

REPUBLIC OF SOUTH AFRICA

\_\_\_\_\_

# HIGHER EDUCATION BILL

\_\_\_\_\_

*(As introduced)*

\_\_\_\_\_

(MINISTER OF EDUCATION)

[B 75—97]



REPUBLIEK VAN SUID-AFRIKA

\_\_\_\_\_

# WETSONTWERP OP HOËR ONDERWYS

\_\_\_\_\_

*(Soos ingedien)*

\_\_\_\_\_

(MINISTER VAN ONDERWYS)

[W 75—97]

ISBN 0 621 27271 X

# BILL

To regulate higher education; to provide for the establishment, composition and functions of a Council on Higher Education; to provide for the establishment, governance and funding of public higher education institutions; to provide for the appointment and functions of an independent assessor; to provide for the registration of private and foreign higher education institutions; to provide for quality assurance and quality promotion in higher education; to provide for transitional arrangements and the repeal of certain laws; and to provide for matters connected therewith.

## PREAMBLE

WHEREAS IT IS DESIRABLE that institutions providing higher education—

**REDRESS** past discrimination and ensure representativeness;

**PROVIDE** optimal opportunities for learning and the creation of knowledge;

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

**RESPECT** freedom of religion, belief and opinion;

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

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

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

**CONTRIBUTE** to the advancement of all forms of knowledge and scholarship, in keeping with international standards of academic quality;

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

**AND WHEREAS IT IS DESIRABLE** to establish a single co-ordinated higher education system which provides for programme-based higher education and to restructure programmes and institutions to respond better to the human resources and economic needs of the Republic of South Africa;

—

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

## ARRANGEMENT OF ACT

### CHAPTER 1 DEFINITIONS, APPLICATION AND DETERMINATION OF POLICY

#### Section

- |   |   |
|---|---|
| 1. Definitions                              | 5 |
| 2. Application                              |   |
| 3. Determination of higher education policy |   |

### CHAPTER 2 COUNCIL ON HIGHER EDUCATION

- |  |    |
|--|----|
| 4. Establishment of Council on Higher Education (CHE)            | 10 |
| 5. Functions of CHE  |    |
| 6. Information to be provided to CHE                             |    |
| 7. Quality promotion and quality assurance functions of CHE      |    |
| 8. Composition of CHE  |    |
| 9. Term of office of members                                     | 15 |
| 10. Vacation of office by members                                |    |
| 11. Filling of vacancies   |    |
| 12. Executive officer and employees of CHE                       |    |
| 13. Executive committee of CHE                                   |    |
| 14. Committees of CHE  | 20 |
| 15. Meetings of CHE and committees                               |    |
| 16. Funds of CHE   |    |
| 17. Remuneration and allowances of members of CHE and committees |    |
| 18. Annual audit   |    |
| 19. Annual report to Parliament                                  | 25 |

### CHAPTER 3 PUBLIC HIGHER EDUCATION INSTITUTIONS

- |   |    |
|---|----|
| 20. Establishment of public higher education institutions                         |    |
| 21. Declaration of education institutions as public higher education institutions |    |
| 22. Consequences of declaration as public higher education institutions           | 30 |
| 23. Merger of public higher education institutions                                |    |
| 24. Merger of subdivisions of public higher education institutions                |    |
| 25. Closure of public higher education institutions                               |    |

### CHAPTER 4 GOVERNANCE OF PUBLIC HIGHER EDUCATION INSTITUTIONS

- |  |    |
|--|----|
| 26. Institutional governance structures  |    |
| 27. Council of public higher education institution   |    |
| 28. Senate of public higher education institution  |    |
| 29. Committees of council and senate   |    |
| 30. Principal of public higher education institution   | 40 |
| 31. Institutional forum  |    |
| 32. Institutional statutes and institutional rules   |    |
| 33. Institutional statutes to be approved or made by Minister                                  |    |
| 34. Appointment and conditions of service of employees of public higher education institutions | 45 |
| 35. Students' representative council   |    |
| 36. Disciplinary measures  |    |
| 37. Admission to public higher education institutions  |    |
| 38. Regional co-operation between public higher education institutions                         |    |

