REPUBLIC OF SOUTH AFRICA

ADULT BASIC EDUCATION AND TRAINING ACT

REPUBLIEK VAN SUID-AFRIKA

WET OP BASIESE ONDERWYS EN OPLEIDING VIR VOLWASSENES

ACT

To regulate adult basic 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 basic 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 basic education and training system which promotes co-operative governance and provides for programme-based adult basic 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 basic 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 basic 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 and to 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 and the labour market and of the communities served by the centres;

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

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

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CHAPTER 1

DEFINITIONS AND APPLICATION OF ACT

Definitions

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

(i) ''adult'' means a person who is sixteen years or older;

(ii) ''adult basic education and training'' means all learning and training programmes for adults from level 1 to 4 where level 4 is equivalent to—

(a) grade 9 in public schools; or

(b) national qualifications framework level 1 as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

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

(iv) ''centre'' means a public or private centre;

(v) ''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);

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

(vii) ''Council of Education Ministers'' means the Council established under section 9 of the National Education Policy Act, 1996 (Act No. 27 of 1996);

(viii) ''Department'' means the government department responsible for education at national level;

(ix) ''Director-General'' means the Director-General of the Department;

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

(xi) ''Employment Educators Act'' means the Employment Educators Act, 1998 (Act No. 76 of 1998);
(xii) ''governing body'' means a governing body contemplated in section 8;
(xiii) ''grade'' means a grade as defined in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996);
(xiv) ''Head of Department'' means the head of a provincial department of education;
(xv) ''learner'' means any person receiving education in terms of this Act;
(xvi) ''Member of the Executive Council'' means the member of the Executive Council of the province in question who is responsible for education in that province;
(xvii) ''Minister'' means the Minister of Education;
(xviii) ''NABABET'' means the National Advisory Board for Adult Basic Education and Training, established by regulation in terms of section 11 of the National Education Policy Act. 1996 (Act No. 27 of 1996);
(xix) ''organ of state'' means an organ of state as defined in section 239 of the Constitution;
(xx) ''policy'' means policy determined by the—
(a) Minister in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996); or
(b) Member of the Executive Council in terms of a provincial law;
(xxi) ''private centre'' means a private centre registered in terms of section 27 which offers adult basic education and training;
(xxii) ''provincial legislature'' means a provincial legislature contemplated in section 104 of the Constitution;
(xxiii) ''public centre'' means a public centre established in terms of section 3 which offers adult basic education and training;
(xxiv) ''this Act'' includes the regulations made under this Act.

Application of Act

2. (1) This Act applies to any adult basic education and training offered at any centre 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).

CHAPTER 2

PUBLIC CENTRES

Establishment of public centre

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

(2) Every public centre contemplated in subsection (1) must be a juristic person.

(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 to the benefit of the centre for educational purposes.

(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 (3) may be restricted by the Head of Department if the immovable property is not used by the centre for educational purposes.

(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 and the reasons therefor;
(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.

Provision of facilities

4. (1) The Head of Department must provide facilities for use by 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 (Act No. 84 of 1996), request the governing body of a public school to allow 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 among other things for the—

(a) amount of time, and the time of day or night that the school facilities may be used by the public centre;

(b) manner in which resources and the costs must be shared between the school and the public centre;

(c) responsible authority to be liable for payment of the costs referred to in paragraph *(b)*;

(d) maintenance and improvement of the school facilities;

(e) access to school facilities by all interested persons;

(f) security of the facility; and

(g) relationship between the school governing body and the public centre governing body.

(4) The Head of Department must consult with the governing body of the public centre in question 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).

Merger of public centres

5. (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 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 assets, liabilities, rights and obligations of the centres that are merged vest in the single centre contemplated in subsection (1).

(4) The governing bodies of the centres referred to in subsection (1) must have a meeting before the merger to constitute a single interim governing body.

(5) 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.

(6) The governing body of any public centre to be merged under subsection (1), may appeal to the Minister against the merger.

Closure of public centre

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

(2) Before closing a public centre, the Member of the Executive Council must—

(a) inform the governing body of the centre of his or her intention and his or her reasons therefor;

(b) grant the governing body of the centre a reasonable opportunity to make representations to him or her in relation to such actions;

(c) conduct a public hearing after 90 days from the date of the notice referred in subsection (1) to enable the community to make representations to him or her in relation to such actions; and

(d) give 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 be dealt with in accordance with the law by the Member of the Executive Council in consultation with the governing body, and any assets remaining after payment of all liabilities vest in the State.

