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REPUBLIEK VAN SUID-AFRIKA

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THE PRESIDENCY

No. 1598

19 December 2002

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

No. 63 of 2002: Higher Education Amendment Act, 2002.

DIE PRESIDENSIE

No. 1598

19 Desember 2002

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

No. 63 van 2002: Wysigingswet op Hoër Onderwys, 2002.

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
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- Words underlined with a solid line indicate insertions in existing enactments.
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*(English text signed by the President.)
(Assented to 9 December 2002.)*

ACT

To amend the Higher Education Act, 1997, so as to provide for consequential matters arising out of declarations and mergers of public higher education institutions in relation to labour and student matters; to provide for changes in the size of councils and institutional forums; to provide for the appointment of an administrator to take over the functions of a council which is deemed to have resigned; to make new provision for the Minister's authority to make regulations; and to make certain textual alterations; 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 (Act No. 101 of 1997) (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution for the definition of “higher education institution” of the following definition:
“higher education institution” means any institution that provides higher education on a full-time, part-time or distance basis and which is—
(a) merged, established or deemed to be established as a public higher education institution under this Act;
(b) declared as a public higher education institution under this Act; or
(c) registered or [**conditionally**] provisionally registered as a private higher education institution under this Act;”;
- (b) by the insertion after the definition of “higher education quality committee” of the following definition:
“incorporation of a subdivision” means the process of incorporation as contemplated in section 21(1)(b) or 24 in terms of which an identified subdivision, faculty, school, department, section or component of a public higher education institution or education institution becomes part of another public higher education institution while the latter institution's legal personality as contemplated in section 20(4) is not affected by the incorporation, and “an incorporated subdivision” has a similar meaning;”; and
- (c) by the insertion after the definition of “local juristic person” of the following definition:

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ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
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- Woerde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.
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*(Engelse teks deur die President geteken.)
(Goedgekeur op 9 Desember 2002.)*

WET

Om die Wet op Hoër Onderwys, 1997, te wysig ten einde voorsiening te maak vir aangeleenthede wat voortvloeи uit verklarings en samesmeltings van openbare inrigtings vir hoër onderwys met betrekking tot arbeids- en studenteaangeleenthede; voorsiening te maak vir veranderings in die grootte van rade en institusionele forums; voorsiening te maak vir die aanstelling van 'n administrateur om die funksies oor te neem van 'n raad wat geag word te bedank het; nuwe voorsiening te maak vir die Minister se bevoegdheid om regulasies uit te vaardig; en sekere teksveranderings aan te bring; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 101 van 1997

1. Artikel 1 van die Wet op Hoër Onderwys, 1997 (Wet No. 101 van 1997) (hierna die Hoofwet genoem), word hierby gewysig—

(a) deur die woordomskrywing van "inrigting vir hoër onderwys" deur die volgende woordomskrywing te vervang:

"inrigting vir hoër onderwys" enige inrigting wat hoër onderwys op 'n voltydse, deeltydse of afstandsgrondslag verskaf en wat—

(a) saamgesmelt, ingestel of geag ingestel te wees as 'n openbare inrigting vir hoër onderwys ingevolge hierdie Wet; of

(b) ingevolge hierdie Wet tot openbare inrigting vir hoër onderwys verklaar is; of

(c) geregistreer of **[voorwaardelik] voorlopig** geregistreer is as 'n private inrigting vir hoër onderwys kragtens hierdie Wet;";

(b) deur die volgende woordomskrywing na die woordomskrywing van "hoof" in te voeg:

"inkorporering van 'n onderafdeling" die proses van inkorporering soos in artikel 21(1)(b) of 24 beoog ingevolge waarvan 'n geïdentifiseerde onderafdeling, fakulteit, skool, departement, seksie of komponent van 'n openbare inrigting vir hoër onderwys of onderwysinrigting deel word van 'n ander openbare inrigting vir hoër onderwys terwyl die regpersoonlikheid van laasgenoemde inrigting soos in artikel 20(4) beoog nie deur die inkorporering geaffekteer word nie, en het "'n geïnkorporeerde onderafdeling" 'n ooreenstemmende betekenis;" en

(c) deur die volgende woordomskrywing na die woordomskrywing van "SAKO" in te voeg:

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“merger” means the process contemplated in section 23 in terms of which two or more public higher education institutions lose their status as juristic persons on the date that they are merged into a new juristic person as contemplated in section 20(4).”.

Amendment of section 8 of Act 101 of 1997

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2. Section 8 of the principal Act is hereby amended by the substitution, in subsection (3), for paragraph (b) of the following paragraph:

- (b) national organisations representing students, academic employees, employees other than academic employees, university principals, technikon principals, [principals of colleges of education,] principals of higher education colleges, principals of private higher education institutions, the further education sector, the distance education sector, educators, organised business and organised labour;”.