### CHAPTER 5 FUNDING OF PUBLIC HIGHER EDUCATION

- |   |  |
|---|--|
| 39. Allocation of funds by Minister               |  |
| 40. Funds of public higher education institutions |  |

41. Records to be kept and information to be furnished by council  
 42. Action on failure of council to comply with this Act or certain conditions

**CHAPTER 6  
 INDEPENDENT ASSESSOR**

43. Appointment of independent assessment panel 5  
 44. Appointment of independent assessor  
 45. Cases where independent assessor may be appointed  
 46. Independent assessor may be appointed for two or more public higher education institutions  
 47. Functions of independent assessor 10  
 48. Assistance to independent assessor  
 49. Remuneration and allowances

**CHAPTER 7  
 PRIVATE HIGHER EDUCATION INSTITUTIONS**

50. Designation of registrar 15  
 51. Registration of private higher education institutions  
 52. Application for registration  
 53. Requirements for registration  
 54. Determination of application for registration  
 55. Certificate of registration 20  
 56. Access to information  
 57. Records and audits  
 58. Amendment of registration  
 59. Requirements for amendment of registration and determination of application  
 60. Conditions for registration 25  
 61. Amendment or cancellation of conditions  
 62. Cancellation of registration  
 63. Steps before amendment or cancellation  
 64. Appeal to Minister

**CHAPTER 8  
 GENERAL** 30

65. Offences  
 66. Limitation of liability  
 67. Delegation of powers  
 68. Regulations 35  
 69. Application of Act when in conflict with other laws

**CHAPTER 9  
 TRANSITIONAL AND OTHER ARRANGEMENTS**

70. Existing statutes and rules of public higher education institutions  
 71. Existing technikons and universities 40  
 72. Continued existence of University and Technikons Advisory Council  
 73. Continued existence of Committee of University Principals, Committee of Technikon Principals and Matriculation Board  
 74. Exemption of existing private higher education institutions  
 75. Repeal of laws 45  
 76. Short title and commencement

**CHAPTER 1  
 DEFINITIONS, APPLICATION AND DETERMINATION OF POLICY**

**Definitions**

1. In this Act, unless the context otherwise indicates— 50  
 (i) “academic employee” means any person appointed to teach or to do research at a public higher education institution and any other employee designated as such by the council of that institution; (ii)

- (ii) “applicant” means any person who makes any application referred to in Chapter 7; (iii)
- (iii) “auditor” means any person registered as such in terms of the Public Accountants and Auditors Act, 1991 (Act No. 80 of 1991); (xix)
- (iv) “CHE” means the Council on Higher Education established by section 4; 5  
(xxiii)
- (v) “college” means any college established or declared as a college under this Act; (xv)
- (vi) “council” means the governing body of a public higher education institution; (xxi) 10
- (vii) “Department of Education” means the Government department responsible for education at national level; (v)
- (viii) “Director-General” means the Director-General of the Department of Education; (vi)
- (ix) “employee” means any person employed at a public higher education 15  
institution; (xxxii)
- (x) “employer” means the council of a public higher education institution; (xxxii)
- (xi) “financial year” means a year commencing on the first day of April and ending on the thirty-first day of March of the following year; (iv)
- (xii) “grade 12” means the highest grade in which education is provided by a 20  
school as defined in the South African Schools Act, 1996 (Act No. 84 of 1996); (vii)
- (xiii) “higher education” means all learning programmes leading to qualifications higher than grade 12; (ix)
- (xiv) “higher education institution” means any institution that provides higher 25  
education on a full-time, part-time or distance basis and which is—  
(a) established or regarded as 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 registered as a private higher education 30  
institution under this Act; (xi)
- (xv) “Higher Education Quality Committee” means the committee of the CHE established in terms of section 7(1); (xvi)
- (xvi) “institutional forum” means the body contemplated in section 31; (xii)
- (xvii) “institutional rules” means any rules made by the council of a public higher 35  
education institution under section 32; (xiii)
- (xviii) “institutional statute” means any statute made by the council of a public higher education institution under section 32; (xiv)
- (xix) “Minister” means the Minister of Education; (xvii)
- (xx) “organ of state” means an organ of state as defined in section 239 of the 40  
Constitution; (xxvi)
- (xxi) “prescribed” means prescribed by regulation; (xxx)
- (xxii) “principal” means the chief executive and accounting officer of a public higher education institution, and vice-chancellor and rector have a similar meaning; (x) 45
- (xxiii) “private higher education institution” means any person registered or conditionally registered as a private higher education institute in terms of Chapter 7; (xx)
- (xxiv) “public higher education institution” means any higher education institution that is established, regarded as established or declared as a public higher 50  
education institution under this Act; (xviii)
- (xxv) “registrar” means the registrar designated by the Director-General in terms of section 50(1); (xxii)
- (xxvi) “SAQA” means the South African Qualifications Authority established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 55  
of 1995); (xxiv)
- (xxvii) “senate” means the body contemplated in section 28, and includes an academic board; (xxv)
- (xxviii) “student” means any person registered as a student at a higher education institution; (xxvii) 60
- (xxix) “technikon” means any technikon established, regarded as established or declared as a technikon under this Act; (xxviii)
- (xxx) “this Act” includes the regulations made under this Act; (viii)

