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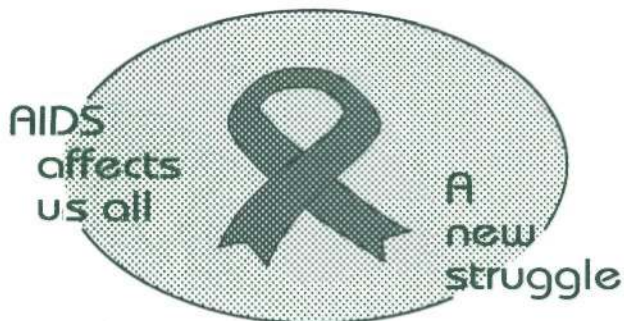
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DEPARTMENT OF HEALTH

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GENERAL NOTICES

NOTICE 1444 OF 2000

DEPARTMENT OF EDUCATION

The Minister of Education hereby publishes the following draft Bills for comment:

- (A) Adult General Education and Training Bill, 2000;
- (B) Education Laws Amendment Bill, 2000;
- (C) General And Further Education And Training Quality Assurance Bill, 2000; and
- (D) Higher Education Amendment Bill, 2000

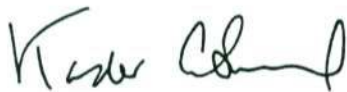
All interested persons and organisations are invited to comment in writing on the draft Bills and to direct the comments to:

The Director-General, Department of Education, Private Bag X895, Pretoria, 0001 for attention Ms M Locke, Fax No.: (012) 326 9128 or e-mail: locke.m@educ.gov.za, telephone number (012) 312 5356.

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

The comments should reach the Department not later than 23 April 2000.

Copies of the draft Bills and explanatory memoranda can be obtained from the Department of Education at the above address and the Government Printer in Pretoria.



PROFESSOR KADER ASMAL, MP
MINISTER OF EDUCATION

DATE:

28/3/2000

NOTICE 1445 OF 2000**HIGHER EDUCATION AMENDMENT BILL, 2000****GENERAL EXPLANATORY NOTE:**

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Higher Education Act, 1997, so as to provide that the policy determined by the Minister may prescribe the scope of operations of public and private higher education institutions; to provide that vacancies in the CHE are filled for the unexpired term of office of the predecessor; to provide for nominations to fill vacancies in the CHE; to provide that public higher education institutions may not without the concurrence of the Minister enter into a loan agreement or develop infrastructure; to empower the Minister to differentiate between foreign higher education institutions and local private higher education institutions if it is deemed to be in the best interest of public higher education institutions; to provide that the Minister must make regulations to give effect to the registration of private higher education institutions; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 101 of 1997

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

- (a) by the addition after the definition of "financial year" of the following definition:

““foreign legal person” means a person -

- (i) established as a legal person in terms of a law of a foreign country to function as a higher education institution; and
- (ii) recognised or registered as an external company in terms of the Companies Act, 1976 (Act No. 61 of 1973);”;

- (b) by the addition after the definition of “institutional statute” of the following definition:

““local legal person” means a person originally established as a legal person in South Africa in terms of the Companies Act, 1973 (Act No. 61 of 1973) or the Close Corporation Act, 1984 (Act No. 69 of 1984);”;

- (c) by the addition after the definition of “this Act” of the following definition:

““to provide higher education’ means the registering of students for whole qualifications or unit standards, the taking of responsibility for the provision and delivery of the curricula, the assessment of such learning programmes and the conferring of certificates.”.

Amendment of section 3 of Act 101 of 1997

2. Section 3 of the principal Act is hereby amended by the addition of the following subsections:

“(3) The Minister may, in terms of the policy contemplated in subsection (1) and in the interest of the higher education system as a whole, prescribe the scope of operations of public and private higher education institutions.

(4) The policy contemplated in subsection (1) may be determined with reference to the size and institutional configuration of the higher education system, the high level human resource needs of the country, the geographical location of higher education institutions and the mode of delivery of academic programmes.”.

Amendment of section 11 of Act 101 of 1997

3. Section 11 of the principal Act is hereby amended by -

- (a) by numbering it as subsection (1); and
- (b) by the addition of the following subsections:

"(2) A vacancy filled by nomination in accordance with subsection (1), must be for the unexpired term of office of the predecessor.

(3) Notwithstanding section 8(3) the Minister must invite nominations to fill such vacancies by writing to -

- (a) national organisations representing students, academic employees, employees other than academic employees, university principals, technikon principals, private higher education institutions, business and labour; and
- (b) research and science councils."

Amendment of section 20 of Act 101 of 1997

4. Section 20 of the principal Act is hereby amended by the addition of the following subsections:

"(6) Notwithstanding subsection (4), a public higher education institution may not, without the concurrence of the Minister, enter in any one financial year into loan or overdraft agreements which total a value of 10% or more of its annual budget for the financial year immediately prior to the loan or overdraft application.

(7) Notwithstanding subsection (4), a public higher education institution may not, without the concurrence of the Minister, embark on any immovable infrastructural development or the purchasing of immovable property or long term leases of immovable property."

Amendment of section 51 of Act 101 of 1997

5. Section 51 of the principal Act is hereby amended-

- (a) by numbering it as subsection (1); and
- (b) by the addition of the following subsections:

"(2) The person contemplated in subsection (1) must be a person registered or recognised as a legal person in terms of –

- (a) the Companies Act, 1973 (Act No. 61 of 1973); or
- (b) the Close Corporation Act, 1984 (Act No. 69 of 1984).

(3) When determining an application for registration as contemplated in section 54, the registrar may differentiate between a foreign legal person and a local legal person.

(4) The Minister must make regulations to provide for any matters pertaining to registration."

Amendment of section 53 of Act 101 of 1997 as amended by Act 55 of 1999

6. Section 53 of the principal Act is hereby amended -

- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words

"The registrar **[must]** may register an applicant as a private higher education institution if the registrar has reason to believe that the applicant-";

- (b) by the deletion of subparagraph (iii) of subsection (1)(b); and
- (c) by the addition to subsection (1) of the following paragraph:

- "(c) complies with any other reasonable requirement determined by the registrar which may include a requirement that none of the words or expressions or any derivatives of the words or expressions 'university', 'technikon' or 'higher education college' may appear in the name of the applicant."

Amendment of section 54 of Act 101 of 1997

7. Section 54 of the principal Act is hereby amended -

- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words -

"(1) The registrar **[must]**-";

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

"(a) must consider any application for registration as a private higher education institution and any further information, particulars or documents provided by the applicant; and

(b) may register the applicant as a private higher education institution if the requirements for registration contemplated in section 53 are fulfilled.";

- (c) by the substitution for subsection (3) of the following subsection:

"(3) Notwithstanding subsection (1), the registrar may conditionally register an applicant other than a foreign legal person, who does not fulfil the requirements for registration, if the registrar believes that the applicant will be able to fulfil the relevant requirements within a reasonable period."; and

- (d) by the addition of the following subsection:

"(7) A private higher education institution may not confer a professorship or an honorary degree or use the titles of rector, vice-chancellor or chancellor, unless it is registered as a private university or a private technikon."

Amendment of section 57 of Act 101 of 1997

8. Section 57 of the principal Act is hereby amended by the addition of the following subsection:

"(3) Every private higher education institution must keep student records and in the event of the cancellation of its registration must provide such records to the registrar within one month of the cancellation of its registration."

Amendment of section 66 of Act 101 of 1997

9. Section 66 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) Any person who contravenes section 51(1), 54(7) or 55(2) is guilty of an offence and is liable on conviction to a fine or to imprisonment not exceeding five years or to both such fine and imprisonment."

Amendment of section 76 of Act 101 of 1997 as amended by section 10 of Act 55 of 1999

10. Section 76 of the principal Act is hereby amended by the addition of the following subsection:

"(7) The University Staff (Education and Training) Act, 1984 (Act No. 91 of 1984) is hereby repealed in its entirety."

Short title

11. This Act is the Higher Education Amendment Act, 2000.

EXPLANATORY MEMORANDUM TO THE HIGHER EDUCATION AMENDMENT BILL, 2000

1. INTRODUCTION

This Bill provides for the amendment of the Higher Education Act, 1997 (Act No. 101 of 1997) so as to provide for additional provisions to the Act and to make certain technical adjustments.

2. BACKGROUND

The implementation of the Higher Education Act, 1997 has exposed, amongst others, the following problem areas:

- 2.1 the procedure of the filling of a vacancy in the CHE's membership which resulted from a member who vacates his or her office before the expiry of his or her term of office is too complicated, time-consuming and costly;
- 2.2 institutions running into huge overdrafts;
- 2.3 the risk of a higher education institution developing infrastructure without proper planning and budgeting;
- 2.4 the influx of external private higher institutions into our higher education system.

3. REASONS FOR AND SUBSTANCE OF BILL

- 3.1 The long process of filling of vacancies has been shortened by means of empowering the Minister to write directly to the role players inviting for nominations.
- 3.2 In terms of section 20(4), every higher education institution is a juristic person. This in effect means that it can sue and be sued, in its own name and that it can enter into agreements, including loan agreements and

overdrafts in its own name. A number of institutions are now in dire financial situations (bankrupt) with huge overdrafts.

- 3.3 The development of infrastructure without proper planning and budgeting has already placed some institutions in financial difficulties.
- 3.4 It is therefore advisable that the conclusion of any loan agreement or request for an overdraft or the development of any infrastructure be entered into or made in concurrence with the Minister.
- 3.5 The registrar of private higher institutions is empowered, if it is in the best interest of the higher education system as a whole, to discriminate in a fair manner between foreign private higher education institutions and local private higher education institutions and between private higher education institutions and public higher education institutions.

4. DISCUSSION

After extensive consultations with all relevant role players, a Bill has been drafted which incorporates the above considerations.

5. PARLIAMENTARY PROCEDURE

The Department is of the opinion that this Bill must be dealt with in terms of the procedures tabled in section 76 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

NOTICE 1446 OF 2000

**GENERAL AND FURTHER EDUCATION AND TRAINING QUALITY
ASSURANCE BILL, 2000****BILL**

To provide for quality assurance in general and further education and training, for control over norms and standards of subject matter and examination, and for the issuing of certificates at the exit points in general and further education and training; and for that purpose to establish the General and Further Education and Training Quality Assurance Council; to provide for the composition and functions of the council; to provide for the conducting of examinations; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context otherwise indicates-
 - "**assessment**" means the process of identifying, gathering and interpreting information about a learner's achievement in order to-
 - (a) assist the learner's development and improve the process of learning and teaching; and
 - (b) evaluate and certify competence in order to ensure qualification credibility;
 - "**certificate**" means a certificate contemplated in section 9(1)(c);
 - "**council**" means the General and Further Education and Training Quality Assurance Council established by section 2;

"education department" means a department responsible for education at national level or a department responsible for education in a province;

"employee" means any person who is in the full-time or part-time employ of the council;

"examining body" means an education department or any other body registered with the council as a body responsible for conducting external examinations;

"exit point" means a stage in general or further education and training at which a candidate is required to demonstrate competence with a view to obtaining documentary proof of proficiency;

"external examination" means an examination at an exit point, taken by the candidates of an examining body;

"financial year" means a year ending on 31 March in each year;

"further education and training" means all learning and training programmes leading to qualifications from levels 2 to 4 of the National Qualifications Framework, which levels are above general education but below higher education;

"general education and training" means all learning and training programmes leading to a qualification on level 1 of the National Qualifications Framework, which level is below further education and training;

"Minister" means the Minister of Education;

"National Qualifications Framework" means the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

"provider" means a body which delivers learning programmes which culminate in a specified National Qualifications Framework standard or qualification, and manages the assessment thereof;

"raw marks" means the actual marks obtained by a candidate in a subject in an external examination before any adjustment of the marks is made by the council;

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

"verifier" means a person who is registered by the council to validate the internally conducted learner assessment as well as internal moderation processes.

Establishment of General and Further Education and Training Quality Assurance Council

2. (1) There is hereby established a council to be known as the General and Further Education and Training Quality Assurance Council.

(2) The council is a juristic person.

(3) The council must comply with the policies and criteria formulated by the South African Qualifications Authority in terms of section 5(1)(a)(ii) of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).

Object of council

3. The object of the council is to ensure that qualifications and credits awarded in general and further education and training, comply with the requirements of the South African Qualifications Authority, to ensure quality assurance in the general and further education and training bands and that the certificates issued by the council at an exit point, represent the same standard of education and assessment.