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Amendment of section 20 of Act 101 of 1997

3. Section 20 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

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

Amendment of section 21 of Act 101 of 1997

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

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

“(b) [a] an incorporated subdivision of a university, technikon or college.”;

- (b) by the substitution in subsection (3) for paragraph (b)(i) of the following subparagraph:

“(i) published a notice in one or more [daily] newspapers circulating in the area in which the education institution provides higher education, containing the reasons for the declaration referred to in subsection (1), in all the official languages used as media of instruction by the education institution concerned;”; and

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- (c) by the substitution for subsection (5) of the following subsections:

“(5) (a) Notwithstanding sections 197 and 197A of the Labour Relations Act, 1995 (Act No. 66 of 1995), the contracts of employment between the education institution (herein referred to as ‘the old employer’) and its employees are transferred automatically to the declared higher education institution (herein referred to as ‘the new employer’) as from the date of the declaration contemplated in subsection (1), but any redeployment of an employee as a consequence of the declaration is subject to applicable labour legislation.

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(b) If an education institution is declared a higher education institution as contemplated in subsection (1), all the rights and obligations between the old employer and each employee at the time of the declaration continue in force as if they were rights and obligations between the new employer and each employee and anything done before the declaration by or in relation to the old employer is deemed to have been done by or in relation to the new employer.

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(c) A declaration referred to in subsection (1) does not interrupt the employee’s continuity of employment.

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(d) The provisions of this subsection do not affect the liability of any person to be disciplined for, prosecuted for, convicted of, and sentenced for any offence or misconduct.

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(e) An employee or a student is subject to the disciplinary codes and rules applicable to the higher education institution as from the date of the declaration contemplated in subsection (1), but if any enquiry into

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“samesmelting” die proses in artikel 23 beoog ingevolge waarvan twee of meer openbare inrigtings vir hoër onderwys hulle status as regspersone verloor op die datum waarop hulle saamsmelt in ’n nuwe regspersoon soos in artikel 20(4) beoog.”.

Wysiging van artikel 8 van Wet 101 van 1997

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2. Artikel 8 van die Hoofwet word hierby gewysig deur in subartikel (3) paragraaf (b) deur die volgende paragraaf te vervang:

“(b) nasionale organisasies wat verteenwoordigend is van studente, akademiese werknemers, ander werknemers as akademiese werknemers, hoofde van universiteite, hoofde van technikons, [hoofde van onderwyskolleges,] hoofde van kolleges vir hoër onderwys, hoofde van private inrigtings vir hoër onderwys, die verdere onderwyssektor, die afstandsondersektor, opvoeders, georganiseerde handel en georganiseerde arbeid;”.

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Wysiging van artikel 20 van Wet 101 van 1997

3. Artikel 20 van die Hoofwet word hierby gewysig deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Elke openbare inrigting vir hoër onderwys ingestel, saamgesmelt, geag ingestel te wees, of verklaar tot openbare inrigting vir hoër onderwys kragtens hierdie Wet, is ’n regspersoon.”.

Wysiging van artikel 21 van Wet 101 van 1997

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4. Artikel 21 van die Hoofwet word hierby gewysig—

(a) deur in subartikel (1) paragraaf (b) deur die volgende paragraaf te vervang:

“(b) ’n geïnkorporeerde onderafdeling van ’n universiteit, technikon of kollege.”;

(b) deur in subartikel (3) paragraaf (b)(i) deur die volgende subparagraaf te vervang:

“(i) ’n kennisgewing gepubliseer het in een of meer [dagblaaie] koerante wat in die gebied versprei word waarin die onderwysinrigting hoër onderwys aanbied met die redes vir die verklaring bedoel in subartikel (1) in al die amptelike tale wat gebruik word as onderrigmedia deur die betrokke onderwysinrigting;”;

(c) deur subartikel (5) deur die volgende subartikels te vervang:

“(5) (a) Ondanks artikels 197 en 197A van die Wet op Arbeidsbetrekkinge, 1995 (Wet No. 66 van 1995), word die dienskontrakte tussen die onderwysinrigting (hierin ‘die ou werkewer’ genoem) en sy werknemers na die verklaarde inrigting vir hoër onderwys (hierin ‘die nuwe werkewer’ genoem) outomatis oorgeplaas vanaf die datum van die verklaring in subartikel (1) beoog, maar enige herontplooiing van ’n werknemer as ’n gevolg van die verklaring is onderhewig aan toepaslike arbeidswetgewing.”;

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(b) Indien ’n onderwysinrigting tot inrigting vir hoër onderwys verklaar word soos in subartikel (1) beoog, bly alle regte en verpligtings tussen die ou werkewer en elke werknemer op die datum van die verklaring van krag asof dit regte en verpligtings tussen die nuwe werkewer en elke werknemer is, en enigets wat voor die verklaring deur of met betrekking tot die ou werkewer gedoen is, word geag deur of met betrekking tot die nuwe werkewer gedoen te wees.