- (xxx) “university” means any university established, regarded as established or declared as a university under this Act; (xxix)  
 (xxxii) “vice-principal” includes a vice-rector and a deputy vice-chancellor. (i)

### **Application**

2. This Act applies to higher education in the Republic of South Africa. 5

### **Determination of higher education policy**

3. (1) The Minister must determine policy on higher education after consulting the CHE.  
 (2) The Minister must—  
 (a) publish such policy by notice in the *Gazette*; and 10  
 (b) table such policy in Parliament.

## **CHAPTER 2 COUNCIL ON HIGHER EDUCATION**

### **Establishment of Council on Higher Education (CHE)**

4. The Council on Higher Education (CHE) is hereby established as a juristic person. 15

### **Functions of CHE**

5. (1) The CHE may advise the Minister on any aspect of higher education on its own initiative and must—  
 (a) advise the Minister on any aspect of higher education at the request of the Minister; 20  
 (b) arrange and co-ordinate conferences and publish an annual report on the state of higher education;  
 (c) subject to section 7(1)(b), through its permanent committee, the Higher Education Quality Committee—  
 (i) promote quality assurance in higher education; 25  
 (ii) audit the quality assurance mechanisms of higher education institutions; and  
 (iii) accredit programmes of higher education;  
 (d) publish information regarding developments in higher education on a regular basis; 30  
 (e) promote the access of students to higher education institutions; and  
 (f) perform any other function—  
 (i) conferred or imposed to it by or in terms of this Act;  
 (ii) delegated or assigned to it by the Minister by notice in the *Gazette*.  
 (2) The advice contemplated in subsection (1)(a) includes advice on— 35  
 (a) quality promotion and quality assurance;  
 (b) research;  
 (c) the structure of the higher education system;  
 (d) a mechanism for the allocation of public funds;  
 (e) governance of higher education institutions and the higher education system; 40  
 and  
 (f) the national higher education plan, as developed by the Department in concurrence with the CHE.  
 (3) The Minister must—  
 (a) consider the advice of the CHE; and 45  
 (b) provide reasons in writing to the CHE if the Minister does not accept the advice.  
 (4) The Minister may act without the advice of the CHE—  
 (a) if the matter is urgent; or  
 (b) if the CHE has failed to provide the advice within a reasonable time. 50  
 (5) If the Minister acts without the advice of the CHE the Minister must—  
 (a) notify the CHE of such action; and  
 (b) provide reasons in writing to the CHE for such action.

### **Information to be provided to CHE**

6. Every national or provincial department of state, every publicly funded research 55

council and every higher education institution must provide the CHE with such information as the CHE may reasonably require for the performance of its functions in terms of this Act.