Composition of council

4. (1) The council consists of-

- (a) one member nominated by the Department of Education;
- (b) one member nominated by organised business and industry;
- (c) one member nominated by organised labour;
- (d) one member nominated by national organisations representing private providers of general and further education and training recognised by the Minister for this purpose;
- (e) one member nominated by non-governmental organisations and community based organisations recognised by the Minister for this purpose;
- (f) one member nominated by the Heads of Education Departments Committee;

- (g) one member nominated by the National Skills Authority established by section 4 of the National Skills Development Act, 1998 (Act No. 97 of 1998);
- (h) one member nominated by the interim Adult Basic Education and Training Advisory Board;
- (i) one member nominated by the Co-ordinating Committee for Early Childhood Development;
- (j) one member nominated by the National Board for Further Education and Training established by regulations made under the National Education Policy Act, 1996 (Act No. 27 of 1996);
- (k) one member nominated by the Council on Higher Education established by section 4 of the Higher Education Act, 1997 (Act No. 101 of 1997);
- (l) one member nominated by national organisations representing distance education providers, recognised by the Minister for this purpose;
- (m) three members nominated by the trade unions represented in the Education Labour Relations Council;
- (n) one member nominated by the South African Council for Educators;
- (o) one member nominated by the South African Qualifications Authority;
- (p) four members appointed by the Minister at his or her discretion, of whom one is appointed by the Minister as the chairperson; and
- (q) the chief executive officer appointed in terms of section 15, in his or her official capacity;

(2) The selection of members of the council must be undertaken in such a manner as to ensure, insofar as is practically possible, that-

- (a) the functions of the council in terms of this Act are performed according to the highest professional standards;
- (b) the membership taken as a whole-
 - (i) is broadly representative of the general and further education and training systems and related interests;
 - (ii) has thorough knowledge and understanding of general and further education and training;
 - (iii) appreciates the role of the general and further education and training systems in reconstruction and development;

- (iv) has known and attested commitment to the interests of general and further education and training;
 - (v) has knowledge and understanding of accreditation, assessment and certification of general and further education and training programmes; and
 - (vi) has experience in the statistical or financial field; and
- (c) due attention is given to the representivity of the council on such relevant factors as race, gender and disability.

(3) (a) The Minister must invite nominations for the appointment of members of the council from the bodies and organisations referred to in subsection (1).

(b) In respect of the bodies mentioned in subsection (1)(b) and (c) nominations must be invited by notice in the Gazette.

(4) (a) Organisations referred to in subsection (1)(d), (e) and (l) may apply to the Minister in writing for recognition as organisations that may nominate persons for appointment as members of the council.

(b) The Minister may at his discretion grant or refuse an application referred to in paragraph (a).

(5) The Minister appoints the members of the council except the chief executive officer, and must consider the nominations contemplated in subsection (2) in appointing the members of the council contemplated in subsection (1)(a) to (o).

(6) The chairperson and any member of the council, excluding the chief executive officer, hold office for a period of four years and may be reappointed at the expiry of his or her term of office.

(7) The chairperson and any member of the council excluding the chief executive officer, may not serve for more than two consecutive terms of office.

Vacation of office and filling of vacancies

5. (1) The chairperson or any member of the council shall vacate his or her office if he or she-

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

- (b) is absent from three consecutive meetings of the council, without leave of the council;
- (c) is declared insolvent, is removed from an office of trust by a court of law or is convicted of an offence for which the sentence is imprisonment without the option of a fine;
- (d) is declared unable to attend to his or her personal affairs by a court of law; or
- (e) ceases to represent the body or organisation that nominated him or her.

(2) The Minister may revoke the appointment of the chairperson or any member of the council appointed in terms of section 4(5) at any time before the expiry of his or her term of office if in the Minister's opinion there exist sound reasons for doing so.

(3) If the chairperson or a member of the council vacates his or her office, the resultant vacancy must be filled by appointment in accordance with section 4.

Committees of council

6. (1) The council may establish committees to assist it in the performance of its functions.

(2) A committee may include persons who are not members of the council.

(3) The chairperson of a committee is appointed by the council and must be a member of the council.

(4) Members of committees are appointed for such periods as the council may determine.

Meetings of council and committees

7. (1) Meetings of the council and its committees must be held at such times and places as may be determined by the chairperson concerned, but the chairperson must convene a meeting of the council at least twice a year or if asked to do so in writing by at least one third of the members of the council, or by the Minister, as the case may be.

(2) Whenever the chairperson is absent from any meeting of the council or a committee, the members present must appoint a person from among themselves to preside at that meeting.

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

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

Remuneration and allowances of members of council and committees

8. The chairperson and a member of the council, and any person appointed as a member of a committee, who is not in the full-time employ of the State, may, in respect of the services rendered by him or her in connection with the affairs of the council or committee, be paid by the council-

- (a) such travelling, subsistence and other allowances; and
- (b) in the case of the chairperson of the council, such remuneration in addition, as the Minister with the concurrence of the Minister of Finance may determine from time to time.

Functions of council

9. (1) Subject to policy determined in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996) the council must-

- (a) monitor, audit and report on general and further education and training achievements and systems in terms of standards and qualifications registered on the National Qualifications Framework;
- (b) recognise learner achievements in general and further education and training that meet the requirements of the council, and award qualifications and credits towards qualifications registered on the National Qualifications Framework, and also-
 - (i) manage assessment either directly or through accredited examining bodies or assessment agencies;

- (ii) moderate across different accredited examining bodies and assessment agencies to ensure reliability and validity of external assessment;
 - (iii) register verifiers of assessment;
 - (iv) verify internally conducted assessments;
 - (v) verify internal moderation processes; and
 - (vi) ensure that internal and external quality management systems are in place;
- (c) issue certificates in the form prescribed by the council to candidates who, in one or more subjects at an exit point-
- (i) have met the requirements set by the council for a certificate; and
 - (ii) have complied with every other condition determined by the council;
- (d) accredit general and further education and training providers, other than departments of education, for specific National Qualifications Framework standards and qualifications, and also-
- (i) accredit those providers for delivery of learning programmes which culminate in specified standards and qualifications according to the criteria determined by the South African Qualifications Authority;
 - (ii) monitor provision by constituent providers; and
 - (iii) promote quality among constituent providers;
- (e) monitor and report to the Minister on the performance of departments of education as providers, and recommend steps to rectify any deficiencies;
- (f) recommend new standards and qualifications, or the modification of existing standards and qualifications, to the national standards bodies; and
- (g) maintain an acceptable data base and follow acknowledged recording and reporting procedures.

(2) Subject to policy determined in terms of section 3(4) of the National Education Policy Act, 1996 (Act No. 27 of 1996), the council, with regard to external examination-

- (a) must perform the external moderation of examination papers, memoranda and samples of examination scripts of all examining bodies;
- (b) must, in consultation with the Director-General and the examining body, approve the publication of the results of candidates if the council is satisfied that the examining body-

- (i) conducted the examination free from any irregularity;
 - (ii) complied with the requirements prescribed by the council for conducting examinations;
 - (iii) applied the norms and standards prescribed by the council and the South African Qualifications Authority, and with which a candidate is required to comply in those examinations in order to obtain a certificate; and
 - (iv) complied with every other condition determined by the council;
- (c) must issue certificates as contemplated in subsection (1)(c);
- (d) may adjust raw marks during the standardisation process in consultation with the Director-General.

(3) Subject to the approval of the Minister, the council may register an examining body other than a department of education in accordance with criteria determined by the council.

(4) Subject to section 74 of the Higher Education Act, 1997 (Act No. 101 of 1997), the council may with the approval of a body authorised to determine the requirements for admission to study at a higher education institution, endorse a certificate of a candidate who has complied with the minimum requirements for admission to study at a higher education institution accordingly.

Functions of examining body with regard to external examination

10. In respect of an external examination to be conducted, an examining body, subject to policy determined in terms of section 3(4) of the National Education Policy Act, 1996 (Act No. 27 of 1996)-

- (a) must take adequate measures, including measures to combat irregularities in the examination venue and security measures for ensuring the confidentiality of examination papers, to ensure the integrity of the examinations;
- (b) must ensure that each paper is representative of the prescribed subject matter;
- (c) must ensure that each paper is moderated by at least one competent internal moderator;

- (d) must submit a paper and memorandum to an external moderator for confirmation that they conform to the required standards;
- (e) must ensure that a sample of the examination scripts is moderated by an external moderator;
- (f) must schedule a particular paper for a stipulated date and time on the examination time-table;
- (g) must supply the council on or before a date and in the form determined by the council, with a mark for each subject in which a candidate sat for examination;
- (h) must without delay and in writing supply the council and the Director-General with full details of any irregularities that occurred in respect of such examination as well as the steps taken with regard to such irregularities;
- (i) must publish the results of the examination after obtaining the approval of the council; and
- (j) may recommend to the council during the standardisation process that raw marks be adjusted.

Functions of Director-General with regard to external examination

11. With regard to external examination the Director-General-
- (a) must promote the integrity of the examination system;
 - (b) must monitor the conduct of the council and the examination body in upholding the minimum norms and standards set by the South African Qualifications Authority, or determined by policy; and
 - (c) may institute an investigation into any irregularities which may occur.

Fees payable to council

12. The council determines the fees payable to the council in respect of-
- (a) the issue of a certificate as contemplated in section 9(1)c) or a duplicate certificate; and
 - (b) the endorsement of a certificate as contemplated in section 9(4) or of a duplicate certificate.

Cancellation of certificates

13. (1) If in the opinion of the council a substantial irregularity has occurred in relation to the sitting for an examination, or if a certificate has been issued by the council to a candidate who in the opinion of the council has not complied with the norms and standards for obtaining that certificate, the council may refuse the issue of the relevant certificate or cancel a certificate that has been issued, as the case may be.

(2) For the purposes of such cancellation the council may by notice in writing direct the candidate to whom the certificate in question has been issued to return the certificate to the council within three weeks after such notice.

(3) Any person who fails to comply with such notice shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

Funds of council

14. (1) The funds of the council consist of-

- (a) money appropriated by Parliament;
- (b) donations and contributions received by the council;
- (c) moneys received by the council in respect of fees charged for services;
- (d) interest received on investments referred to in subsection (5);
- (e) money obtained by means of loans raised by the council with the approval of the Minister granted with the concurrence of the Minister of Finance; and
- (f) any other income received by the council.

(2) The council-

- (a) must keep record of all funds received and spent and of all assets, liabilities and financial transactions;
- (b) must in each financial year, at such time and in such manner as the Minister may determine, submit a statement of its estimated income and expenditure for the ensuing financial year, to the Minister for his or her approval granted with the concurrence of the Minister of Finance;

- (c) may in any financial year submit adjusted statements of its estimated income and expenditure to the Minister for his or her approval, granted with the concurrence of the Minister of Finance; and
- (d) may not incur any expenditure which exceeds the total amount approved in terms of paragraphs (b) and (c).

(3) If the Minister does not approve the council's statement of its estimated income and expenditure, the Minister must require the council to provide a revised statement to him or her within a specified period.

(4) The money contemplated in subsection (1) must be used by the council 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 subsection (4), the council may invest any portion of its funds in such manner as the Minister, with the concurrence of the Minister of Finance, may approve.

Appointment of chief executive officer and staff

15. (1) The council must appoint a chief executive officer and may appoint other employees as it may deem necessary to assist it to perform its functions.

(2) The secretariat of the council is the responsibility of the chief executive officer who must carry out the duties as assigned or delegated by the council.

(3) The council is the employer of the employees and must determine their remuneration, allowances, subsidies and other conditions of service, subject to the applicable labour law.

Functions of chief executive officer

16. (1) The chief executive officer must-

- (a) be responsible for the work in connection with the performance by the council of its functions in terms of this Act;
- (b) supervise the employees of the council;
- (c) be accounting officer to the council charged with accounting for moneys received, payments made and movable property purchased by the council.

(2) The chief executive officer must be assisted in the performance of his or her functions in terms of subsection (1) by such employees of the council as the chief executive officer may designate for that purpose.

Alienation and encumbrance of council's property

17. The council shall not without the prior approval of the Minister granted with the concurrence of the Minister of Finance-

- (a) let, sell, exchange or otherwise alienate its immovable property;
- (b) as long as a guarantee in terms of section 70 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), is in force in respect of any loan granted to the council-
 - (i) mortgage or otherwise encumber its immovable property acquired with money obtained by means of that loan; and
 - (ii) let, sell, exchange or otherwise alienate, or hypothecate or otherwise encumber its movable property acquired with money obtained by means of that loan.

Auditing and annual report

18. (1) The statements of account and balance sheet of the council shall be audited at the end of each financial year by a person registered as an accountant and auditor in terms of the provisions of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), and appointed by the council with the approval of the Director-General.

(2) The council must not later than three months after the end of each financial year submit to the Minister a report in such form as the Minister may determine on its functions during that financial year, including an audited balance sheet and a statement of income and expenditure.

(3) The Minister must table the report, including the balance sheet and statement of income and expenditure referred to in subsection (2), in Parliament within 14 days after receipt thereof, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

Information to be provided to and by council

19. (1) Every education department, every provider of general or further education and training, every institution where general or further education and training is provided and every examining body must provide the council with such information as the council may reasonably require for the performance of its functions in terms of this Act.

(2) The council must on request provide such information as may be reasonably required by any body or organisation referred to in subsection (1).

Regulations

20. The Minister may make regulations on any matter which may or must be prescribed by regulation in terms of this Act, and any matter which is necessary or expedient to prescribe in order to achieve the objects of this Act.

Repeal of law

21. The South African Certification Council Act, 1986 (Act No. 85 of 1986), is hereby repealed.

Transitional arrangements

22. (1) Despite section 21, the South African Certification Council established by section 2 of the South African Certification Council Act, 1986 (Act No. 85 of 1986), continues to perform the functions which it performed prior to the commencement of this Act, until the date on which the council is constituted in terms of section 4 of this Act.