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(c) ’n Verklaring in subartikel (1) bedoel onderbreek nie die werknemer se ononderbroke diens nie.

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(d) Die bepalings van hierdie subartikel raak nie die aanspreeklikheid van enige persoon wat vir enige misdryf of wangedrag gedissiplineer of vervolg, aan enige misdryf of wangedrag skuldig bevind en daarvoor gevonnis, staan te word nie.

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(e) ’n Werknemer of ’n student is vanaf die datum van die verklaring in subartikel (1) beoog onderhewig aan die tugkodes en -reëls wat op die inrigting vir hoër onderwys van toepassing is, maar indien enige

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| incapacity or any proceedings in respect of a charge of misconduct had been instituted or commenced against any employee or student before the date of the declaration, such enquiry or proceedings continue in terms of the codes and rules applicable to the education institution immediately prior to the declaration. | 5 |
| (6) Notwithstanding subsection (5)(a), the old employer may undertake rationalisation of its workforce according to operational requirements in accordance with section 189 of the Labour Relations Act, 1995 (Act No. 66 of 1995), prior to the date of the declaration contemplated in subsection (1). | 10 |
| (7) If an education institution is declared a higher education institution as contemplated in subsection (1), the higher education institution— | 15 |
| (a) continues with all academic programmes offered by the education institution under the rules applicable to the education institution immediately before the date of the declaration, until such programmes and rules are amended or restructured by its council; and | 20 |
| (b) awards a degree, diploma or certificate to a student who qualifies before or after the date of the declaration in its own name, but if the student started the course before the date of the declaration, such degree, diploma or certificate must also reflect the name of the education institution as it was before the <u>declaration.</u> ”. | 25 |
| Amendment of section 23 of Act 101 of 1997 | |
| 5. Section 23 of the principal Act is hereby amended— | 30 |
| (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph: | 35 |
| “(b) publish a notice giving the reasons for the proposed merger in [at least] one [national and one regional newspaper] or more newspapers circulating in the area in which the public higher education institutions concerned are situated;”; | 40 |
| (b) by the deletion of subsection (2) of paragraph (e); | 45 |
| (c) by the insertion after subsection (2) of the following subsections: | 50 |
| “(2A) Notwithstanding sections 197 and 197A of the Labour Relations Act, 1995 (Act No. 66 of 1995), the contracts of employment between the public higher education institution (herein referred to as ‘the old employer’) and its employees are transferred automatically to the merged single public higher education institution (herein referred to as ‘the new employer’) as from the date of the merger contemplated in subsection (1), but any redeployment of an employee as a consequence of the merger is subject to applicable labour legislation. | 55 |
| (2B) If two or more public higher education institutions are merged into a single public higher education institution as contemplated in subsection (1), all the rights and obligations between the old employers and each employee at the time of the merger continue in force as if they were rights and obligations between the new employer and each employee and anything done before the merger by or in relation to the old employers is considered to have been done by or in relation to the new employer. | 60 |
| (2C) A merger referred to in subsection (1) does not interrupt the employee’s continuity of employment. | 65 |
| (2D) The provisions of subsections (2A) to (2F) do not affect the liability of any person to be disciplined for, prosecuted for, convicted of and sentenced for any offence or misconduct. | 70 |
| (2E) An employee or a student is subject to the disciplinary codes and rules applicable to the new single public higher education institution as from the date of the merger contemplated in subsection (1), but if any enquiry into incapacity or any proceedings in respect of a charge of | 75 |

ondersoek na onbekwaamheid of enige verrigtinge ten aansien van 'n klag van wangedrag voor die datum van die verklaring teen enige werknemer of student ingestel of begin is, gaan sodanige ondersoek of verrigtinge voort ingevolge die kodes en reëls wat onmiddellik voor die verklaring op die opvoedkundige inrigting van toepassing was.

(6) Ondanks subartikel (5)(a), kan die ou werkewer voor die datum van die verklaring in subartikel (1) beoog rasionalisering van sy arbeidsmag onderneem volgens operasionele vereistes in ooreenstemming met artikel 189 van die Wet op Arbeidsbetrekkinge, 1995 (Wet No. 66 van 1995).

(7) Indien 'n onderwysinrigting tot inrigting vir hoër onderwys verklaar word soos in subartikel (1) beoog—

(a) gaan die inrigting vir hoër onderwys voort met alle akademiese programme wat deur die onderwysinrigting aangebied word kragtens die reëls wat onmiddellik voor die datum van die verklaring op die onderwysinrigting van toepassing was, tot tyd en wyl sodanige programme en reëls deur sy raad gewysig of herstruktureer word; en

(b) ken die inrigting vir hoër onderwys in sy eie naam 'n graad, diploma of sertifikaat toe aan 'n student wat voor of na die datum van die verklaring kwalificeer, maar indien die student die kursus begin het voor die datum van die verklaring, moet sodanige graad, diploma of sertifikaat ook die naam van die onderwysinrigting soos dit voor die verklaring was, weerspieël".