### Quality promotion and quality assurance functions of CHE

7. (1) (a) The CHE must establish the Higher Education Quality Committee as a permanent committee to perform the quality promotion and quality assurance functions of the CHE in terms of this Act. 5
- (b) The CHE and the Higher Education Quality Committee must comply with the policies and criteria formulated and published by SAQA in terms of section 5(1)(a)(ii) of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995). 10
- (2) The Higher Education Quality Committee may, with the concurrence of the CHE, delegate or assign any quality promotion and quality assurance functions to other appropriate bodies capable of performing such functions.
- (3) The act under subsection (2)—
- (a) must be in writing and published by notice in the *Gazette*; 15
- (b) is subject to such conditions as the Higher Education Quality Committee may determine; and
- (c) does not prevent the performance of such functions by the Higher Education Quality Committee.
- (4) The CHE may charge fees for any service rendered by the CHE or the Higher Education Quality Committee to any person, institution or organ of state. 20
- (5) The CHE may request the Minister to publish regulations prepared by the Higher Education Quality Committee relating to any matter that in the opinion of the Committee is necessary to give effect to quality promotion and quality assurance in terms of this Act. 25

### Composition of CHE

8. (1) The CHE consists of—
- (a) a chairperson, who must have knowledge and experience relevant to the interests and governance of higher education, appointed by the Minister;
- (b) three students appointed by the Minister from nominations by national organisations representing students; 30
- (c) three academic employees appointed by the Minister from nominations by national organisations representing academic employees;
- (d) one employee appointed by the Minister from nominations by national organisations representing employees other than academic employees; 35
- (e) two college principals appointed by the Minister from nominations by national bodies representing college principals;
- (f) two university principals appointed by the Minister from nominations by national bodies representing university principals;
- (g) two technikon principals appointed by the Minister from nominations by national bodies representing technikon principals; 40
- (h) one person appointed by the Minister from nominations by national bodies representing private higher education institution principals;
- (i) two persons appointed by the Minister from nominations by national bodies representing further education; 45
- (j) one person appointed by the Minister from nominations by the Foundation for Research Development, established in terms of the Research Development Act, 1990 (Act No. 75 of 1990);
- (k) one person appointed by the Minister from nominations by the heads of provincial departments of education; 50
- (l) two persons appointed by the Minister from nominations by the National Economic, Development and Labour Council (Nedlac), established in terms of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994), one representing organised labour and one representing organised business; 55
- (m) not more than four persons not directly involved in higher education, appointed by the Minister from nominations by the public;

- (n) one representative each from the Department of Education, the Department of Arts, Culture, Science and Technology and the Department of Labour, designated by the respective Directors-General; and
  - (o) not more than three additional persons, co-opted by the CHE on account of their experience and expertise in matters relating to the functions of the CHE. 5
- (2) For the purposes of the nominations contemplated in subsection (1), the Minister must give notice in the *Gazette*, in two national newspapers circulating in every province of the Republic, and by any other means regarded necessary by the Minister, of the intention to appoint members of the CHE and request the nominations of persons who, on account of their experience and expertise in matters relating to the functions of the CHE, are suitable candidates for appointment as members of the CHE. 10
- (3) The members referred to in subsection (1)(k) and (n) have no voting powers.
- (4) A co-opted member of the CHE has the same rights, powers and duties as any other member of the CHE.
- (5) A member of the CHE must advance the best interests of higher education in general above the particular interests of the body or organisation which nominated such member. 15

#### **Term of office of members**

9. (1) The chairperson of the CHE holds office for a period of five years.
- (2) Every student member of the CHE holds office for a period of two years. 20
- (3) Every other member of the CHE holds office for a period of four years.
- (4) The CHE may determine that a co-opted member holds office for a period of less than four years.
- (5) A member of the CHE may not serve for more than two consecutive terms of office. 25

#### **Vacation of office by members**

10. A person ceases to be a member of the CHE if he or she—
- (a) resigns by giving written notice to the chairperson or, in the case of the chairperson, to the Minister;
  - (b) no longer qualifies for appointment in terms of section 8; 30
  - (c) is absent from three consecutive meetings of the CHE without the leave of the chairperson or, in the case of the chairperson, the leave of the executive committee of the CHE;
  - (d) is declared insolvent, is removed from an office of trust by a court of law or is convicted of an offence involving dishonesty or an offence for which the sentence is imprisonment without the option of a fine; or 35
  - (e) is declared unable to attend to his or her personal affairs by a court of law.

#### **Filling of vacancies**

11. If a member vacates his or her office, the resultant vacancy must be filled by nominating, appointing, designating or co-opting, as the case may be, a person 40 representing the same category as the member vacating office.