(2) The Minister must immediately after the commencement of this Act, initiate the process to constitute the council as contemplated in section 4.

(3) For the purposes of subsection (2), the Minister must identify bodies to nominate the members of the council referred to in paragraphs (d), (e) and (l) of subsection (1) of section 4.

(4) All assets which vested in the South African Certification Council referred to in subsection (1) immediately prior to the date referred to in that subsection, vest in the council on that date.

(5) Existing agreements of employment between the South African Certification Council and its employees, must on the date referred to in subsection (1), be deemed to be agreements entered into between those employees and the council and must continue to exist subject to applicable labour laws, and those employees must be deemed to have served continuously under the same employer without interruption.

Short title

23. This Act is the General and Further Education and Training Quality Assurance Act, 2000.

EXPLANATORY MEMORANDUM TO THE GENERAL AND FURTHER EDUCATION AND TRAINING QUALITY ASSURANCE BILL, 2000

1. INTRODUCTION

This Bill provides for quality assurance in general and further education and training. It establishes, for that purpose, the General and Further Education and Training Quality Assurance Council.

2. BACKGROUND

The Department of Education appointed a task team to investigate, develop and produce a suitable quality assurance model for the general and further education and training bands. After extensive consultations with all relevant stakeholders and also with quality assurance authorities in Scotland and Canada, the task team proposed a model which was accepted by the Heads of Education Department Committee.

3. REASONS FOR AND SUBSTANCE OF BILL

- 3.1 This Bill creates a general and further education and training quality assurer on the basis of the model proposed by the task team. The intention with this legislation is to move from an examination driven system to a system that provides for quality assurance of standard.
- 3.2 Provision is made for a wide range of bodies and organisations to be represented on the council. Nominations will be invited from these bodies and organisations and the Minister will appoint the members. The council will be broadly representative of the general and further education and training systems and related interests, and will also have knowledge and understanding of accreditation, assessment and certification.
- 3.3 The object of the council is to ensure that qualifications and credits awarded comply with requirements of the South African Qualifications

Authority, and to ensure quality assurance in general and further education and training.

3.4 The main function of the council is to audit and monitor general and further education and training achievements, and to perform all related functions such as the management of assessment, moderation, accrediting of providers and the issuing of certificates.

3.5 The functions of examining bodies and of the Director-General with regard to the viewing and elimination of irregularities during examinations are set out in the Bill.

4. DISCUSSION

A Bill has been drafted that incorporates the above model as proposed by the task team.

5. THE BILL AND THE EDUCATION SYSTEM

The Bill is designed to improve the quality of general and further education and training. In this regard the Bill establishes a Quality Management System at 4 levels.

5.1 At school level, governing bodies, the school principal and management will be responsible for ensuring quality in terms of general school management and of teaching, learning and assessment.

5.2 At district level there will be two components of quality assurance. These would include

The professional support service who will be responsible for ensuring quality in teaching, learning and assessment of particular subject areas. These education specialists will be registered by the Education and Training Quality Assurer for the purpose of external verification of the learners' assessment conducted by educators.

Supervisory Inspection Service will be responsible for quality in the management and administration of the institution.

5.3 The professional support service as well as the district supervisory inspection service will report to both the provincial department as well as to the council on the functioning of the system.

5.4 At national level the whole school reviews will be carried out at regular intervals.

6. PARLIAMENTARY PROCEDURE

The Department and the Chief State Law Adviser are of the opinion that this Bill must be dealt with in terms of sections 73 and 76 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

NOTICE 1447 OF 2000

EDUCATION LAWS AMENDMENT BILL, 2000

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the South African Qualifications Authority Act, 1995, by increasing the representation of organised labour on the Authority; to amend the South African Schools Act, 1996, so as to make further provision for public schools on private property; to provide for the governance of a new public school until a governing body is constituted; to provide for representivity of governing bodies; and to provide for safety measures at public schools; to amend the Employment of Educators Act, 1998, so as to substitute a definition; to make provision for the appointment of educators to new public schools, public further education and training institutions and public adult learning centres; to amend the provisions dealing with incapacity, misconduct and appeals; to make provision for an incapacity code and procedure and a disciplinary code and procedure; and to provide for matters related thereto.

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

Amendment of section 4 of Act 58 of 1995

1. Section 4 of the South African Qualifications Authority Act, 1995, is hereby amended by the substitution in subsection 3 for paragraph (e) of the following paragraph:

- "(e) **[two]** three members nominated by the national organisations representing organised labour;"

Amendment of section 14 of Act 84 of 1996 as amended by section 5 of Act 100 of 1997

2. Section 14 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Subject to the Constitution and **[this Act]** an expropriation in terms of section 58 of a real right to use the property on which the public school is situated, a public school may be provided on private property only in terms of an agreement between the Member of the Executive Council and the owner of the private property."

Amendment of section 16 of Act 84 of 1996 as amended by section 9 of Act 48 of 1999

3. Section 16 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsection:

"(7) If a new public school is provided in terms of section 12, the governance of that school vests in the Head of Department until a governing body has been constituted in terms of this Act."

Amendment of section 23 of Act 84 of 1996 as amended by section 11 of Act 48 of 1999

4. Section 23 of the South African Schools Act, 1996, is hereby amended-

- (a) by the substitution for subsection (8) of the following subsection:

"(8) Subject to **[subsection]** subsections 10 and 13, co-opted members do not have voting rights on the governing body."; and

- (b) by the addition of the following subsection:

"(13) If the membership of a governing body is not representative of the racial composition of the learners of the school, the governing body must

co-opt two parent members with voting rights from that part of the learner community that is not represented."

Amendment of section 61 of Act 84 of 1996

5. The South African Schools Act, 1996, is hereby amended by the substitution for section 61 of the following section:

"Regulations

61. The Minister may make regulations to provide for safety measures at public schools and on any matter which must or may be prescribed by regulation under this Act and any matter which may be necessary or expedient to prescribe in order to achieve the objects of this Act."

Amendment of section 1 of Act 76 of 1998

6. Section 1 of the Employment of Educators Act, 1998, is hereby amended by the substitution for the definition of "this Act" of the following definition:

"this Act" includes a regulation and any Schedule attached to the Act;"

Amendment of section 6 of Act 76 of 1998, as amended by section 15 of Act 48 of 1999

7. Section 6 of the Employment of Educators Act, 1998, is hereby amended by the addition to subsection (3) of the following paragraph:

"(e) The initial appointment, promotion or transfer to any post on the educator establishment of-

- (i) a new public school established in terms of the South African Schools Act, 1996 (Act No. 84 of 1996) and any applicable provincial law;
- (ii) a new further education and training institution established in terms of the Further Education and Training Act, 1998 (Act No. 98 of 1998) and any applicable provincial law; or

- (iii) a new public adult learning centre established in terms of the Adult General Education and Training Act, 2000, or any applicable provincial law,

shall be made by the Head of Department without the recommendation of a governing body of the public school, council of the public further education and training institution or governing body of the public adult learning centre, as contemplated in paragraph (a)."

Deletion of section 12 of Act 76 of 1998

8. The Employment of Educators Act, 1998, is hereby amended by the deletion of section 12.

Substitution of section 16 of Act 76 of 1998

9. The Employment of Educators Act, 1998, is hereby amended by the substitution for section 16 of the following section:

"Incapable educators"

16. If it is alleged that an educator is unfit for the duties attached to the educator's post or incapable of carrying out those duties efficiently, the employer must assess the capacity of the educator and may take action against the educator in accordance with the incapacity code and procedures for poor work performance provided in Schedule 1."

Substitution of section 17 of Act 76 of 1998

10. The Employment of Educators Act, 1998, is hereby amended by the substitution for section 17 of the following section:

"Dismissable misconduct"

17. (1) An educator commits dismissable misconduct and shall be dismissed if the educator-

- (a) steals, bribes or commits fraud or an act of corruption in regard to examinations or promotional reports;

- (b) commits an act of sexual assault on a learner, student or other employee;
- (c) enters into a sexual relationship with a learner of the school where he or she is employed;
- (d) seriously assaults with the intention to cause grievous bodily harm to a learner, student or other employee; or
- (e) causes a learner or student to perform any of the acts contemplated in paragraphs (a) to (d).

(2) If it is alleged that an educator committed dismissable misconduct as contemplated in subsection (1), the employer must institute disciplinary proceedings in accordance with the disciplinary code and procedures in Schedule 2.”.

Substitution of sections 18 to 24 of Act 76 of 1998

11. The Employment of Educators Act, 1998, is hereby amended by the substitution for sections 18 to 24 of the following section:

“Misconduct

18. (1) An educator commits misconduct if the educator-

- (a) fails to comply with, or contravenes an Act of Parliament, regulation or legal obligation;
- (b) wilfully or negligently mismanages the finances of the State, a school, further education and training institution or adult learning centre;
- (c) without permission possesses or wrongfully uses the property of the State, a school, further education and training institution or adult learning centre, another employee or a visitor;
- (d) wilfully, intentionally or negligently damages or causes loss of state, school, further education and training institution or adult learning centre property;
- (e) endangers the lives of him or herself or others by disregarding safety rules or regulations;

- (f) prejudices the administration, discipline or efficiency of a department, office of the State or school, further education and training institution or adult learning centre;
- (g) misuses his or her position in the Department, school, further education and training institution or adult learning centre to promote or to prejudice the interests of any person;
- (h) accepts any compensation in cash or otherwise from a member of the public or another employee for performing her or his duties without written approval from the employer;
- (i) fails to carry out a lawful order or routine instruction without just or reasonable cause;
- (j) absents him or herself from work without a valid reason or permission;
- (k) unfairly discriminates against others on the basis of race, gender, disability, sexuality or other grounds outlawed by the Constitution;
- (l) performs poorly or inadequately for reasons other than incapacity;
- (m) without written approval from the employer, performs work for compensation for another person or organisation either during or outside working hours;
- (n) without prior permission of the employer accepts or demands in respect of the carrying out of or the failure to carry out the educator's duties, any commission, fee, pecuniary or other reward to which the educator is not entitled by virtue of the educator's office, or fails to report to the employer the offer of any such commission, fee or reward;
- (o) without authorisation, sleeps on duty;
- (p) while on duty, is under the influence of an intoxicating, illegal, unauthorised, or stupefying drug, including alcohol;
- (q) while on duty, conducts herself or himself in an improper, disgraceful or unacceptable manner;
- (r) contravenes any prescribed Code of Conduct for educators;

- (s) assaults, or attempts or threatens to assault, another employee or person;
- (t) incites other personnel to unprocedural and unlawful conduct;
- (u) displays disrespect towards others in the workplace or demonstrates abusive or insolent behaviour;
- (v) intimidates or victimises fellow employees, learners or students;
- (w) prevents other employees from belonging to any trade union or body;
- (x) operates any money lending scheme for employees for his or her own benefit during working hours or from the premises of the educational institution of office where he or she is employed;
- (y) carries or keeps firearms or other dangerous weapons on state premises, without the written authorisation of the employer;
- (z) refuses to obey security regulations;
- (aa) gives false statements or evidence in the execution of his or her duties;
- (bb) falsifies records or any other documentation;
- (cc) participates in unprocedural, unprotected or unlawful industrial action;
- (dd) fails or refuses to-
 - (i) follow a formal programme of counselling as contemplated in item 2.4 of Schedule 1;
 - (ii) subject himself or herself to a medical examination as contemplated in item 3.7 of Schedule 1; or
 - (iii) attend rehabilitation or follow a formal rehabilitation programme as contemplated in item 3.9 of Schedule 1.
- (ee) commits a common law or statutory offence; or
- (ff) commits any other act prescribed by the Minister as misconduct.

(2) If it is alleged that an educator committed misconduct as contemplated in subsection (1), the employer must institute disciplinary proceedings in accordance with the disciplinary code and procedures in Schedule 2.”.

(3) If, after having followed the procedures contemplated in subsection (2), a finding is made that the educator committed misconduct, the employer may, in accordance with the disciplinary code and procedures, contained in Schedule 2, impose a sanction of-

- (a) counselling;
- (b) a verbal warning;
- (c) a written warning;
- (d) a final written warning;
- (e) suspension without pay for a period not exceeding three months;
- (f) a fine not exceeding one month's salary;
- (g) demotion;
- (h) a combination of the sanctions referred to in paragraphs (a) to (f); or
- (i) dismissal.

4. Any sanction contemplated in subsection (3)(e), (f) or (g) may be suspended for a specified period on conditions determined by the Employer.

Substitution of section 25 of Act 76 of 1998

12. The Employment of Educators Act, 1998, is hereby amended by the substitution for section 25 of the following section:

“Appeals

25. (1) An educator may appeal to the Minister or the Member of the Executive Council, as the case may be, against a decision to demote, transfer or terminate the services of the educator on the grounds of incapacity contemplated in section 16.

(2) An educator shall have the right to appeal to the Minister or the Member of the Executive Council, as the case may be, against the finding by the presiding officer of a disciplinary hearing that the educator has committed misconduct, as contemplated in section 17 or 18 and against the sanction imposed in terms of section 18.