Wysiging van artikel 23 van Wet 101 van 1997

5. Artikel 23 van die Hoofwet word hierby gewysig—

(a) deur paragraaf (b) van subartikel (2) deur die volgende paragraaf te vervang:

“(b) 'n kennisgewing met die redes vir die voorgestelde samesmelting publiseer in [ten minste] een [nasionale en een streeksdagblad] of meer dagblaale wat in die gebied versprei word waarin die betrokke openbare inrigtings vir hoër onderwys geleë is;”;

(b) deur paragraaf (e) van subartikel (2) te skrap;

(c) deur na subartikel (2) die volgende nuwe subartikels in te voeg:

“(2A) Ondanks artikels 197 en 197A van die Wet op Arbeidsbetrekkinge, 1995 (Wet No. 66 van 1995), word die dienskontrakte tussen die openbare inrigting vir hoër onderwys (hierin 'die ou werkewer' genoem) en sy werknemers outomaties oorgeplaas na die saamgesmelte enkele openbare inrigting vir hoër onderwys (hierin 'die nuwe werkewer' genoem) vanaf die datum van die samesmelting in subartikel (1) beoog, maar enige herontplooiing van 'n werknemer as 'n gevolg van die samesmelting is onderhewig aan toepaslike arbeidswetgewing.

(2B) Indien twee of meer openbare inrigtings vir hoër onderwys saamsmelt tot 'n enkele openbare inrigting vir hoër onderwys soos in subartikel (1) beoog, bly alle regte en verpligtings tussen die ou werkewers en elke werknemer op die datum van die samesmelting van krag asof dit regte en verpligtings tussen die nuwe werkewer en elke werknemer was, en enigiets wat voor die samesmelting deur of met betrekking tot die ou werkewers gedoen is, word geag deur of met betrekking tot die nuwe werkewer gedoen te wees.

(2C) 'n Samesmelting in subartikel (1) bedoel onderbreek nie die werknemer se ononderbroke diens nie.

(2D) Die bepalings van subartikels (2A) tot (2F) raak nie die aanspreeklikheid van enige persoon wat vir enige misdryf of wangedrag gedissiplineer of vervolg, aan enige misdryf of wangedrag skuldig bevind en daarvoor gevonnis, staan te word nie.

(2E) 'n Werknemer of 'n student is vanaf die datum van die samesmelting in subartikel (1) beoog onderhewig aan die tugkodes en -reëls wat op die nuwe enkele openbare inrigting vir hoër onderwys van toepassing is, maar indien enige ondersoek na onbekwaamheid of enige

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| <p>misconduct had been instituted or commenced against any employee or student before the date of the merger, such enquiry or proceedings continue in terms of the codes and rules applicable to the relevant public higher education institution immediately prior to the merger.</p> <p>(2F) Until the new single public higher education institution has made disciplinary codes or rules, the disciplinary codes and rules of the respective old public higher education institutions are applicable to the respective employees and students.</p> <p>(2G) Notwithstanding subsection (2A), the old employer may undertake rationalisation of its workforce according to operational requirements in accordance with section 189 of the Labour Relations Act, 1995 (Act No. 66 of 1995), prior to the date of the merger contemplated in subsection (1).</p> <p>(2H) If two or more public higher education institutions are merged into a single public higher education institution as contemplated in subsection (1), the new single public higher education institution—</p> <ul style="list-style-type: none"> (i) continues with all academic programmes offered by the old higher education institutions under the rules applicable to the respective higher education institutions immediately before the date of the merger, until such programmes and rules are amended or restructured by the new council; and (ii) awards a degree, diploma or certificate to a student who qualifies before or after the date of the merger in its own name, but such degree, diploma or certificate must also reflect the name of the education institution at which the student was registered immediately before the date of the merger if the student was so registered.”; <p>(d) by the substitution for subsection (3) of the following subsection:</p> <p>“(3)(a) The single public higher education institution contemplated in subsection (1) is deemed to be a public higher education institution established under [this Act] section 20.</p> <p>(b) The Minister must, after consultation with the councils of the public higher education institutions that are to be merged, determine by notice contemplated in section 23(1)—</p> <ul style="list-style-type: none"> (i) the date of establishment of the institution; (ii) the type and name of the institution; and (iii) <u>the physical location and official address of the institution.”;</u> <p>(e) by the substitution for paragraph (b) of subsection (7) of the following paragraph:</p> <p>“(b) [four other members] a minimum of six members and a maximum of eight members.”;</p> <p>(f) by the substitution for subsection (8) of the following subsection:</p> <p>(8) The [four] members contemplated in subsection (7)(b)—</p> <ul style="list-style-type: none"> (a) must be appointed by the Minister from nominations received from the public higher education institutions concerned; and (b) may not include any member of staff, or student, from the public higher education institutions concerned.”; and <p>(g) by the insertion after subsection (11) of the following subsections:</p> <p>“(12) Upon a written request by the Minister and within 60 days thereof, each of the public higher education institutions referred to in subsection (1) must provide the Minister with no fewer than four nominations for appointment of the members as contemplated in subsection (8)(a).</p> <p>(13) Notwithstanding subsection (8), if any of the public higher education institutions fail to provide the nominations in terms of subsection (12), the Minister may appoint the members referred to in subsection (7)(b) from the nominations received from the other institution concerned, or at his or her discretion.”.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p> <p>55</p> |
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Substitution of section 24 of Act 101 of 1997

