period within which an applicant may note an appeal against the decision of the registrar.
- (4) An appeal in terms of this section does not suspend the operation of any decision of the registrar.

CHAPTER 7

INDEPENDENT ASSESSOR

60. Appointment of independent assessment panel

The Council on Higher Education must appoint an independent assessment panel consisting of at least three suitable persons who -

- (a) have knowledge and experience of higher education; and
- (b) comply with any other requirements determined by the CHE.

61. Appointment of independent assessor

- (1) The Minister, from the independent assessment panel referred to in section 60, may appoint an assessor who is independent in relation to the public higher education institution to conduct an investigation at a higher education institution -
 - (a) wherever the circumstances, contemplated in section 62 apply; and
 - (b) after consulting the council of the higher education institution if possible.
- (2) The council and any person affected by the investigation must assist and co-operate with the independent assessor in the performance of his or her functions in terms of section 64.

62. Circumstances when independent assessor may be appointed

- (1) An independent assessor may be appointed in terms of section 61 if the council requests the appointment.
- (2) Notwithstanding subsection (1), the Minister may appoint an independent assessor in terms of section 61 if -
 - (a) circumstances arise at a public higher education institution that -
 - (i) involve financial or other maladministration of a serious nature; or
 - (ii) seriously undermine the effective functioning of the public higher education institution;
 - (b) the council has failed to resolve such circumstances; and
 - (c) the appointment is in the best interests of higher education in an open and democratic society.

63. Independent assessor may be appointed for two or more public higher education institutions

The Minister may appoint an independent assessor in terms of section 61 to conduct an investigation at two or more public higher education institutions.

64. Functions of independent assessor

- (1) An independent assessor appointed in terms of section 61 must, within a period of 30 days and on the terms of reference specified by the Minister -
 - (a) conduct an investigation into circumstances at the higher education institution;
 - (b) report in writing to the Minister regarding the findings of his or her investigation; and
 - (c) suggest appropriate measures to address the circumstances and to avoid their recurrence.
- (2) The Minister must provide a copy of the report referred to in subsection (1) to the council.

65. Independent assessor may be assisted

An independent assessor appointed in terms of section 61 may, with the approval of the Minister, appoint any other person with suitable knowledge and experience to assist in the performance of the independent assessor's functions.

66. Remuneration and allowances

The Minister, with the agreement of the Minister of Finance, may determine the remuneration and allowances to be paid to an independent assessor and any person appointed by him or her in terms of section 65.

67. Limitation of liability

Neither the independent assessor, any person appointed in terms of section 65, the CHE nor the Minister is liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the course of performing the functions referred to in section 64.

CHAPTER 8

TRANSITIONAL ARRANGEMENTS

68. Existing legislation on higher education

- (1) All existing legislation dealing with higher education continues to apply unless expressly repealed by this Act.
- (2) If such existing legislation conflicts with this Act, this Act prevails.

69. Existing technikons and universities

- (1) Any technikon which was established or deemed to be established in terms of the Technikons Act, 1993 (Act No. 125 of 1993) and which existed immediately prior to the commencement of this Act, is deemed to be a technikon established in terms of this Act.
- (2) Any university established in terms of a private Act continues to exist in terms of such private Act and is deemed to be a public higher education institution in terms of this Act.
- (3) Should any provision of this Act conflict with a provision of a private Act of a university, this Act prevails.
- (4) Subject to any other applicable law, all conditions of service or service benefits applicable immediately prior to the commencement of this Act at a university or technikon, continue to exist until amended or repealed by the council of the higher education institution concerned.
- (5) Councils and senates of technikons and universities which existed at the commencement of this Act continue to exist and exercise all functions which they fulfilled prior to such commencement but must comply with the provisions of this Act by a date determined by the Minister by notice in the *Government Gazette*.

70. Existing colleges

- (1) If, at the commencement of this Act, a government department, other than the Department of Education, or a public education institution administered, controlled or funded by such government department, provides a higher education programme, the provision of such programme is deemed to have been approved by the Minister in terms of section 22.
- (2) The Minister, after consulting the responsible Minister or Member of the Executive Council, may impose any reasonable condition on the continued provision of a higher education programme contemplated in terms of subsection (1).
- (3) Any higher education programme provided by a government department or a public education institution contemplated in subsection (1), is subject to the quality promotion and assurance functions of the CHE.