(3) The procedure to be followed by the educator in such an appeal must be in accordance with the procedures provided in Schedule 2.

Amendment of section 35 of Act 76 of 1998

13. Section 35 of the Employment of Educators Act, 1998, is hereby amended-

- (a) by the numbering of the existing section as subsection (1);
- (b) by the addition to the existing section of the following paragraph:
 "(d) the conduct to educators during strike actions;"; and
- (c) by the renumbering of the existing paragraphs (d) and (e) as (e) and (f) respectively;"

Amendment of section 36 of Act 76 of 1998

14. Section 36 of the Employment of Educators Act, 1998, is hereby amended-

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 "(a) delegate to the Director-General or any other person in the service of the Department of Education any power conferred upon the Minister by or under this Act, other than the power referred to in section [16(10),] 25[(3)] or 35, on such conditions as the Minister may determine; or"; and
- (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
 "(a) delegate to the Head of Department or any other person in the service of the provincial department of education any power conferred upon the Member of the Executive Council by or under this Act, other than the power referred to in section [16(10) or]

25[(3)], on such conditions as the Member of the Executive Council my determine; or”.

Addition of Schedules to Act 76 of 1998

15. The Employment of Educators Act, 1998, is hereby amended by the addition after section 39 of the following Schedules:

SCHEDULE 1

INCAPACITY CODE AND PROCEDURES FOR POOR WORK PERFORMANCE

1. Codes, rules and standards

1.1 The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, 1995, insofar as it relates to incapacity, constitutes part of this Code and Procedures, in respect of poor work performance.

1.2 In applying this Code and Procedures, the relevant employer must assess the incapacity of an educator by considering-

- (a) the extent to which the incapacity impacts on the work of the Department of Education or provincial department of education, the public school, public further education and training institution or public adult learning centre;
- (b) the extent to which the educator fails to meet the required performance standards established by the employer;
- (c) the extent to which the educator lacks the necessary skills to perform in accordance with the educator's job description; and
- (d) the nature of the educator's work and responsibilities, and the circumstances of the educator.

2. Procedure in respect of poor performance

2.1 If the employer is of the view that an educator, whether on probation or a permanent staff member, is not performing in accordance with the job that the educator has been employed to do the employer must-

- (a) give written reasons to the educator why it is necessary to initiate this procedure; and
- (b) after serving the written reasons referred to in subitem (a), meet with the educator, and if the educator so chooses with the educator's trade union representative or a fellow employee.

2.2 In the meeting referred to item 2.1(b), the employer must-

- (a) explain the requirements, grade, skills and nature of the job;
- (b) evaluate the educator's performance in relation to the job;
- (c) indicate the perceived poor performance; and
- (d) hear the educator or the educator's representative on-
 - (ii) whether the educator has performed in accordance with the requirements of the job; or
 - (ii) reasons why the educator has not performed in accordance with the requirements of the job if the educator agrees.

2.3 After hearing the educator or his or her representative, the employer must if necessary, develop and initiate a formal programme of counselling and training to enable the educator to reach the required standard of performance, which must include-

- (a) assessing the time that it would take for the educator to overcome the poor work performance;
- (b) on the basis of the assessment referred to in subitem (a), the establishment of realistic time frames within which the employer will expect the educator to meet the required performance standards; and
- (c) if necessary, the identification and provision of appropriate training.

- 2.4 (a) If the educator fails or refuses to follow a formal programme of counselling and training as contemplated in item 2.3, the employer may initiate disciplinary proceedings against the educator for misconduct as contemplated in section 18.
- (b) If the educator, after being subjected to a formal programme of counselling and training as contemplated in item 2.3, fails to meet the required performance standard for the post after having been made aware of such standard, the employer may after consulting the educator, terminate the employment of the educator or transfer or demote the educator or provide further training or counselling to the educator.
- 2.5 The person appointed by the employer to conduct the procedures in items 2.1 to 2.3, must be an employee on a higher post level than the educator concerned, and should be as far as practically possible his or her direct supervisor or the immediate superior of such supervisor.

INCAPACITY CODE AND PROCEDURES IN RESPECT OF ILL HEALTH OR INJURY

3. Procedures in respect of ill health or injury

- 3.1 If the employer is of the view that an educator is not performing in accordance with the post requirements that the educator has been employed to perform, as a result of poor health or injury, or if an educator applies for a discharge from service on account of continuous ill health or injury, the employer must investigate the extent of the ill health or injury.
- 3.2 In conducting this investigation the employer must give the educator, or the educator's trade union representative or fellow employee, the opportunity to state the educator's case and to be heard on all the issues that the employer investigates and considers.
- 3.3 (a) The employer must appoint at least one registered medical practitioner to examine the educator at the State's expense and to report on the educator's state of health.

(b) An educator is entitled to nominate any other registered medical practitioner of his or her choice at the educator's own expense to report on the educator's state of health.

(c) The record of any medical examination performed in terms of this Act must be kept confidential and may be made available only-

- (i) in accordance with the ethics of medical practice;
- (ii) if required by law or court order; or
- (iii) if required by the employer to determine the extent to which the educator is able to perform in accordance with the job requirements.

(d) The medical practitioner contemplated in paragraph (a) must, on completion of the medical examination, provide the employer with a report on the nature and extent of the educator's ill-health or injury and whether it is temporary or permanent, and the expected period of the educator's incapacity.

3.4 Based on the medical reports the employer must determine whether the nature of the educator's ill health or injury is of a temporary or permanent nature and the period of time that the educator is likely to be absent from work.

3.5 If the educator's ill health or injury is of a permanent nature the employer must investigate the possibility of-

- (a) securing alternative employment for the educator;
- (b) adapting the duties or work circumstances of the educator to accommodate the educator's ill health or injury; or
- (c) consider the termination of the educator's service with effect from a date determined by the employer.

3.6 After the investigation the employer must provide the educator with a written report setting out the results of the investigation.

3.7 If an educator refuses or fails to be subjected to an examination contemplated in item 3.3 when requested to do so by the employer, the employer may initiate disciplinary proceedings against the educator for misconduct as contemplated in section 18.

3.8 If the educator's ill health is as a result of alcohol or drug abuse, the employer may-

- (a) counsel the educator;
- (b) encourage the educator to attend rehabilitation;
- (c) recommend a formal rehabilitation program which the educator will be expected to follow at the cost of the employee; or
- (d) terminate the employment of the educator, if the behaviour is repetitive.

3.9 If the educator fails to follow the formal program, to attend rehabilitation or to address the problem of alcohol or drug abuse, the employer must give the educator or the educator's representative a written report and consult again with the educator. After consulting with the educator the employer may initiate disciplinary proceedings against the educator for misconduct as contemplated in section 18.

SCHEDULE 2

DISCIPLINARY CODE AND PROCEDURES FOR EDUCATORS

A. PURPOSE AND SCOPE

1. The purpose of this Code and Procedures is:

- (a) to support constructive labour relations in education;
- (b) to promote mutual respect among educators and between educators and the employer;
- (c) to ensure that employers and educators share a common understanding of misconduct and discipline;
- (d) to promote acceptable conduct;
- (e) to provide educators and the employer with a quick and easy reference for the application of disciplinary measures;
- (f) to avert and correct unacceptable conduct; and

- (g) to prevent arbitrary or discriminatory actions by employers toward educators.

B. PRINCIPLES

- 2. The principles underlying the Code and Procedures and any decision to discipline an educator are that-

- (a) discipline is a corrective measure and not a punitive one;
- (b) discipline must be applied in a prompt, fair, consistent and progressive manner;
- (c) discipline is an employer function and the decision regarding the procedural approach to be taken by the employer, is final and cannot be disputed;
- (d) a disciplinary code is necessary for the efficient delivery of service and the fair treatment of educators, and ensures that educators-
 - (i) have a fair hearing in a formal or informal setting;
 - (ii) are timeously informed of allegations of misconduct made against them;
 - (iii) receive written reasons for any decision taken; and
 - (iv) have the right to appeal against any decision;
- (e) as far as possible, disciplinary procedures shall take place in the place of work and be understandable to all educators;
- (f) if an educator commits misconduct that is also a criminal offence, the criminal procedure and the disciplinary procedure will continue as separate and different proceedings;
- (g) disciplinary proceedings do not replace or seek to imitate court proceedings; and
- (h) disciplinary proceedings must be concluded in the shortest possible time frame.

C. CODE OF GOOD PRACTICE

3. The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, 1995, insofar as it relates to discipline, constitutes part of this Code and Procedure.
4. Educator conduct that may warrant a disciplinary action is listed in section 17 and 18. This list is not exhaustive. The Minister may prescribe other conduct which constitutes misconduct.
5. In dealing with misconduct contemplated in section 18 the employer must assess the seriousness of the alleged misconduct by considering-
 - (a) the extent to which the misconduct impacts on the work of the Department of Education or provincial department of education, the public school, public further education and training institution or public adult learning centre;
 - (b) the nature of the educator's work and responsibilities; and
 - (c) the circumstances in which the alleged misconduct took place.
6. The form of disciplinary procedure to be followed in any case shall be determined by the employer.

D. SANCTIONS AND DISCIPLINARY PROCEDURES PERTAINING TO LESS SERIOUS MISCONDUCT CONTEMPLATED IN SECTION 18(1) OF THE ACT

7. The employer shall delegate the function to deal with misconduct in terms of these procedures, to the head of the institution or office where the educator is employed, or the immediate superior of the educator where the educator concerned is the head of the institution or office.
8. **Corrective counselling.** In cases where the seriousness of the misconduct warrants counselling, the employer of the educator must-

- (a) bring the misconduct to the educator's attention;
- (b) determine the nature of the misconduct and give the educator an opportunity to respond to the allegations;
- (c) after consultation with the educator decide on a method to remedy the conduct; and
- (d) take steps to implement the decision.

9. **Verbal warnings.** In cases where the seriousness of the misconduct warrants it, the employer of the educator may give a verbal warning. The employer must inform the educator that further misconduct may result in more serious disciplinary action, and record the warning.

10. **Written warnings.** In cases where the seriousness of the misconduct warrants it, the employer may give the educator a written warning. The following provisions apply to written warnings:

- (a) the written warning must be in accordance with Form A attached to the Schedule;
- (b) the employer must give a copy of the written warning to the educator, who must sign receipt of it;
- (c) if the educator refuses to sign receipt, the employer must hand the warning to the educator in the presence of another educator, who shall sign in confirmation that the written warning was conveyed to the educator;
- (d) the written warning must be filed in the educator's personal file;
- (e) a written warning remains valid for six months;
- (f) if during the six-month period, the educator is subject to disciplinary action, the written warning may be taken into account in deciding on an appropriate sanction; and
- (g) if the educator disagrees with the written warning or wishes to add any information, he or she may lodge such additional information or written objection against the sanction, which must be filed with the written warning.

11. **Final written warnings.** In cases where the seriousness or extent of the misconduct warrants it, the employer must give the educator a final written warning. The following provisions apply to a final written warning:

- (a) a final written warning must be on the prescribed form B attached hereto;
- (b) the employer must give a copy of the final written warning to the educator, who must sign receipt of it;
- (c) if the educator refuses to sign receipt, the employer must hand the warning to the educator in the presence of another educator, who must sign in confirmation that the final written warning was conveyed to the educator;
- (d) the final written warning must be filed in the educator's personal file;
- (e) a final written warning remains valid for six months;
- (f) if during the six-month period, the educator is subject to disciplinary action, the final written warning may be taken into account in deciding on an appropriate sanction; and
- (g) if the educator disagrees with the written warning or wishes to add any information, he or she may lodge such additional information or written objection against the sanction, which must be filed with the written warning.

12. (a) If the seriousness or extent of the misconduct warrants it, no formal enquiry shall be held and the procedures in subitems (b), (c) and (d) shall be followed.
- (b) The employer must convene a meeting where-
- (i) the educator and, if he or she so chooses, the educator's trade union representative who is based at the institution, are present;
 - (ii) reasons are given to the educator as to why it is necessary to initiate this procedure; and
 - (iii) the educator or the educator's representative is heard on the misconduct and reasons therefore.
- (c) After hearing the educator or his or her representative, the employer must-
- (i) counsel the educator;
 - (ii) issue a verbal warning;
 - (iii) issue a written warning;

- (iv) issue a final written warning;
 - (v) impose a combination of any of the above; or
 - (vi) take no further action.
- (d) An educator cannot appeal against any of the above sanctions but may lodge an objection, in writing, against the sanction imposed, or provide additional written information. The objection or additional information must be filed together with a record of the sanction in the educator's personal file.

13. For the purpose of determining appropriate disciplinary actions, valid warnings for similar offences by the educator shall be taken into account.

E. DISCIPLINARY PROCEDURES PERTAINING TO SERIOUS MISCONDUCT AS CONTEMPLATED IN SECTIONS 17(1) AND 18(1) OF THE ACT

14. In the case of dismissable misconduct in terms of section 17(1), or if the seriousness or extent of the alleged misconduct in terms of section 18(1) justifies it, the employer must initiate a disciplinary enquiry.