6. The following section is hereby substituted for section 24 of the principal Act: 60

verrigtinge ten aansien van 'n klag van wangedrag voor die datum van die samesmelting teen enige werknemer of student ingestel of begin is, gaan sodanige ondersoek of verrigtinge voort ingevolge die kodes en reëls wat onmiddellik voor die samesmelting op die betrokke openbare inrigting vir hoër onderwys van toepassing was.

(2F) Tot tyd en wyl die nuwe enkele openbare inrigting vir hoër onderwys tugkodes en -reëls ingestel het, bly die tugkodes en -reëls van die onderskeie ou openbare inrigtings vir hoër onderwys op die onderskeie ou werknemers en studente van toepassing.

(2G) Ondanks subartikel (2A), kan die ou werkewer voor die datum van die samesmelting in subartikel (1) beoog, rasionalisering van sy arbeidsmag onderneem volgens operasionele vereistes in ooreenstemming met artikel 189 van die Wet op Arbeidsbetrekkinge, 1995 (Wet No. 66 van 1995).

(2H) Indien twee of meer openbare inrigtings vir hoër onderwys tot 'n enkele inrigting vir hoër onderwys saamsmelt soos in subartikel (1) beoog—

(i) gaan die nuwe enkele inrigting vir hoër onderwys voort met alle akademiese programme wat deur die ou inrigtings vir hoër onderwys aangebied is kragtens die reëls wat onmiddellik voor die datum van die samesmelting op die onderskeie inrigtings vir hoër onderwys van toepassing was, tot tyd en wyl sulke programme en reëls deur die nuwe raad gewysig of herstruktureer word; en

(ii) ken die nuwe enkele inrigting vir hoër onderwys in sy eie naam 'n graad, diploma of sertifikaat toe aan 'n student wat voor of na die datum van die samesmelting kwalificeer, maar sodanige graad, diploma of sertifikaat moet ook die naam weerspieël van die onderwysinrigting waar die student onmiddellik voor die datum van die samesmelting geregistreer was, indien die student sodanig geregistreer was.";

(d) deur subartikel (3) deur die volgende subartikel te vervang:

"(3) (a) Die enkele openbare inrigting vir hoër onderwys beoog in subartikel (1) word geag 'n openbare inrigting vir hoër onderwys kragtens [hierdie Wet] artikel 20 ingestel te wees.

(b) Die Minister moet, na oorlegpleging met die rade van die openbare inrigtings vir hoër onderwys wat saamgesmelt staan te word, by kennisgewing in artikel 23(1) beoog—

(i) die datum van instelling van die inrigting bepaal;
(ii) die tipe en naam van die inrigting bepaal; en

(iii) die fisiese ligging en amptelike adres van die inrigting bepaal.";

(e) deur paragraaf (b) van subartikel (7) deur die volgende paragraaf te vervang:

"(b) [**vier ander lede**] 'n minimum van ses lede en 'n maksimum van agt lede.";

(f) deur subartikel (8) deur die volgende subartikel te vervang:

"(8) Die [**vier**] lede in subartikel (7)(b) beoog—

(a) moet deur die Minister aangestel word uit nominasies ontvang van die betrokke openbare inrigtings vir hoër onderwys; en

(b) mag nie enige personeel of student van die betrokke openbare inrigtings vir hoër onderwys insluit nie."; en

(g) deur die volgende subartikels na subartikel (11) in te voeg:

"(12) Op skriftelike versoek deur die Minister en binne 60 dae daarna moet elkeen van die openbare inrigtings vir hoër onderwys in subartikel (1) bedoel, die Minister voorsien van minstens vier nominasies vir aanstelling van die lede soos in subartikel (8)(a) beoog.