71. Continued existence of University and Technikons Advisory Council

- (1) The University and Technikons Advisory Council established in terms of the University and Technikons Advisory Council Act, 1983, (Act No. 99 of 1983), continues to exist and continues to perform its functions as if that Act had not been repealed until the CHE commences its functions in terms of this Act.
- (2) The CHE commences its functions on a date determined by the Minister by notice in the *Government Gazette*.

72. Continued existence of Committee of University Principals, Committee of Technikon Principals and Matriculation Board

- (1) The Committee of University Principals, the Committee of Technikon Principals and the Matriculation Board continue to exist as if the Universities Act, 1955 (Act No. 61 of 1955) and the Technikons Act, 1993 (Act No. 125 of 1993) had not been repealed.

- (2) The Committee of University Principals, the Committee of Technikon Principals and the Matriculation Board cease to exist on a date or dates to be determined by the Minister, by notice in the *Government Gazette*, after the Minister has -

- (a) given the bodies at least 180 days notice of the decision to publish such notice;
- (b) invited such bodies to make representations in regard to such decision and has considered such representations; and

- (c) sought the advice of the CHE.

- (3) The Committee of University Principals and the Committee of Technikon Principals determine the manner in which their assets and liabilities must be dealt with upon their dissolution.

- (4) Joint statutes and joint rules made in terms of the Universities Act, 1955 (Act No. 61 of 1955) and the Technikons Act, 1993 (Act No. 125 of 1993) continue to exist until the date contemplated in subsection 72(2).

73. Provisional registration of existing private institutions

- (1) Any person, other than a public higher education institution, who provides a higher education programme at the date of commencement of this Act, must apply for provisional registration as a private institution in terms of section 44 by a date determined by the Minister by notice in the *Government Gazette*.

- (2) Section 76(4) does not apply to a person contemplated in subsection (1) who applies for provisional registration by the date contemplated in that subsection until such application is refused by the registrar.

74. Institution established under name of college

- (1) Any person who provides education or training under a name that includes the word 'college' and is not established, or deemed to be established, declared or registered as a higher education institution in terms of this Act, a school contemplated in section 76(2) or a person contemplated in section 23 must, within 180 days of the commencement of this Act remove the word 'college' from its name.

- (2) Until the period referred to in subsection (1) has expired, a person contemplated in subsection (1) is not guilty of an offence in terms of section 76(1)(d) of this Act.

75. Serving members of council and chancellors

Any person who holds public office or is in the full-time employment of the State and serves as chancellor or as a member of council of a higher education institution at the commencement of this Act may despite section 27(5) complete his or her current term of office.

CHAPTER 9

GENERAL

76. Offences

- (1) Any person, excluding a higher education institution, who, without the authority of a higher education institution-

- (a) in any way makes it known or pretends that such person or some other person offers any instructional programme or subdivision of an instructional programme which entitles a person who has followed such an instructional programme or subdivision of an instructional programme to the granting of any qualification which may be issued by a higher education institution;
- (b) confers a qualification purporting to be a qualification granted by a higher education institution, or in collaboration with a higher education institution;
- (c) performs any act which purports to have been performed by or on behalf of a higher education institution; or
- (d) establishes or manages an institution, not being a technikon, university or college under a name which includes the words 'technikon', 'university' or 'college';

is guilty of an offence and on conviction liable to the same sentence which could be imposed for fraud.

- (2) Subsection (1)(d) does not apply to a school contemplated in terms of the South African Schools Act, 1996 (Act No. 84 of 1996), which, at the date of commencement of this Act, included the word 'college' in its name.
- (3) Any person who pretends that a qualification has been awarded to that person by a higher education institution, whereas in fact no such qualification has been so awarded, is guilty of an offence and is liable upon conviction to the same sentence which could be imposed for fraud.
- (4) Any person, other than a public higher education institution or a person contemplated in section 23, who provides a higher education programme and is not registered or provisionally registered as a private institution in terms of this Act is guilty of an offence and on conviction is liable to a fine not exceeding R 100 000 or imprisonment not exceeding 10 years or both such fine and imprisonment.
- (5) Any private higher education institution which does not comply with section 50 is guilty of an offence and on conviction is liable to a fine not exceeding R20 000.
- (6) Despite the provisions of any other law, a Magistrates' Court is competent to impose any sentence contemplated in terms of this Act.