15. Notice of enquiry

- (a) The educator must be given written notice at least five working days before the date of the hearing.
- (b) The written notice of the disciplinary hearing must be given in accordance with Form C attached to this Schedule and must contain-
 - (i) a description of the allegations of misconduct and the main evidence on which the employer will rely;
 - (ii) details of the time, place and venue of the hearing; and
 - (iii) when delivered by registered post, the date on which the letter was posted; and
 - (iv) information on the rights of the educator to representation by a fellow educator or a trade union representative, and to call witnesses at the hearing.

- (c) The educator must sign receipt of the notice and if the educator refuses to sign receipt of the notice, it must be given to the educator in the presence of a fellow educator who shall sign in confirmation that the notice was conveyed to the educator.

16. **Suspension**

- (a) In the case of dismissable misconduct, the employer may suspend the educator on full pay for a maximum period of three months.
- (b) In the case of serious misconduct in terms of section 18, the employer may suspend an educator in accordance with the procedure contemplated in subitem (a), or transfer the educator to another post if the employer believes that the presence of the educator may jeopardise any investigation into the alleged misconduct, or endanger the well-being or safety of any person at the workplace.
- (c) If an educator is suspended or transferred, the employer must do everything possible to conclude a disciplinary hearing within one month of the suspension or transfer. The presiding officer may decide on any further postponement. Such a postponement shall not exceed 90 days from the date of suspension. If the proceedings are not concluded within 90 days, the employer must enquire from the presiding officer what the reasons for the delay are and give directions for the speedy conclusion of the proceedings. At the time of such enquiry the employer may after giving the educator an opportunity to make representations direct that the further suspension will be without pay.

17. **Conducting the disciplinary hearing**

- (a) The disciplinary hearing must be held within ten working days after the notice referred to in item 14 is delivered to the educator.
- (b) The presiding officer at the hearing must be appointed by the employer.
- (c) If the educator so chooses, she or he may be represented at the hearing by a fellow educator or a representative of a trade union.

- (d) If the presiding officer deems it necessary, an interpreter shall assist at the hearing.
- (e) In a disciplinary hearing, neither the employer nor the educator may be represented by a legal practitioner or a labour consultant. For the purposes of this Act, a legal practitioner is defined as a person who is admitted to practise as an advocate or an attorney in South Africa.
- (f) If the educator fails to attend the hearing and the presiding officer concludes that the educator does not have a valid reason, the hearing may continue in the educator's absence.
- (g) The presiding officer must keep a record of the notice of the disciplinary hearing and the proceedings thereof.
- (h) The presiding officer must read the notice for the record and start the hearing.
- (i) The representative of the employer will lead evidence on the conduct giving rise to the hearing. The educator or the educator's representative may question any witness called by the representative of the employer.
- (j) For purposes of the investigation and hearing, the representative of the employer may summon any person who may be able to give information of material importance concerning the subject of the investigation or hearing, or has in his or her possession, custody or control, any book, document or object which may have a bearing on the matter, or any person requested by the educator to be summoned to appear at the hearing.
- (k) The summons to appear at a disciplinary hearing, shall be in accordance with Form D attached to this Schedule and served on the person by way of delivery-
 - (i) by hand;
 - (ii) telefax; or
 - (iii) registered post.
- (l) The date on which the summons is served will be-
 - (i) when delivering by hand, the date of delivery;
 - (ii) when delivering by telefax, the date reflected on the telefax; or
 - (iii) when delivering by registered post, the date on which the letter was posted.

- (m) The educator or his or her representative will be given an opportunity to lead evidence. The representative of the employer may question the witnesses.
 - (n) The presiding officer may ask any witness questions for clarification.
 - (o) The presiding officer shall find whether or not the educator has committed misconduct, and must inform the educator of the finding and the reasons therefor.
 - (p) Before deciding on a sanction, the presiding officer must give the educator an opportunity to present relevant circumstances in mitigation. The representative of the employer may also present aggravating circumstances.
 - (q) The presiding officer must communicate the final outcome of the hearing to the employer and the educator within five working days after the conclusion of the disciplinary enquiry, and the outcome must be recorded on the educator's personal file.
18. (a) If the presiding officer finds that an educator has committed misconduct, the presiding officer must on behalf of the employer impose a sanction, as contemplated in section 18(3) of the Act, taking into account the nature of the case and the seriousness and extent of the misconduct, the educator's previous record and any mitigating or aggravating circumstances.
- (b) With the agreement of the educator, the presiding officer may impose the sanction of suspension without pay or demotion as an alternative to dismissal.
- (c) If an educator is demoted, after a year she or he may apply for promotion without prejudice.
- (d) The employer shall not implement the sanction during an appeal by the educator.
19. If an educator is found guilty of an offence in a court of law, and such offence constitutes misconduct in terms of the Act, the educator shall be deemed to have committed that misconduct, and the employer may determine an appropriate sanction.

F. APPEALS

20. (a) An educator may appeal against a finding or sanction by making an application in accordance with Form E attached hereto.
- (b) The educator must, within five working days of receiving notice of the final outcome of a disciplinary hearing, submit the appeal form to the Member of the Executive Council or the Minister, as the case may be.
- (c) On receipt of the application referred to in paragraph (a), the Member of the Executive Council or the Minister, as the case may be, must request the employer to provide him or her with a copy of the record of the proceedings and any other relevant documentation.
- (d) If the Member of the Executive Council or the Minister, as the case may be, chooses to allow further representations by the educator or his or her representative, she or he shall notify the educator of the date, time and place where such representation shall be made.
- (e) The Member of the Executive Council or the Minister, as the case may be, shall consider the appeal, and may-
- (i) uphold the appeal;
 - (ii) amend the sanction; or
 - (iii) dismiss the appeal.
- (f) The employer shall immediately implement the decision of the Member of the Executive Council or the Minister, as the case may be.”.

FORM A
WRITTEN WARNING

[DATE]

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a written warning in terms of the disciplinary procedure. Should you engage in further misconduct, this written warning may be taken into account in determining a more serious sanction.

The written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

If you object to the warning or wish to furnish additional information, you may lodge a written objection or addition which will be filed together with this warning.

The nature of the misconduct is:

SIGNATURE OF EMPLOYEE

DATE

SIGNATURE OF EMPLOYER

DATE

SIGNATURE OF WITNESS (if applicable)

DATE

FORM B
FINAL WRITTEN WARNING

[DATE]

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a final written warning in terms of the disciplinary procedure. Should you engage in further transgressions, it could lead to formal misconduct proceedings being instituted against you.

This final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

Should you wish to do so, you may lodge a written objection to this final warning, or provide additional information which will be filed together with this final warning.

The nature of the misconduct is:

SIGNATURE OF EMPLOYEE

DATE

SIGNATURE OF EMPLOYER

DATE

SIGNATURE OF WITNESS (if applicable)

DATE

FORM C
NOTICE OF DISCIPLINARY MEETING

[DATE]

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

You are hereby given notice to attend a disciplinary hearing in terms of clauses 6 and 7 of the Disciplinary Code.

The alleged misconduct and the available evidence is based on the following evidence:

[A DETAILED DESCRIPTION OF MISCONDUCT MAY BE ATTACHED].

The hearing will be held at _____ [PLACE] on _____ [DATE] at _____ [TIME]. If you do not attend and cannot give reasonable grounds for failing to attend, the hearing will be held in your absence.

A fellow employee or a representative of a recognised union may represent you at the hearing.

You may give evidence at the hearing in the form of documents or through witnesses. You will be entitled to question any witness called by the employer.

If the presiding officer finds that you are guilty of misconduct, you may present any relevant circumstances which you wish to be taken into account by the presiding officer in determining the sanction.

SIGNATURE OF EMPLOYER

DATE

ACKNOWLEDGEMENT OF RECEIPT BY EMPLOYEE

DATE

SIGNATURE OF WITNESS (if applicable)

DATE

FORM D
SUMMONS TO APPEAR AT DISCIPLINARY HEARING

DATE:

TO: _____

(Name and residential address of person summoned)

You are hereby summoned to appear personally on the _____ day
of _____ 20__ at _____ (time) at _____
(place) before the presiding officer of a disciplinary hearing in terms of Schedule 2 to the
Employment of Educators Act, 1998 (Act No. 76 of 1998), for the purpose of giving
evidence regarding the following misconduct:

and to submit the following book, document or object in your possession, custody or
control, which may have a bearing on the matter;

(specify the book, document or object)

SIGNATURE OF REPRESENTATIVE OF EMPLOYER

FORM E
NOTICE OF APPEAL

[DATE]

[NAME OF APPEAL AUTHORITY]

I, _____, [NAME OF EMPLOYEE] am hereby appealing against the FINDINGS and/or SANCTION that have been imposed in terms of the Disciplinary Code and Procedure on _____ [DATE] at _____ [PLACE].

I attach a copy of the final outcome of the disciplinary enquiry and the record of the hearing. [THE APPEAL REQUEST IS NOT VALID UNLESS THESE DOCUMENTS ARE ATTACHED]

My reasons for appeal are:

The desired outcome of the appeal is:

I wish/do not wish [CHOOSE ONE] to provide additional evidence not available at the time of the disciplinary proceeding.

SIGNATURE OF EMPLOYEE

DATE

[PERSONAL DETAILS OF THE EMPLOYEE]

NB: Educators may only appeal against the finding and resultant sanction of:

1. Suspension without pay for a period not exceeding three months;
2. Demotion;
3. A Fine
4. A combination of the above sanction or together with warnings; or
5. Dismissal.

Short Title

16. This Act is the Education Laws Amendment Act, 2000.

EXPLANATORY MEMORANDUM TO THE EDUCATION LAWS AMENDMENT BILL, 2000

1. INTRODUCTION

This Bill provides for the amendment of the following Acts:

- 1.1 The South African Qualifications Authority Act, 1995;
- 1.2 The South African Schools Act, 1996; and
- 1.3 The Employment of Educators Act, 1998.

2. BACKGROUND

After extensive consultations with role players, the Department of Education decided that legislation should be drafted to amend the above-mentioned Acts.

The following most important matters received attention:

- 2.1 Increasing the representation of organised labour on the Authority.
- 2.2 The making of further provision for public schools on private property.
- 2.3 Providing for the governance of a new public school until a governing body is constituted.
- 2.4 Providing for representivity of governing bodies.
- 2.5 Provisions to provide for safety measures at public schools.
- 2.6 Provisions dealing with incapacity, misconduct and incapacity code and procedure and a disciplinary code and procedure.

3. REASONS FOR AND SUBSTANCE OF BILL

- 3.1 The South African Quality Authority Act, 1995

The Act is amended so as to increase the number of members representing organised labour on the Authority from two to three. The reason for this is that the voice of organised labour is of crucial importance

in that the quality of training is one of the most important requirements for employment opportunities.

3.2 The South African Schools Act, 1996

This Act was amended to address the following concerns:

The Member of the Executive Council is now authorised to expropriate private property on which a public school is situated in terms of section 58 of the Schools Act, instead of invoking the provisions of the Expropriation Act, which involves time-consuming and complicated procedures. The authority to expropriate the private property will only be exercised when the private owner of the property is not willing to enter into an agreement contemplated in section 14 of the Schools Act.

When a new public school is provided, there is no governing body to perform the governing functions of the school. The Head of Department is therefore authorised to perform such functions until a governing body has been constituted in terms of the provisions of the Schools Act.

In accordance with the government policy of representivity, the governing body of a public school, which is not representative of the racial composition of the learners of the school, must co-opt two parent members with voting rights from that part of the learner community that is not represented.

It is a known fact that schools are currently not safe for learners, educators and parents. The Minister is therefore authorised by the Bill to make regulations to provide for safety measures at public schools.

3.3 The Employment of Educators Act, 1998

The Head of Department may appoint an educator only after the recommendation of the school governing body. A new public school, adult learning centre or further education and training institution has no

governing body or council, whatever the case may be. To fill this vacuum, the Head of Department is empowered to make the initial appointment, promotion or transfer of an educator to a new public school or public further education and training institution.

The Bill streamlines the procedures dealing with incapable educators and educators who are guilty of misconduct so as to bring the Act in line with the provisions of the Labour Relations Act, 1995.

4. DISCUSSION

A Bill has been drafted that incorporates the above-mentioned concerns

5. THE BILL AND THE EDUCATION SYSTEM

The Bill is intended to close the above-mentioned loopholes in the aforesaid Acts in order to create a watertight education system.

6. PARLIAMENTARY PROCEDURE

The Department and the Chief State Law Adviser are of the opinion that this Bill must be dealt with in terms of sections 73 and 76 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

NOTICE 1505 OF 2000**ADULT GENERAL EDUCATION AND TRAINING BILL, 2000****BILL**

To regulate adult general education and training; to provide for the establishment, governance and funding of public adult learning centres; to provide for the registration of private adult learning centres; to provide for quality assurance and quality promotion in adult general education and training; to provide for transitional arrangements; and to provide for matters connected therewith.