(13) Ondanks subartikel (8), indien enige van die openbare inrigtings vir hoër onderwys versuim om die nominasies in subartikel (12) beoog te voorsien, kan die Minister die lede in subartikel (7)(b) bedoel uit die nominasies wat van die ander betrokke inrigting ontvang is, of na sy of haar goedgunke aanstel.".

Vervanging van artikel 24 van Wet 101 van 1997

6. Artikel 24 van die Hoofwet word hierby deur die volgende artikel vervang:

“[Merger] Incorporation of subdivisions of public higher education institutions

24. (1) The Minister may, after consulting the CHE and by notice in the *Gazette*, [merge] incorporate a subdivision of a public higher education institution with another public higher education institution. 5

(2) The assets, liabilities, rights and obligations of the subdivisions concerned devolve upon the public higher education institution with which the subdivision has [merged] been incorporated in a manner agreed by the councils of the public higher education institutions concerned or failing such agreement, in a manner determined by the Minister after consulting such councils. 10

(3) Sections 22(2) to (6) and 23(2), with the changes required by the context, apply to [a merger] an incorporation referred to in subsection (1).”. 15

Amendment of section 27 of Act 101 of 1997

7. Section 27 of the principal Act is hereby amended by the substitution for subsections (4) and (5) of the following subsections, respectively:

“(4) The council of a public higher education institution must consist of not more than 30 members, made up of— 20

- (a) the principal;
- (b) the vice-principal or vice-principals;
- (c) not more than five persons appointed by the Minister;
- (d) a member or members of the senate elected by the senate;
- (e) an academic employee or academic employees of the public higher education institution, elected by such employees; 25
- (f) a student or students of the public higher education institution, elected by the students' representative council;
- (g) an employee or employees other than academic employees, elected by such employees of the public higher education institution; and
- (h) such additional persons as may be determined by the institutional statute. 30

(5) The number of persons contemplated in subsection (4)(b), (d), (e), (f), (g) and (h) and the manner in which they are elected, where applicable, must be determined by the institutional statute [or an Act of Parliament].”. 35

Amendment of section 31 of Act 101 of 1997

8. Section 31 of the principal Act is hereby amended by the substitution in subsection 35
(2) for the words preceding paragraph (a) of the following words:

“(2) The institutional forum of a public higher education institution must consist of a representative or representatives of—”. 40

Amendment of section 40 of Act 101 of 1997

9. Section 40 of the principal Act is hereby amended by the substitution in subsection 40
(2) for paragraph (b) of the following paragraph:

“(b) A resolution contemplated in paragraph (a) must be approved by the Minister if the sum of the borrowing it authorises plus the borrowing previously approved but not yet taken up, plus the institution's short-term and long-term debt at that date exceeds— 45

- (i) such amount as the Minister has determined for such institution; or
- (ii) in the absence of such determination, five per cent of the average annual income of the public higher education institution during the two years immediately preceding the date of such resolution.”. 50

Substitution of section 41 of Act 101 of 1997

10. The following section is hereby substituted for section 41 of the principal Act:

“[Samesmelting] Inkorporering van onderafdelings van openbare inrigtings vir hoër onderwys

24. (1) Die Minister kan, na oorleg met die RHO en by kennisgewing in die *Staatskoerant*, 'n onderafdeling van 'n openbare inrigting vir hoër onderwys [met] by 'n ander openbare inrigting vir hoër onderwys [laat saamsmelt] inkorporeer. 5

(2) Die bates, laste, regte en verpligtinge van die betrokke onderafdeling gaan oor op die openbare inrigting vir hoër onderwys [waarmee] waarby die onderafdeling [saamgesmelt het] geïnkorporeer is op 'n wyse ooreengekom deur die rade van die betrokke openbare inrigtings vir hoër onderwys, of andersins, op 'n wyse bepaal deur die Minister na oorleg met die rade. 10

(3) Artikels 22(2) tot (6) en 23(2), met die veranderinge vereis deur die konteks, is van toepassing op 'n [samesmelting] inkorporering in subartikel (1) bedoel.”. 15

Wysiging van artikel 27 van Wet 101 van 1997

7. Artikel 27 van die Hoofwet word hierby gewysig deur subartikels (4) en (5) deur onderskeidelik die volgende subartikels te vervang:

“(4) Die raad van 'n openbare inrigting vir hoër onderwys bestaan uit hoogstens 30 lede, saamgestel uit— 20

- (a) die hoof;
- (b) die adjunkhoof of adjunkhoofde;
- (c) hoogstens vyf persone deur die Minister aangestel;
- (d) 'n lid of lede van die senaat verkies deur die senaat;
- (e) 'n akademiese werknaemers of akademiese werknaemers van die inrigting vir hoër onderwys, verkies deur daardie werknaemers;
- (f) 'n student of studente van die openbare inrigting vir hoër onderwys, verkies deur die verteenwoordigende studenteraad;
- (g) 'n ander werknaemers of werknaemers as akademiese werknaemers, verkies deur daardie werknaemers van die openbare inrigting vir hoër onderwys; 30
- (h) die bykomende persone wat by die institusionele statuut bepaal kan word.