77. Delegation of powers

- (1) The Minister may, on 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 assign any of his or her duties in terms of this Act to -
- (a) a council of a public higher education institution;
 - (b) the CHE;
 - (c) any employee of the Department of Education; or
 - (d) any executive organ of state as contemplated in sections 238 and 239 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).
- (2) A council of a public higher education institution may, on such conditions as it may determine, delegate any of its powers under this Act or delegated to it in terms of subsection (1), except the power to make institutional statutes, and assign any of its duties in terms of this Act or assigned to it in terms of subsection (1), to the senate, the principal or other employee of the public higher education institution.

78. Regulations

The Minister may make regulations, not inconsistent with this Act, as to -

- (a) any matter which under this Act the Minister is empowered or required to prescribe by regulation; and
- (b) in general, all matters in respect of the which the Minister may deem it necessary or expedient to make regulations to achieve the objects of this Act.

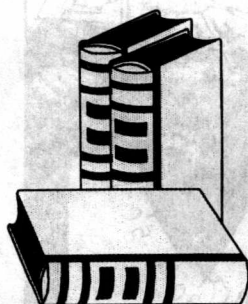
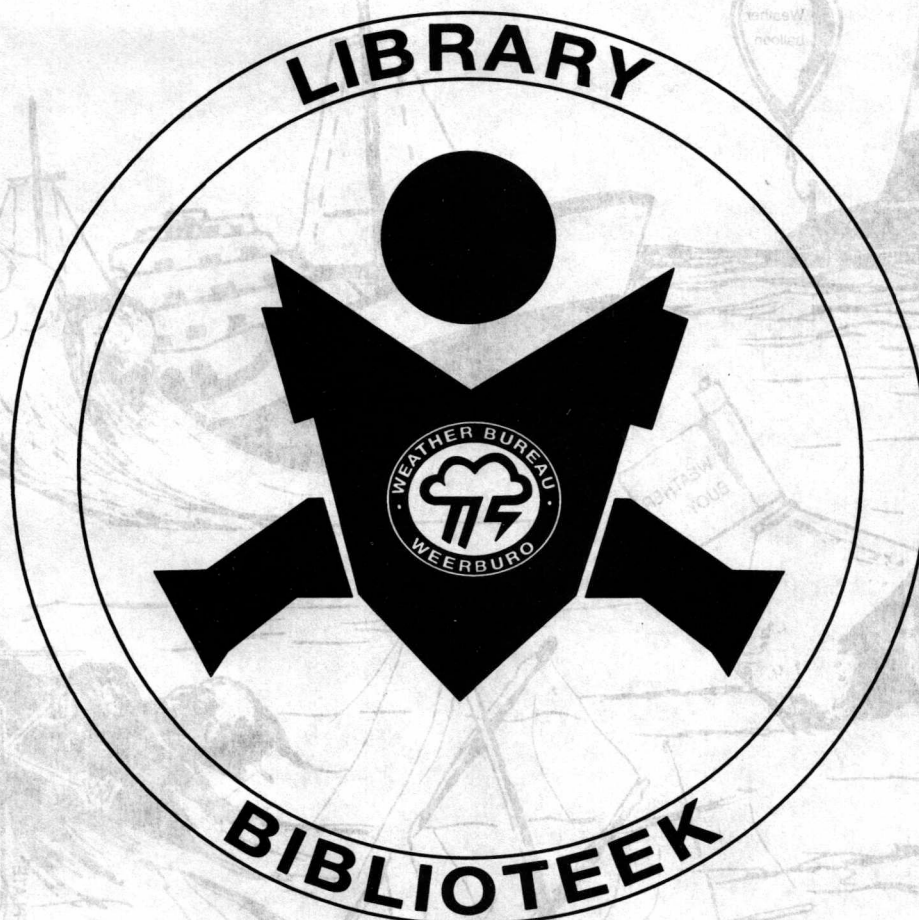
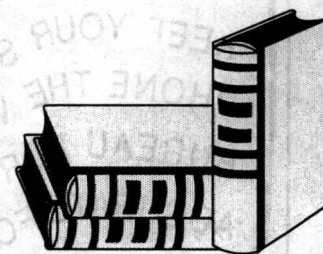
79. Repeal of laws

- (1) The University and Technikons Advisory Council Act, 1983 (Act No. 99 of 1983) is hereby repealed in its entirety.
- (2) The Universities Act, 1955 (Act No. 61 of 1955) is hereby repealed in its entirety.
- (3) The Technikons Act, 1993 (Act No. 125 of 1993) is hereby repealed in its entirety.
- (4) The Tertiary Education Act, 1988 (Act No. 66 of 1988) is hereby repealed in its entirety.