PREAMBLE

WHEREAS IT IS DESIRABLE TO-

ESTABLISH a national co-ordinated adult general education and training system which promotes co-operative governance and provides for programme-based adult general education and training;

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

REDRESS past discrimination and ensure representivity and equal access;

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

PROVIDE optimal opportunities for adult learning and literacy, the creation of knowledge and development of skills in keeping with international standards of academic and technical quality;

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

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

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

PURSUE excellence, promote the full realisation of the potential of every learner and member of staff, tolerance of ideas and appreciation of diversity;

RESPOND to the needs of the Republic, the labour market and of the communities served by the centres;

COMPLEMENT the Skills Development Strategy in co-operation with the Department of Labour;

AND WHEREAS IT IS DESIRABLE for adult learning centres to perform specific functions within the context of public accountability and the national need for skills and knowledge and to provide access to work;

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

ARRANGEMENT OF THE ACT

CHAPTER 1

DEFINITIONS AND PURPOSE OF THE ACT

Section

1. Definitions

2. Purpose of the Act

CHAPTER 2

PUBLIC CENTRES

3. Establishment of public centre
4. Provision of facility
5. The governance and professional management of public centres
6. Merger of public centres
7. Closure of public centres

CHAPTER 3

GOVERNANCE OF PUBLIC CENTRES

8. The governing body of a public centre
9. Election of Members of a governing body
10. Single governing body for two or more public centres
11. Functions of all governing bodies
12. Staff employed by the State at public centres
13. Enhancement of capacity of governing bodies
14. Failure of governing bodies to perform functions
15. Recusal by members of governing body
16. Reimbursement of members of governing body
17. Committees of governing body
18. Admission to public centre
19. Representative council of learners
20. Disciplinary measures

CHAPTER 4

FUNDING OF PUBLIC CENTRES

21. Responsibility of the State
22. Norms and Standards for funding of public centres
23. Funds of public centres
24. Financial records and statements of public centres
25. Action on failure of governing body to comply with the Act or certain conditions

CHAPTER 5

PRIVATE CENTRES

26. Establishment of private centre
27. Registration of private centre
28. Withdrawal of registration of private centre
29. Subsidies to registered private centre
30. Declaration of a private centre as a public centre
31. Duties of Member of Executive Council relating to private centre

CHAPTER 6

QUALITY ASSURANCE AND PROMOTION

32. Quality assurance and promotion in adult general education and training
33. Advice by NABAET
34. Report on quality assurance

CHAPTER 7

GENERAL

35. Duty of centres to provide information

36. Investigation at public centres
37. Name change of public centres
38. Offences
39. Limitation of liability
40. Delegation of powers
41. Regulations

CHAPTER 8

TRANSITIONAL AND OTHER ARRANGEMENTS

42. Existing centres, structures and bodies
43. Exemption of existing centres
44. Short title

CHAPTER 1

DEFINITIONS AND PURPOSE OF THE ACT

Definitions

1. In this Act, unless the context shows that another meaning is intended-

“adult general education and training” means all learning and training programmes for adults leading to qualifications from adult general education and training level 1 to 4 of which level 4 is equivalent to grade 9 in public schools or to National Qualifications Framework level 1 as contemplated in the SAQA Act, 1995 (Act No. 58 of 1995);

“auditor” means any person registered in terms of the Public Accounts' and Auditors' Act, 1991 (Act No. 80 of 1991);

“centre” means a public or private centre;

“centre manager” means the head of a public centre appointed by the Head of Department in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998);

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“Department” means the government department responsible for education at national level;

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

“educator” means any person who teaches, educates or trains a learner, or who provides professional educational services, including professional therapy and education psychological services at a centre;

“governing body” means a governing body contemplated in section 8;

“grade” means a grade as defined in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996);

“Head of Department” means the head of a provincial department of education;

“learner” means any person receiving education in terms of this Act;

“Member of the Executive Council” means the Member of the Executive Council of a province who is responsible for education in that province;

“Minister” means the Minister of Education;

“NABAET” means the National Advisory Board for Adult General Education and Training, established by regulations in terms of section 11 of the National Education Policy Act, 1996 (Act No. 27 of 1996);

“organ of State” means an organ of State as defined in section 239 of the Constitution;

“policy” means-

- (a) policy determined by the Minister in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996); or
- (b) policy determined by the Member of the Executive council in terms of a provincial law;

“private centre” means a private adult learning centre registered in terms of section 27 and which offers adult general education and training to learners;

“province” means a province established by section 103 of the Constitution;

“provincial legislature” means a provincial legislature contemplated in section 104 of the Constitution;

“public centre” means a public adult learning centre established in terms of section 3 and which offers adult general education and training to adult learners;

“SAQA” means the South African Qualification Authority, established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

“staff” means persons employed at public centres

“this Act” includes regulations made under this Act.

Purpose of the Act

2. (1) This Act shall provide for adult general education and training which is offered in centres in the Republic of South Africa.

(2) A Member of the Executive Council and Head of Department must exercise any power conferred upon them by or under this Act, after taking full account of the

applicable policy determined in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996).

(3) Nothing in this Act prevents a provincial legislature from enacting legislation for adult general education and training in a province in accordance with the Constitution and this Act.

CHAPTER 2

PUBLIC CENTRES

Establishment of public centres

3. (1) The Member of the Executive Council may, by notice in the Provincial Gazette and from money appropriated for this purpose by the provincial legislature, establish a public centre.

(2) Every public centre is a juristic person, with legal capacity to perform its functions in terms of this Act.

(3) A public centre which occupies immovable property owned by the State has the right, for the duration of the centre's existence, to occupy and use the immovable property for the benefit of the centre for educational purposes at or in connection with the centre.

(4) In this section, immovable property owned by the State includes immovable property held in trust on behalf of a tribe by a trust created by statute.

(5) The right referred to in subsection (4) may only be restricted-

- (a) by the Head of Department; and
- (b) if the immovable property is not utilised by the centre in the interests of education.

(6) The Head of Department may not act under subsection (5) unless he or she has-

- (a) informed the governing body of the centre of his or her intention so to act and the reasons therefore;
- (b) granted the governing body of the centre a reasonable opportunity to make representations to him or her in relation to such action; and
- (c) duly considered any such representations received.

(7) The right contemplated in subsection (3) is enforceable against any successor in title to the owner of the immovable property in question.

Provision of facilities

4. (1) The Head of Department must provide facilities for the use of the public centre to perform its functions in terms of this Act.

(2) If no facilities are available to be used by the public centre, the Head of Department must in terms of section 20(1)(k) of the South African Schools Act, 1996, request the governing body of a public school to allow the reasonable use of the facilities of the school by the public centre.

(3) After the request contemplated in subsection (2) has been made, the Head of Department and the school governing body must enter into an agreement providing for-

- (a) the amount of time and the time of day or night the school facilities will be used by the public centre;
- (b) the exact manner in which resources and the attached costs will be shared between the school and the public centre;
- (c) the responsible authority to be liable for payment of the costs referred to in paragraph (b);
- (d) the maintenance and improvement of the school facilities;
- (e) the access of all interested parties to the facility;
- (f) the security of the facility; and
- (g) the relationship between the school governing body and the public centre governing body.

(4) Where practically possible the Head of Department must consult with the relevant public centre governing body and take account of its concerns before entering into the agreement contemplated in subsection (3).

(5) The Minister may, after consultation with the Council of Education Ministers, make regulations regarding the minimum requirements for an agreement contemplated in subsection (3).

The governance and professional management of public centres

5. (1) Subject to this Act, the governance of every public centre is vested in its governing body.

(2) A governing body stands in a position of trust towards the centre.

(3) Subject to this Act and any applicable provincial law, the professional management of a public centre must be undertaken by the centre manager under the authority of the Head of Department.

Merger of public centres

6. (1) Subject to subsection (2), the Member of the Executive Council may, by notice in the Provincial Gazette, merge two or more public centres into a single centre.

(2) Before merging two or more public centres the Member of the Executive Council must-

- (a) give written notice to the centres in question of the intention to merge them;
- (b) publish a notice giving reasons for the proposed merger in one or more newspapers circulating in the area in which the centres are situated;
- (c) give the governing bodies of the centres in question and any other interested persons an opportunity to make representations within at least 90 days from the date of the notice referred to in paragraph (b);
- (d) consider such representations; and
- (e) be satisfied that the employers of staff at the public centres in question have complied with their obligations in terms of the applicable labour law.

(3) The single centre contemplated in subsection (1) must be regarded as a public centre.

(4) All assets, liabilities, rights and obligations of the centres that are merged, must subject to the conditions of any donation, bequest or trust, vest in the single centre.

(5) The governing bodies of the centre that are merged must have a meeting before the merger to constitute a single interim governing body comprising of all the members of the governing bodies concerned.

(6) The interim governing body must decide on the budget and differences in the code of conduct and fees, as well as any issue that is relevant to the merger or which is prescribed, until a new governing body is constituted in terms of section 8.

(7) The governing body of a public centre to be merged, may appeal to the Minister against the decision as contemplated in subsection (1).

Closure of public centres

7. (1) The Member of the Executive Council may, by notice in the Provincial Gazette, close a public centre.

(2) The Member of the Executive Council may not act under subsection (1) unless he or she has-

- (a) informed the governing body of the centre of his or her intention so to act and his or her reasons therefore;
- (b) granted the governing body of the centre a reasonable opportunity to make representations to him or her in relation to such action;
- (c) conducted a public hearing on reasonable notice, to enable the community to make representations to him or her in relation to such actions; and
- (d) given due consideration to any such representations received.

(3) If a public centre is closed down in terms of subsection (1) all assets and liabilities of such centre must, subject to the conditions of any donation, bequest or trust devolved on the State unless otherwise agreed between the Member of the Executive Council and the governing body of the centre.

CHAPTER 3

GOVERNANCE OF PUBLIC CENTRES

The governing body of a public centre

8. (1) Every public centre must establish a governing body except a public centre provided in terms of section 21(1)(dA) of the South African Schools Act 1996 (Act No. 84 of 1996) and this chapter is not applicable to such a centre.

(2) Subject to this Act, the membership of the governing body of a public centre consist of-

- (a) elected members;
- (b) the centre manager in his or her official capacity;
- (c) co-opted members;
- (d) representatives of sponsoring bodies, if applicable;
- (e) representatives of organisations of disabled persons, if applicable; and
- (f) experts in the fields of adult general education and training, if applicable.

(3) Elected members of the governing body consist of a member or members of each of the following categories:

- (a) educators at the centre;
- (b) members of staff who are not educators; and
- (c) learners at the centre;

(4) Subject to this Act or any applicable provincial law-

- (a) a member or members of the governing body contemplated in subsection (3)(a) must be elected by educators at the centre;
- (b) the member or members of the governing body contemplated in subsection (3)(b) must be elected by members of the staff who are not educators at the centre; and
- (c) the member or members of the governing body contemplated in subsection (3)(c) must be elected by the learners at the centre.

(5) Subject to this Act or any applicable provincial law, the governing body must co-opt members from the community which the centre serves and such co-opted members having voting rights.

(6) The chairperson of the governing body and the principal of the public school where the centre operates, if applicable, may be co-opted by the governing body of the centre but do not have voting rights on the governing body.

(7) Subject to this Act and any applicable provincial law, the governing body of a public centre must function in terms of a constitution which complies with minimum requirements determined by the Member of the Executive Council by notice in the Provincial Gazette.

(8) A constitution contemplated in subsection (7) must provide for-

- (a) a meeting of the governing body at least four times a year and the procedures at such meetings;

- (b) recording and keeping minutes of governing body meetings; and
- (c) making available such minutes for inspection by the Head of Department.

(9) The governing body must submit a copy of its constitution to the Head of Department within 90 days of its election.

(10) If a new public centre is established in terms of section 3, the governance of that centre vests in the Head of Department until a governing body has been constituted in terms of this Act.

Election of members of and co-option of members to the governing body

9. Subject to this Act and any applicable provincial law, the Member of the Executive Council must, by notice in the Provincial Gazette, determine-

- (a) the term of office of members and office-bearers of a governing body;
- (b) the designation of an officer to conduct the process for the nomination and election of members of the governing body;
- (c) the procedure for the disqualification or removal of a member of the governing body or the dissolution of a governing body, for sufficient reason in each case;
- (d) the procedure for the filling of a vacancy on the governing body;
- (e) guidelines for the achievement of the highest practicable level of representativity of members of the governing body;
- (f) a formula for the calculation of the number of members of the governing body to be elected in each of the categories referred to in section 8(3) or co-opted to the governing body as contemplated in section 8(5), but such formula must provide reasonable representation for each category and must be capable of application to the different sizes and circumstances of public centres; and
- (g) any other matters necessary for the election, appointment or assumption of office of members of the governing body.

Single governing body for two or more public centres

10. (1) The Member of the Executive Council may determine that the governance of two or more public centres must vest in a single governing body if-

- (a) it is in the best interest of education and the centres;
- (b) it is in the public interest; or
- (c) he or she was so requested by the governing bodies of such centres, if such governing bodies exist.

(2) The Member of the Executive Council may not act in terms of subsection (1) unless he or she has-

- (a) given notice in the Provincial Gazette of his or her intention so to act;
- (b) given interested parties an opportunity to make written submissions within a period of not less than 30 days; and
- (c) considered all such submissions.

(3) The Member of the Executive Council must, by notice in the Provincial Gazette, determine the composition of the single governing body in a manner that ensures that each centre is equitably represented.