CHAPTER 3

GOVERNANCE OF PUBLIC CENTRES

Governance and management of public centre

7. (1) A public centre is governed by a governing body.

(2) The governing body must stand in a position of trust towards the centre.

(3) The management of a public centre must be undertaken by the centre manager under the authority of the Head of Department.

Governing body of public centre

8. (1) Every public centre must establish a governing body, except a public centre contemplated in section 21(1)*(d)* of the South African Schools Act, 1996 (Act No. 84 of 1996), or section 9 of the Further Education and Training Act, 1998 (Act No. 98 of 1998).

(2) The governing body of a public centre must consist of—

(a) elected members;

(b) the centre manager, in his or her official capacity;

(c) co-opted members;

(d) any representative of any sponsoring body;

(e) any representative of an organisation for disabled persons, where applicable; and

(f) any expert in the field of adult basic education and training, where applicable.

(3) The members of a governing body contemplated in subsection (2)*(a)* must be elected from—

(a) educators at the centre;

(b) members of staff who are not educators; and

(c) learners at the centre;

(4) A member contemplated in—

(a) subsection (3)*(a)* must be elected by the educators at the centre;

(b) subsection (3)*(b)* must be elected by members of the staff who are not educators at the centre; and

(c) subsection (3)*(c)* must be elected by the learners at the centre.

(5) The members contemplated in subsections (2)*(a)*, *(b)*, *(d)*, *(e)* and *(f)* must co-opt members contemplated in subsection (2)*(c)* from the community which the centre serves and such co-opted members may vote at any meeting of the governing body.

(6) *(a)* The governing body contemplated in subsection (2) must co-opt as member of the governing body—

(i) the chairperson of the governing body or any member designated by him or her; or

(ii) the principal or any educator designated by him or her,

of the public school from which the centre operates.

(b) The member contemplated in paragraph *(a)* may not vote at a meeting of the governing body.

(7) The governing body of a public centre functions in terms of a constitution which must comply 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 to be followed at such meetings;

(b) recording and keeping minutes of governing body meetings; and

(c) the making available of 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 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 established in terms of this Act.

Election of members to governing body

9. 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) which officer must 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 in the governing body;

(e) guidelines for the achievement of representivity of members of the governing body;

(f) a formula for the calculation of the number of members of the governing body in each of the categories referred to in section 8(3), and 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) Before making a determination under subsection (1), the Member of the Executive Council must—

(a) give notice in the Provincial *Gazette* of his or her intention so to act;

(b) give interested parties an opportunity to make written submissions within a period of not less than 30 days; and

(c) consider 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 body

11. (1) The governing body of a public centre must—

(a) 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) develop a business plan for the public centre;
(c) provide any information pertaining to the public centre and its activities at the request of the Head of Department;
(d) be responsible for the budgeting and financial management systems of the public centre;
(e) promote the activities and the programmes of the public centre;
(f) supplement the procurement of the learning support material for the public centre;
(g) ensure that a conducive learning environment exists for learners;
(h) elicit public support for the public centre;
(i) keep proper records of all governing body meetings;
(j) develop the vision and mission statement of the public centre;
(k) subject to policy, determine the language policy of the public centre;
(l) recommend the appointment of educators of the public centre in terms of the Employment of Educators Act;
(m) establish and administer a public centre fund from voluntary contributions;
(n) adopt a constitution;
(o) adopt a code of conduct for learners at the public centre;
(p) discharge all other functions imposed upon a governing body by or under this Act; and
(q) 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) A public centre may establish posts for—
(a) 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; and
(b) 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).

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

(4) The staff contemplated in subsection (2) 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 must at least include the—
(a) ability of the candidate;
(b) principle of equity;
(c) need to redress past injustices; and
(d) need for representivity.

(5) 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 subsection (2), 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.

(6) 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 subsection (2).

(7) 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 Government *Gazette* regarding the funds used for the employment of staff referred to in subsection (2), but such norms and standards may not be interpreted so as to make the State a joint employer of such staff.

Staff employed by State at public centre

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 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 provide—

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

(b) 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 the 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 dissolve the governing body and 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) for further periods not exceeding three months at a time, 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 the person or 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 functions 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 functions.

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 must be established at every public centre.

(2) The 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 such 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 State

21. (1) The Member of the Executive Council must from money appropriated for this purpose by the provincial legislature fund public adult basic 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 and different adult basic education and training programmes, 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 centre

22. 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 Minister of Finance and NABABET.

Funds of public centre

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 basic education and training provided by the centre; and

(e) other funds from any other source.