(5) Die getal persone beoog in subartikel (4) (b), (d), (e), (f), (g) en (h) en die wyse waarop hulle verkies word, waarvan toepassing, word by die institusionele statuut [of 'n Wet van die Parlement] bepaal.”. 35

Wysiging van artikel 31 van Wet 101 van 1997

8. Artikel 31 van die Hoofwet word hierby gewysig deur die woorde in subartikel (2) wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“(2) Die institusionele forum van 'n openbare inrigting vir hoër onderwys bestaan uit 'n verteenwoordiger of verteenwoordigers van—”. 40

Wysiging van artikel 40 van Wet 101 van 1997

9. Artikel 40 van die Hoofwet word hierby gewysig deur in subartikel (2) paragraaf (b) deur die volgende paragraaf te vervang:

“(b) 'n Besluit beoog in paragraaf (a) moet deur die Minister goedgekeur word 45
indien die bedrag van die lening wat dit magtig plus die lening wat vantevore goedgekeur is maar nog nie opgeneem is nie, plus die inrigting se korttermyn- en langtermynskuld op daardie datum—
(i) die bedrag oorskry wat die Minister vir sodanige inrigting bepaal het; of
(ii) in die afwesigheid van so 'n bepaling, vyf persent van die gemiddelde jaarlikse inkomste van daardie openbare inrigting vir hoër onderwys gedurende die twee jaar wat sodanige ooreenkoms onmiddellik voorafgaan, oorskry.”. 50

Wysiging van artikel 41 van Wet 101 van 1997

10. Artikel 41 van die Hoofwet word hierby deur die volgende artikel vervang: 55

“Records to be kept and information to be furnished by council

- 41.** (1) The council of a public higher education institution must in the manner [determined] prescribed by the Minister—
 (a) keep records of all its proceedings; and
 (b) keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions of the public higher education institution as a whole, of its substructures and of other bodies operating under its auspices. 5
- (2) The council of a public higher education institution must, in respect of the preceding year and by a date or dates and in the manner [determined] prescribed by the Minister, provide the Minister with[—
 (a) a report on the overall governance of the public higher education institution;
 (b) a duly audited statement of income and expenditure; and
 (c) a balance sheet and cash flow statement. 10
- (3) The council of a public higher education institution must provide the Minister with] such information, in such format, as the Minister [may reasonably require] prescribes .”. 15

Amendment of section 41A of Act 101 of 1997

- 11.** Section 41A of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection: 20
 “(3) Notwithstanding subsection (1), if a council is deemed to have resigned as contemplated in section 27(8), the Minister must appoint a person for a period of not longer than six months as an administrator on behalf of the institution to—
 (a) take over the authority of the council;
 (b) perform the council’s functions relating to governance; and
 (c) ensure that a new council is constituted.”. 25

Amendment of section 65A of Act 101 of 1997

- 12.** Section 65A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 30
 “(1) The seat of a public higher education institution is the physical location of the institution, as contemplated in sections 20(3)(c), [and] 21(2)(c) and 23(3)(c), where an institution carries out its teaching activities and must be defined in the institutional statute.”.

Amendment of section 69 of Act 101 of 1997 35

- 13.** Section 69 of the principal Act is hereby amended by the substitution for section 69 of the following section:

“Regulations

- 69.** The Minister may make regulations consistent with this Act on—
 (a) any matter which the Minister is empowered or required to prescribe 40 by regulation in terms of this Act;
 (b) the maximum remuneration of council members;
 (c) the annual reporting framework;
 (d) any policy matter as contemplated in section 3; and
 [(b)](e) any other matter [in respect of which the Minister deems] which 45 it is necessary or expedient to prescribe in order to achieve the objects of this Act.”.

Transitional arrangements

- 14.** (1) If the institutional statute of a public higher education institution provides for a council of more than 30 members the council must amend the institutional statute to 50

“Raad moet rekords hou en inligting verstrek

41. (1) Die raad van 'n openbare inrigting vir hoër onderwys moet op die wyse deur die Minister [**bepaal**] voorgeskryf—

- (a) rekords hou van al sy verrigtinge; en
- (b) volledige verrekeningsrekords hou van alle bates, laste, inkomste en uitgawes en enige ander finansiële transaksies van die openbare inrigting vir hoër onderwys as 'n geheel, van sy substrukture en van ander liggeme wat onder beskerming van die inrigting funksioneer.