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

Functions of governing bodies

11. (1) Subject to this Act and any applicable provincial law, the governing body of a public centre must perform the following functions-

- (a) to promote the best interest of the public centre and strive to ensure its development through the provision of quality education for all learners at the public centre;
- (b) to develop a business plan for the public centre;
- (c) to provide any information pertaining to the public centre and its activities at the request of the Head of Department;
- (d) to be responsible for the budgeting and financial management systems of the public centre;
- (e) to promote the activities and the programmes of the public centre;
- (f) to supplement the procurement of the learning support material for the public centre;
- (g) to ensure that a conducive learning environment exists for learners;
- (h) to elicit public support for the public centre;

- (i) to keep proper records of all governing body meetings;
- (j) to develop the vision and mission statement of the public centre;
- (k) subject to policy, to determine the language policy of the public centre;
- (l) to recommend the appointment of educators of the public centre in terms of the Employment of Educators Act, 1998 (Act No. 98 of 1998);
- (m) to establish and administer a public centre fund from voluntary contributions;
- (n) to adopt a constitution;
- (o) to adopt a code of conduct for learners at the public centre;
- (p) to discharge all other functions imposed upon a governing body by or under this Act; and
- (q) to discharge all other functions consistent with the Act as determined by the Minister by notice in the Government Gazette, or by the Member of the Executive Council by notice in the provincial gazette.

(2) Subject to this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995) and any other applicable law, a public centre may establish posts for educators and employ educators additional to the establishment determined by the Member of the Executive Council in terms of section 5 of the Employment of Educators Act, 1998 (Act No 76 of 1998).

(3) Subject to this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a public centre may establish posts for non-educators and employ non-educator staff additional to the establishment determined in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(4) An educator and a non-educator employed in a post established in terms of subsection (2) or (3) must comply with the requirements set for employment in a public centre in terms of this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995) and any other applicable law.

(5) A public centre may only employ an educator in a post referred to in subsection (2) if such educator is registered as an educator with the South African Council for Educators.

(6) The staff contemplated in subsection (2) and (3) must be employed in compliance with the basic values and principles referred to in section 195 of the Constitution, and the factors to be taken into account when making appointments include, but are not limited to-

- (a) the ability of the candidate;
- (b) the principle of equity;
- (c) the need to redress past injustices; and
- (d) the need for representivity.

(7) When presenting the annual budget contemplated in section 24 the governing body of a public centre must provide sufficient details of any posts envisaged in terms of subsections (2) and (3), including the estimated costs relating to the employment of staff in such posts and the manner in which it is proposed that such costs will be met.

(8) The State is not liable for any act or omission by the public centre relating to its contractual responsibility as the employer in respect of staff employed in terms of subsections (2) and (3).

(9) After consultation as contemplated in section 5 of the National Education Policy Act, 1996 (Act No. 27 of 1996), the Minister may determine norms and standards by notice in the Gazette regarding the funds used for the employment of staff referred to in subsections (2) and (3), but such norms and standards may not be interpreted so as to make the State a joint employer of such staff.

Staff employed by the State at public centres

12 (1) The educator establishment of a public centre is determined by the allocation of posts by the Head of Department from the provincial educator post establishment created by the Member of the Executive council in terms of section 5 of the Employment of Educators Act, 1998 and educators appointed in such posts are employed in terms of that Act.

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

Enhancement of capacity of governing bodies

13. (1) Out of funds appropriated for this purpose by the provincial legislature, the Head of Department must establish a programme to-

- (a) provide introductory training for newly elected governing bodies to enable them to perform their functions; and

- (b) provide continuing training to governing bodies to promote the effective performance of their functions or to enable them to assume additional functions.

(2) The Head of Department must ensure that centre manager and other officers of the education department render all necessary assistance to governing bodies in the performance of their functions in terms of this Act.

Failure by governing body to perform functions

14. (1) If a governing body has ceased or failed to perform its functions, the Head of Department must appoint one or more persons to perform those functions for a period not exceeding three months.

(2) The Head of Department may extend the period referred to in subsection (1), by further periods not exceeding three months each, but the total period may not exceed one year.

(3) The Head of Department must ensure that a governing body is elected in terms of this Act within a year after the appointment of persons contemplated in subsection (1).

Recusal by members of governing body

15. A member of a governing body must withdraw from a meeting of the governing body for the duration of the discussion and decision-making on any issue in which the member has a personal interest.

Reimbursement of members of governing body

16. (1) Necessary expenses incurred by a member of a governing body in the performance of his or her duties may be reimbursed by the governing body.

(2) No member of a governing body may be remunerated in any way for the performance of his or her duties.

Committees of governing body

17. (1) A governing body may-

- (a) establish committees, including an executive committee; and
- (b) appoint persons who are not members of the governing body to such committees on grounds of expertise, but a member of the governing body must chair each committee.

(2) A governing body of a public centre which provides education to learners with special education needs must establish a committee on special education needs.

Admission to public centre

18. (1) A public centre must admit learners and serve their educational requirements without unfairly discriminating in any way.

(2) An application for admission to a public centre must be made to the Head of Department in a manner determined by him or her.

(3) If an application referred to in subsection 2 is refused, the Head of Department must inform the learner in writing of such refusal and the reasons therefor.

(4) Any learner who has been refused admission to a public centre may appeal against the decision of the Head of Department to the Member of the Executive Council.

Representative Council of learners

19. (1) A representative council of learners at the centre must be established at every public centre.

(2) A Member of the Executive Council may by notice in the Provincial Gazette, determine guidelines for the establishment, election and functions of representative councils of learners.

Disciplinary measures

20. (1) Every learner at a public centre is subject to a code of conduct, disciplinary measures and procedures as may be determined by the governing body subject to provincial policy.

(2) The policy contemplated in subsection (1) must in particular deal with measures to curb racism, sexual violence and sexual harassment.

(3) A code of conduct must contain provisions of due process safeguarding the interest of the learner in disciplinary procedures.

CHAPTER 4

FUNDING OF PUBLIC CENTRES

Responsibility of the State

21. (1) The Member of the Executive Council must from money appropriated for this purpose by the provincial legislature fund public adult general education and training on a fair, equitable and transparent basis.

(2) The Member of the Executive Council may, subject to the norms and standards determined in terms of section 22, impose-

- (a) any reasonable condition in respect of an allocation of funding contemplated in subsection (1); and
- (b) different conditions in respect of different centres, different adult general education and training programmes or different allocations, if there is a reasonable basis for such differentiation.

(3) The Member of the Executive Council must, on an annual basis, provide sufficient information to public centres regarding the funding referred to in subsection (1) to enable the public centre to prepare its budget for the next financial year.

Norms and Standards for funding public centres

22. (1) Subject to the Constitution and this Act, the Minister must, in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996), determine norms and standards for funding of public centres, after consultation with the council of Education Ministers, the Financial and Fiscal Commission, the Minister of Finance and the NABAET.

Funds of public centres

23. The funds of a public centre consist of-

- (a) funds allocated by the State;
- (b) any donations or contributions received by the centre;
- (c) money raised by the centre;
- (d) money payable by learners for adult general education and training provided by the centre; and
- (e) other funds from any other source.

Financial records and statements of public centres

24. (1) The governing body of a public centre must, in the manner determined by the Member of the Executive Council-

- (a) keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions of the public centre as a whole, of its substructures and of other bodies operating under its authority;
- (b) must in each financial year, at such time and in such manner as the Member of the Executive Council may determine, submit a statement of its estimated income and expenditure for the ensuing financial year to the Member of the Executive Council for his or her approval granted with the concurrence of the Member of the Executive Council for Finance in the province;
- (c) may in any financial year submit adjusted statements of its estimated income and expenditure to the Member of the Executive Council for his or

her approval, granted with the concurrence of the Member of the Executive Council for Finance in the province; and

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

(2) If the Member of the Executive Council does not approve the governing body's statement of its estimated income and expenditure, the Member of the Executive Council must require the governing body to provide a revised statement to him or her within a specified period.

(3) The governing body of a public centre must, in respect of the preceding financial year and by a date or dates and in the manner determined by the Member of the Executive Council provide the Member of the Executive Council with-

- (a) a report on the overall governance of the centre;
- (b) a duly audited or examined statement of income and expenditure; and
- (c) a balance sheet and cash flow statement.

(4) The governing body of a public centre must provide the Member of the Executive Council with such additional information as the Member of the Executive Council may reasonably require.

(5) The governing body of a public centre must appoint a person registered as an accountant and auditor in terms of the Public Accountants and Auditors Act, 1991 (Act 80 of 1991), to audit the records and financial statements referred to in section 24.

(6) If the audit referred to in subsection (5) is not reasonably practicable, the governing body of a public centre must appoint a person to examine and report on the records and financial statements referred to in section 24, who-

- (a) is qualified to perform the duties of an accounting officer in terms of section 60 of the Close Corporations Act, 1984 (Act 69 of 1984); or
- (b) is approved by the Member of the Executive Council for this purpose.

(7) No person who has a financial interest in the affairs of the public centre may be appointed under this section.

(8) If the Member of the Executive Council deems it necessary, he or she may request the Auditor-General to undertake an audit of the records and financial statements of a public centre.

Action on failure of governing body to comply with Act or certain conditions

25. (1) If the governing body of a centre fails to comply with any provision of this Act under which allocation from money appropriated by the provincial legislature is paid to the public centre, or with any condition subject to which any allocation is paid to the public centre, the Member of the Executive Council may call upon the governing body to comply with the provision or condition within a specified period.

(2) If the governing body thereafter fails to comply with the provision or condition timeously, the Member of the Executive Council may withhold payment of any portion of any allocation appropriated by the provincial legislature in respect of the public centre concerned.

(3) Before taking action under subsection (2), the Member of the Executive Council must-

- (a) give notice to the governing body of the public centre concerned of the intention so to act;
- (b) give such council a reasonable opportunity to make representations; and
- (c) consider such representations.

(4) If the Member of the Executive Council acts under subsection (2), a report regarding the action must be tabled in the provincial legislature by the Member of the Executive Council or as soon as reasonably practical after the action.

CHAPTER 5

PRIVATE CENTRES

Establishment of a private centre

26. (1) Subject to this Act and any applicable provincial law, any person may, at his or her own cost, establish and maintain a private centre.

Registration of a private centre

27. (1) No person may establish or maintain a private centre unless it is registered by the Head of Department.

(2) The Member of the Executive Council must, by notice in the Provincial Gazette, determine the grounds on which the registration of a private centre may be granted or withdrawn by the Head of Department.

(3) A Head of Department must register a private centre if he or she is satisfied that-

- (a) the standards to be maintained by such a private centre will not be inferior to the standard maintained in comparable public centres;
- (b) the admission policy of the private centre does not discriminate on the grounds of race; and
- (c) the private centre complies with the grounds for registration contemplated in subsection (2).

Withdrawal of registration of a private centre

28. (1) No withdrawal of the registration of private centre is valid unless-

- (a) the owner of such a private centre has been furnished by the Head of Department with a notice of intention to withdraw the registration, stating the reasons why such withdrawal is contemplated;
- (b) the owner of such private centre has been granted an opportunity to make written representations to the Head of Department as to why the registration of the private centre should not be withdrawn; and
- (c) any such representations received have been duly considered.

(2) The owner of the private centre may appeal to the Member of the Executive Council against the withdrawal of the registration of such a private centre.

Subsidies to registered private centre

29. (1) The Minister may, by notice in the Government Gazette, determine norms and standards for the granting of subsidies to private centres after consultation with the Council of Education Ministers and the Financial and Fiscal Commission and with the concurrence of the Minister of Finance.

(2) The Member of the Executive Council may, out of funds appropriated by the provincial legislature for that purpose, grant a subsidy to a private centre.

(3) If a condition subject to which a subsidy was granted has not been complied with, the Head of Department may terminate or reduce the subsidy from a date determined by him or her.

(4) The Head of Department may not terminate or reduce a subsidy under subsection (3) unless-

- (a) the owner of such private centre has been furnished with a notice of intention to terminate or reduce the subsidy and the reasons therefor;
- (b) such owner has been granted an opportunity to make written representations as to why the subsidy should not be terminated or reduced; and
- (c) any such representations received have been duly considered.

(5) The owner of a private centre may appeal to the Member of the Executive Council against the termination or reduction of a subsidy to such centre.

Declaration of a private centre as a public centre

30. (1) The Member of the Executive Council may, with the concurrence of the Member of the Executive Council responsible for finance, enter into an agreement with the owner of a private centre in terms whereof such a centre is declared to be a public centre.

(2) Notice of the change of status contemplated in subsection (1) must be published in the Provincial Gazette.

Duties of Member of Executive Council relating to private centres

31. (1) The Member of the Executive Council may, by notice in the Provincial Gazette, determine requirements for-

- (a) the admission of learners of a private centre to examinations conducted by or under the supervision of the education department;
- (b) the keeping of registers and other documents by such a private centre;
- (c) criteria of eligibility, conditions and manner of payment of any subsidy to such a centre; and
- (d) any other matter relating to such a centre which must or may be prescribed in terms of this Act.