80. Short title and commencement

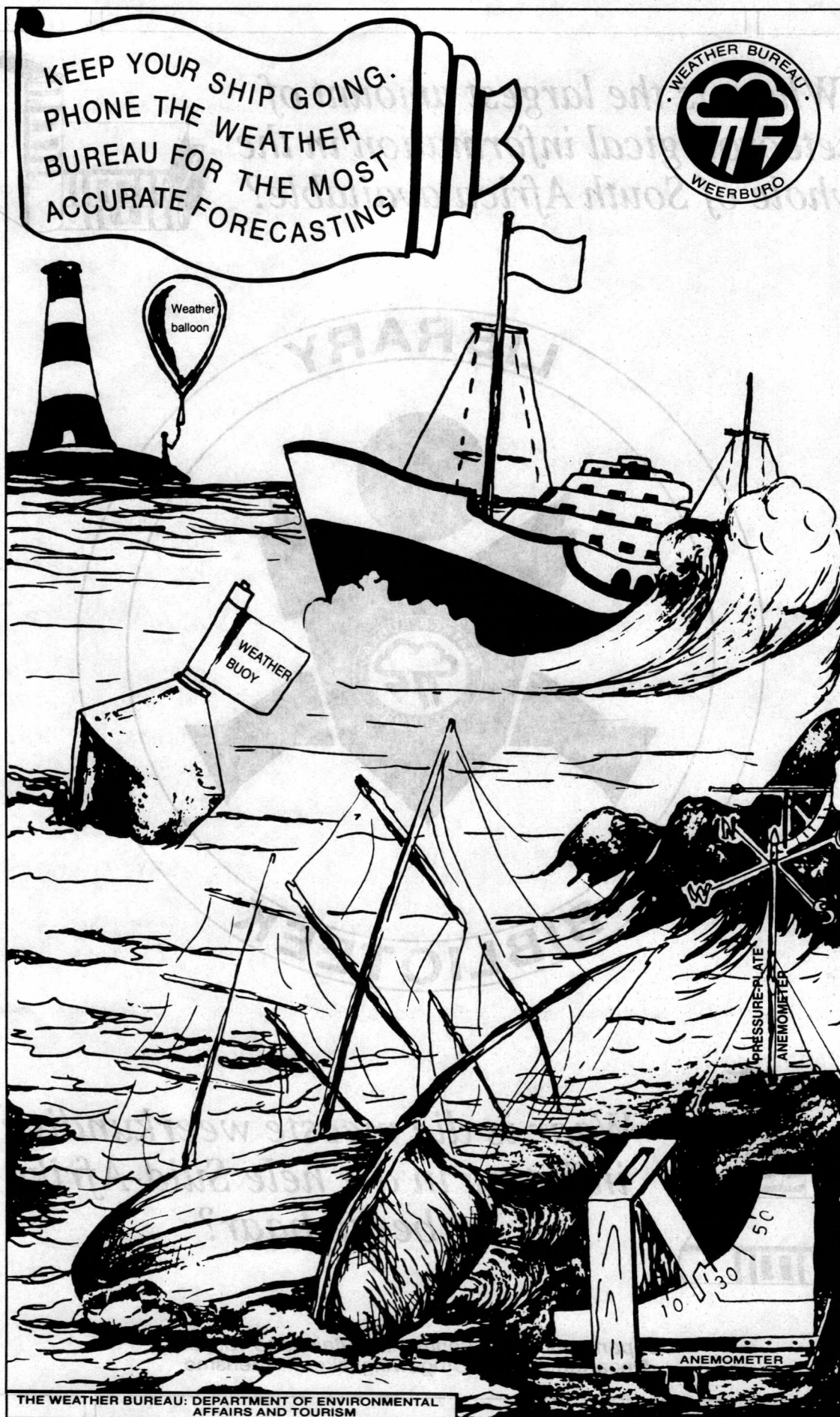
- (1) This Act is called the Higher Education Act, 1997.
- (2) This Act comes into operation on a date determined by the President by proclamation in the *Government Gazette*.