Financial records and statements of public centre

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

(a) must 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 responsible for finance in that province;

(c) must 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 responsible for Finance in that 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) duly audited or examined statement of income and expenditure; and

(c) 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 No. 80 of 1991), to audit the records and financial statements referred to in subsection (1).

(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 subsection (1) who—

(a) is qualified to perform the duties of an accounting officer in terms of section 60 of the Close Corporations Act, 1984 (Act No. 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.

Failure of governing body to comply with Act

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 in question.

(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 in question of the intention so to act;

(b) give such governing body 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 private centre

26. Subject to section 27, any person may, at his or her own cost, establish and maintain a private centre.

Registration of 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) The Head of Department must register a private centre if he or she is satisfied that the—

(a) standards to be maintained by such a private centre will not be inferior to the standard maintained in comparable public centres;

(b) admission policy of the private centre does not discriminate on the grounds of race; and

(c) private centre complies with the grounds for registration contemplated in subsection (2).

Withdrawal of registration of 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 the intention to withdraw the registration, stating the reasons why such withdrawal is contemplated;

(b) the owner of such centre has been granted an opportunity to make written representation 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 or conditions for the granting of subsidies to private centres after consultation with the Council of Education Ministers 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 subject to subsection (1).

(3) If conditions contemplated in subsection (1) under which a subsidy was granted have 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 the 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 private centre as public centre

30. (1) The Member of the Executive Council may, with the concurrence of the Member of the Executive Council responsible for Finance in that province, 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*.

Functions of Member of Executive Council relating to private centre

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 determining under subsection (1).

CHAPTER 6

QUALITY ASSURANCE AND PROMOTION

Quality assurance and promotion in adult basic education and training

32. Quality assurance and promotion in adult basic education and training must be conducted as contemplated in the South African Certification Council Act, 1986 (Act No. 85 of 1986).

Advice by NABABET

33. (1) NABABET must advise the Minister on quality promotion and assurance.

(2) The Minister must—
(a) consider any advice given by NABABET; and
(b) provide reasons in writing to NABABET if the Minister does not accept the advice.

(3) The Minister may act without the advice of NABABET if—
(a) the matter is urgent; or
(b) NABABET has failed to provide the advice within 14 days after such a request was made.

(4) If the Minister acts as contemplated in subsection (3) he or she must—
(a) notify NABABET of such action; and
(b) provide reasons in writing to NABABET for such action.

Report on quality assurance

34. An annual report on the quality of adult basic education and training must be made to the Minister within 90 days after the end of the academic year by—

(a) NABABET in respect of the country as a whole; and

(b) the Member of the Executive Council in respect of the relevant province.

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 basic education and training must provide such information about the centre or quality of adult basic education and training as is reasonably required by NABABET.

Investigation at 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;

(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;

(c) the governing body of the public centre has failed to resolve circumstances contemplated in paragraph *(b)*; or

(d) the appointment is in the interest of adult basic 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 in question.

Name change of public centre

37. 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 the public centre.

Offences

38. (1) Any person other than an organ of state, who without the authority of a public or private adult centre—

(a) offers or pretends to offer any adult basic education and training programme or part thereof;

(b) confers a qualification which purports to have been granted by a centre, or in collaboration with a centre; or

(c) purports to perform an act on behalf of a 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. Neither the State, the NABABET 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) NABABET;

(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, except the power to make regulations under section 41, and the performance of his or her duties in terms of this Act to any—

(a) employee in a provincial department responsible for education and training; or

(b) 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) A delegation in terms of this Act does not prevent the Minister, Member of the Executive Council, the Director-General or the Head of Department, as the case may be, from exercising such powers or performing such duties.

Regulations

41. The Minister or the Member of the Executive Council, as the case may be, may make regulations consistent with this Act on any—

(a) matter which the Minister and the Member of the Executive Council are empowered or required to prescribe by regulation in terms of this Act; and

(b) matter in respect of which regulations are necessary or expedient in order to achieve the purpose of this Act.

CHAPTER 8

TRANSITIONAL AND OTHER ARRANGEMENTS

Existing centres, structures and bodies

42. (1) Any public adult basic education and training centre which existed immediately before the commencement of this Act must be regarded as having been established in terms of this Act.

(2) Any structure or body which existed at a public centre prior to the commencement of this Act continues to exist until it is replaced by a structure contemplated in this Act.

Exemption of existing private centre

43. Section 38(3) does not apply to a person who was providing adult basic education and training programmes at a private centre immediately prior to the date of commencement of this Act until a date determined by the Member of the Executive Council by notice in the Provincial *Gazette*.

Short title

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