(2) Different requirements may be made under subsection (1) in respect of different centres.

(3) The Member of the Executive Council must allow the affected parties a reasonable period to comment on any requirement he or she intends to determine under subsection (1).

CHAPTER 6

QUALITY ASSURANCE AND PROMOTION

Quality assurance and promotion in adult general education and training

32. Quality assurance and promotion in adult general education and training must be conducted in terms of the provisions of the General and Further Education and Training Quality Assurance Act, 2000

Advice by NABAET

33. (1) The NABAET must advise the Minister on quality promotion and assurance.
- (2) The Minister must-
- (a) consider any advice given by the NABAET; and
 - (b) provide reasons in writing to the NABAET if the Minister does not accept the advice.
- (3) The Minister may act without the advice of the NABAET if-
- (a) the matter is urgent; or
 - (b) the NABAET has failed to provide the advice within a reasonable time.
- (4) If the Minister acts as contemplated in subsection (3) the Minister must-
- (a) notify the NABAET of such action; and
 - (b) provide reasons in writing to the NABAET for such action.

Report on quality assurance

34. (1) An annual report on the quality of adult general education and training must be made within a reasonable time after the end of the academic year-

- (a) in respect of the country as a whole by the NABAET; and
- (b) in respect of a province, by the Head of Department.

CHAPTER 7

GENERAL

Duty of centres to provide information

35. (1) A centre must make information available for inspection by any person, in so far as such information is required for the exercise and protection of such person's rights.

(2) Every centre must provide such information about the centre as is reasonably required by the Head of Department or the Director-General in consultation with the Head of Department.

(3) The Head of Department, Director-General, and any centre which offers adult general education and training must provide such information about the centre or quality of adult general education and training as is reasonably required by NABAET.

Investigation at a public centre

36. (1) The Member of the Executive Council may appoint a person to conduct an investigation at a public centre if-

- (a) the governing body of the public centre requests the appointment of such a person; or
- (b) circumstances arise at the public centre that-
 - (i) involve financial or other maladministration of a serious nature; or
 - (ii) seriously undermine the effective functioning of the public centre; and
- (c) the governing body of the public centre has failed to resolve such circumstances; and
- (d) the appointment is in the interest of adult general education and training in an open democratic society.

(2) The person appointed in terms of subsection (1) must, within 30 days after appointment and on the terms of reference specified by the Member of the Executive Council-

- (a) conduct an investigation at the public centre concerned;
- (b) report in writing to the Member of the Executive Council on the findings of his or her investigation; and
- (c) suggest appropriate measures to resolve the matter.

(3) The Member of the Executive Council must as soon as practicable furnish a copy of the report referred to in subsection (2) to the governing body concerned.

Name change of a public centre

37. (1) The governing body of a public centre may, with the approval of the Member of the Executive Council and by notice in the Provincial Gazette, change the name of such public centre.

Offences

38. (1) Any person other than a centre, or an organ of state, who without the authority of an adult general education and training centre-

- (a) offers or pretends to offer any adult general education and training programme or part thereof;
- (b) confers a qualification which purports to have been granted by centre, or in collaboration with a centre; or
- (c) purports to perform an act on behalf of centre,

is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.

(2) Any person who pretends that a qualification has been awarded to him or her by a centre, whereas in fact no such qualification has been so awarded, is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.

(3) Any person who contravenes section 27(1), is guilty of an offence and is liable on conviction to a fine or imprisonment not exceeding five years or to both such fine and imprisonment.

Limitation of liability

39. (1) Neither the State, the NABAET nor any person appointed in terms of this Act is liable for any loss or damage suffered by any person as a result of any act performed or omitted in good faith in the course of performing any function for which that person was appointed in terms of this Act.

Delegation of powers

40. (1) The Minister may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under this Act, except the power to make regulations, and the performance of any of his or her duties in terms of this Act to-

- (a) the NABAET;
- (b) any employee of the Department; or
- (c) any organ of State.

(2) The Member of the Executive council may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under this Act and the performance of his or her duties in terms of this Act to-

- (a) any employee in a provincial department responsible for education and training; or
- (b) any organ of State.

(3) The Director-General may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under this Act and the performance of any of his or her duties in terms of this Act to any employee in the Department.

(4) The Head of Department may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under this Act and the performance of any of his or her duties in terms of this Act to any employee in the provincial department of education.

(5) The governing body of a centre may, on such conditions as it may determine, delegate the exercise of any of its powers under this Act and the performance of any of its duties in terms of this Act, to other internal structures, or members of staff of such centre.

Short title

44. This Act is the Adult General Education and Training Act, 2000.

EXPLANATORY MEMORANDUM TO THE ADULT GENERAL EDUCATION AND TRAINING BILL, 2000

1. INTRODUCTION

This Bill was drafted to regulate adult general education and training (AGET) at an institution separate from other institutions, namely schools and further education and training institutions. Its main focus is to provide for viable adult learning centres.

2. BACKGROUND

2.1 The need to establish adult learning centres is based on the Green Paper, which is the product of an intensive process of research and consultation. In essence the Green Paper is the result of policies initiated by the Minister, including the Interim Guidelines for ABET (AGET) Provisioning, 1995, The Adult Basic Education and Training Policy, 1997, and the Multi-Year Implementation Plan for Adult Education and Training, 1997.

2.2 It is also based on the practical experiences of implementation of these policies through campaigns and pilots such as the Ithutheng Campaign from 1995 onwards, and the execution of the Multi-Year Implementation Plan for Adult General Education and Training that began in 1998.

2.3 The Green Paper addresses the following most important matters:

- Proposals for a new AGET system
- Proposals for a new AGET qualification within the NQF, a new curriculum, a new quality assurance framework and a new quality assurance mechanism
- Proposals for a new approach to AGET funding

Proposals for a new governance framework for the AGET system

3. REASONS FOR AND SUBSTANCE OF BILL

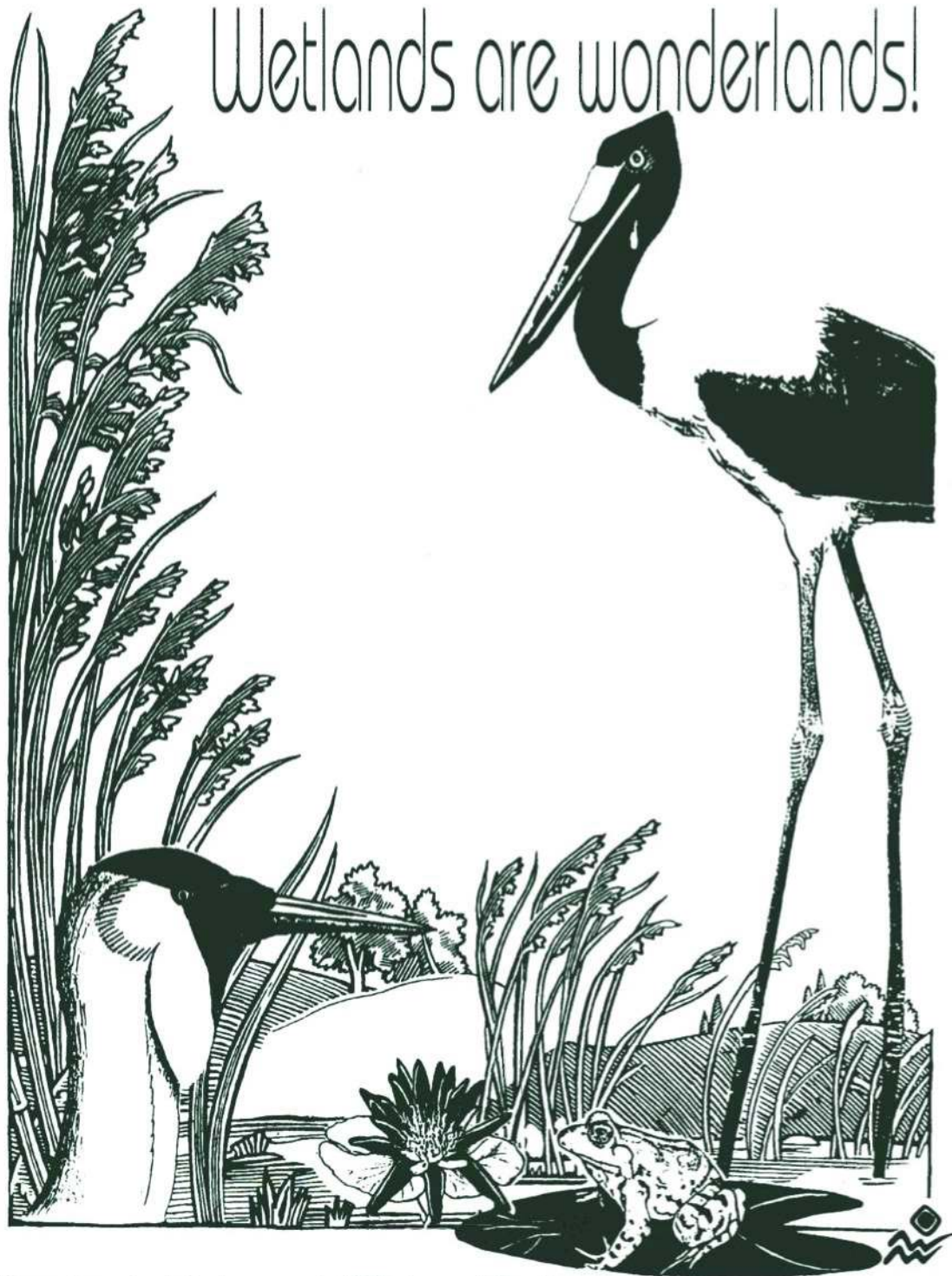
- 3.1 This Bill was drafted to serve as a legal framework, which is intended to give expression to section 29(1)(a) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996). In terms of this section, every person has the right to a basic education, which includes adult basic education.
- 3.2 1996 census figures released by Statistics South Africa reveal that there are 23 699 930 adults between the ages of 16 and 65 in South Africa. Of these, 3 283 290 have not accessed any schooling and 9 439 244 have not completed Grade 9. Accordingly, 12 722 534 adults (54 % of the total adult population) have not completed a general level of education.
- 3.3 The best way to break the back of illiteracy amongst adults is to regulate it by legislation. Currently, there is no legislation to control adult general education and training. Hence, it was necessary to draft the above-mentioned Bill.
- 3.4 The Bill will place an obligation on the Head of Department to provide facilities for the use of a public centre to perform its functions. If no facilities are available, the Head of Department, in terms of section 20(1)(k) of the South African Schools Act, 1996 (Act No. 84 of 1996), should request the governing body of a public school to allow the reasonable use of the facilities of the school by the public centre.
- 3.5 In terms of the Bill, all possible stakeholders shall be eligible governing body members. This is for the purpose of gaining support for the public centre. According to the Bill, the governing body will consist of elected members, the centre manager in his or her official capacity, co-opted members, representatives of sponsoring bodies if applicable, representatives of organisations of disabled persons if applicable and experts in the fields of adult general education and training if applicable.

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- 3.6 In cases where the public centre uses school facilities to perform its functions, the chairperson of the governing body and the principal of the school in question may be co-opted by the governing body of the public centre, but without voting rights.
- 3.7 The Bill provides for a public centre to have its own educators, employed by the Head of Department in terms of section 5 of the Employment of Educators Act, 1998 (Act No. 76 of 1998).
- 3.8 The Bill also makes provision for the funding of adult general education and training. The Member of the Executive Council must fund public adult general education and training, subject to the norms and standards for funding determined by the Minister in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996), from money appropriated for this purpose by the provincial legislature.
- 3.9 In order to control and regulate private adult learning centres, the Head of Department must register these centres and no person may establish or maintain such centres unless they are registered by the Head of Department.

4. PARLIAMENTARY PROCEDURE

The Department is of the opinion that this Bill must be dealt with in terms of sections 73 and 76 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

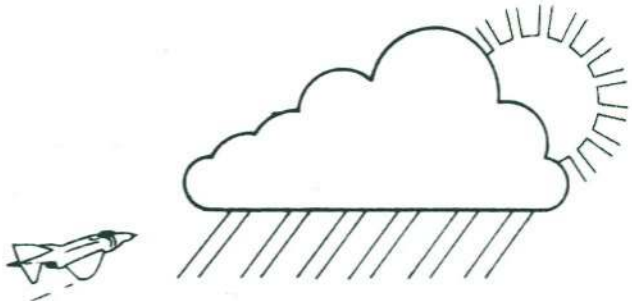
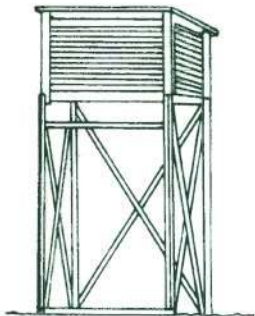
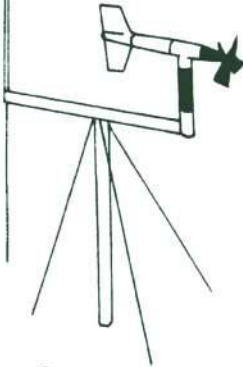
Wetlands are wonderlands!



Department of Environmental Affairs and Tourism

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