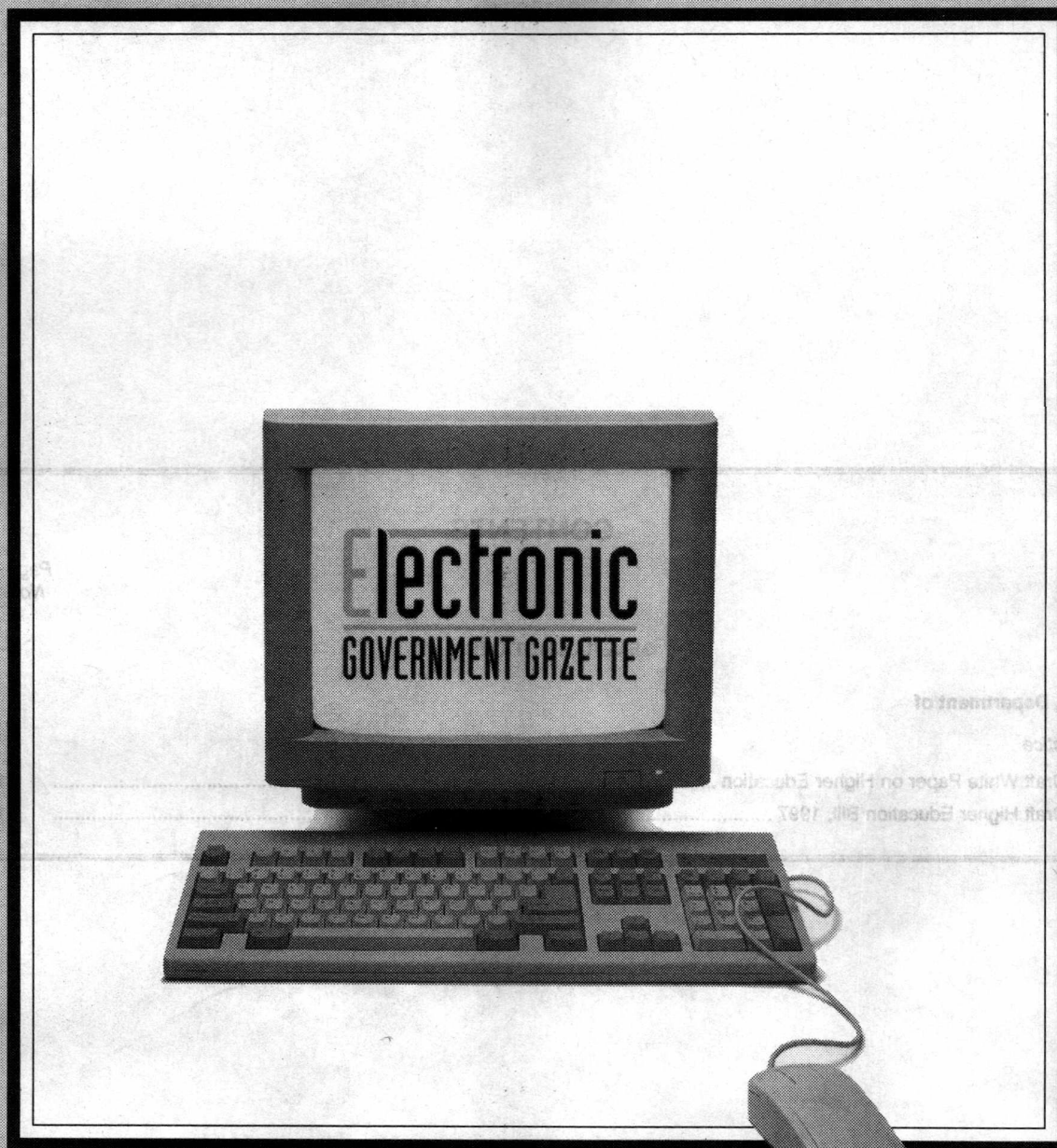
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