(2) Die raad van 'n openbare inrigting vir hoër onderwys moet, ten opsigte van die vorige jaar en teen die datum of datums en op die wyse deur die Minister [**bepaal**] voorgeskryf, die Minister voorsien van[—

- (a) **'n verslag oor die algehele beheer van die openbare inrigting vir hoër onderwys;**
- (b) **'n behoorlik geouditeerde staat van inkomste en uitgawes; en**
- (c) **'n balansstaat en kontantvloeistaat.**

(3) Die raad van 'n openbare inrigting vir hoër onderwys moet die Minister voorsien van] die inligting, in die formaat, wat die Minister [redelikerwys vereis] voorskryf.”.

Wysiging van artikel 41A van Wet 101 van 1997

11. Artikel 41A van die Hoofwet word hierby gewysig deur na subartikel (2) die volgende subartikel in te voeg:

“(3) Ondanks subartikel (1), indien dit geag word dat 'n raad bedank het soos beoog in artikel 27(8), moet die Minister vir 'n tydperk van hoogstens ses maande 'n persoon aanstel as 'n administrateur namens die inrigting om—

- (a) die bevoegdheid van die raad oor te neem;
- (b) die werkzaamhede van die raad ten aansien van beheer te verrig; en
- (c) toe te sien dat 'n nuwe raad gekonstitueer word.”.

Wysiging van artikel 65A van Wet 101 van 1997

12. Artikel 65A van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die setel van 'n openbare inrigting vir hoër onderwys is die fisiese ligging van die inrigting soos in artikels 20(3)(c), [**en**] 21(2)(c) en 23(3)(c) beoog, waar die inrigting sy onderrigbedrywighede beoefen, en moet in die institusionele statuut omskryf word.”.

Wysiging van artikel 69 van Wet 101 van 1997

13. Artikel 69 van die Hoofwet word hierby gewysig deur artikel 69 deur die volgende artikel te vervang:

“Regulasies

69. Die Minister kan regulasies bestaanbaar met hierdie Wet uitvaardig oor—

- (a) enige aangeleenthed wat die Minister ingevolge hierdie Wet by regulasie kan of moet voorskryf;
- (b) die maksimum besoldiging van raadslede;
- (c) die raamwerk vir jaarlikse verslagdoening;
- (d) enige beleidsaangeleenthed soos in artikel 3 beoog; en
- [**(b)**] (e) enige ander aangeleenthed wat [**die Minister**] nodig of dienstig [**ag**] is om voor te skryf ten einde die oogmerke van hierdie Wet te bereik.”.

Oрганы

14. (1) Indien die institusionele statuut van 'n openbare inrigting vir hoër onderwys voorsiening maak vir 'n raad van meer as 30 lede, moet die raad die institusionele statuut

provide for a council of not more than 30 members, and must do so within 12 months of the commencement of this Act.

(2) If a council fails to comply with subsection (1) the Minister must amend the institutional statute of that institution, after consultation with its council, to provide for a council of not more than 30 members, and must do so within 24 months of the commencement of this Act. 5

(3) Notwithstanding any other provision, the terms of office of members of any council which has a membership of more than 30 terminate on a date to be determined by the Minister by notice in the *Gazette*.

(4) The date contemplated in subsection (3) must be— 10

(a) at least three months after the promulgation of provisions in terms of subsection (1) or subsection (2);

(b) not later than 30 months after the date of commencement of this Act.

(5) The council of such institution must be reconstituted in terms of the amended provisions on the day after the date contemplated in subsection (3). 15

Short title

15. This Act is called the Higher Education Amendment Act, 2002.

wysig om voorsiening te maak vir 'n raad van hoogstens 30 lede, en dit doen binne 12 maande na die inwerkingtreding van hierdie Wet.

(2) Indien 'n raad in gebreke bly om aan subartikel (1) te voldoen, moet die Minister die institusionele statuut van daardie inrigting wysig, na oorlegpleging met sy raad, ten einde voorsiening te maak vir 'n raad van hoogstens 30 lede, en dit doen binne 24 maande na die inwerkingtreding van hierdie Wet. 5

(3) Ondanks enige ander bepaling, verstryk die ampstermyne van die lede van enige raad wat 'n lidmaatskap van meer as 30 het op 'n datum wat deur die Minister by kennisgewing in die *Staatskoerant* bepaal word.

(4) Die datum in subartikel (3) beoog moet— 10

(a) minstens drie maande na die uitvaardiging van bepalings ingevolge subartikel

(1) of subartikel (2) wees;

(b) hoogstens 30 maande na die inwerkingtreding van hierdie Wet wees.

(5) Die raad van sodanige inrigting moet herkonstitueer word ingevolge die gewysigde bepalings op die dag na die datum in subartikel (3) beoog. 15

Kort titel

15. Hierdie Wet heet die Wysigingswet op Hoër Onderwys, 2002.