#### **Executive officer and employees of CHE**

12. (1) The CHE must appoint an executive officer to—
- (a) perform the functions determined by the CHE;
  - (b) supervise the employees of the CHE; and 45
  - (c) account for the assets and liabilities of the CHE.
- (2) The CHE may appoint such other employees as it deems necessary to assist the executive officer.
- (3) The CHE must, with the concurrence of the Minister and the Minister of Finance, determine the conditions of service of the executive officer and the other employees of the CHE. 50

### Executive committee of CHE

- 13.** (1) The CHE must establish an executive committee and determine its functions.  
 (2) The executive committee consists of—  
     (a) the chairperson of the CHE; and  
     (b) four other members appointed by the CHE. 5  
 (3) A decision of the executive committee must be regarded as a decision of the CHE, unless such decision is revoked at the next meeting of the CHE.  
 (4) Anything done in consequence of a decision of the executive committee before its revocation is not invalid by reason only of the fact that the decision is revoked by the CHE under subsection (3). 10

### Committees of CHE

- 14.** (1) The CHE may establish other committees in addition to the Higher Education Quality Committee and the executive committee, to assist it in the performance of its functions, and may include as members of such committees persons who are not members of the CHE. 15  
 (2) The chairperson of a committee established in terms of subsection (1) and sections 7(1)(a) and 13 must be appointed by the CHE.

### Meetings of CHE and committees

- 15.** (1) Meetings of the CHE 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 if asked to do so in writing by at least one third of the members of the CHE or the committee, as the case may be. 20  
 (2) Whenever the chairperson is absent from any meeting of the CHE or a committee, the members present must elect a person from among themselves to preside at that meeting. 25  
 (3) The CHE may, with the concurrence of the Minister, make rules relating to the procedure at meetings of the CHE and its committees, including the quorum for such meetings, and any other matter necessary or expedient for the performance of its functions. 30  
 (4) The proceedings at a meeting of the CHE or of a committee are not invalid by reason only of the fact that a vacancy exists on the CHE or such committee, as the case may be, at the time of such meeting.

### Funds of CHE

- 16.** (1) The funds of the CHE consist of—  
     (a) money appropriated by Parliament; 35  
     (b) donations, contributions and other income received by the CHE from whatever source; and  
     (c) money payable by any person, institution or organ of state for services rendered by the CHE or the Higher Education Quality Committee.  
 (2) The CHE— 40  
     (a) 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;  
     (b) 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; 45  
     (c) may not incur any expenditure which exceeds the total amount approved in terms of paragraph (a).  
 (3) If the Minister does not approve the CHE's statement of its estimated income and expenditure, the Minister must request the CHE to provide a revised statement within a reasonable period to him or her. 50  
 (4) The money contemplated in subsection (1) must be used by the CHE in accordance with the approved statement referred to in subsection (2), and any unexpended balance must be carried forward as a credit to the following financial year. 55

(5) Subject to subsection (4), the CHE may invest any portion of its funds in such manner as the Minister, with the concurrence of the Minister of Finance, may approve.

#### **Remuneration and allowances of members of CHE and committees**

17. The chairperson of the CHE, every other member and any person appointed as a member of a committee, who is not in the full-time service of the State may, in respect of services rendered by him or her in connection with the affairs of the CHE or a committee, be paid by the CHE— 5

(a) such travelling, subsistence and other allowances; and

(b) in the case of the chairperson of the CHE, such additional remuneration, as the Minister with the concurrence of the Minister of Finance may determine. 10

#### **Annual audit**

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

#### **Annual report to Parliament**

19. (1) The CHE must, within three months after the end of each financial year, submit a report to the Minister on the performance of its functions during the past financial year. 15

(2) The Minister must table copies of the report in Parliament as soon as reasonably practicable.

### **CHAPTER 3**

#### **PUBLIC HIGHER EDUCATION INSTITUTIONS 20**

#### **Establishment of public higher education institutions**

20. (1) The Minister may, after consulting the CHE, by notice in the *Gazette* and from money appropriated for this purpose by Parliament, establish a university, technikon or college.

(2) Notwithstanding subsection (1), a university may also be established by an Act of Parliament and when so established it is regarded as a public higher education institution established under this Act.

(3) The notice contemplated in subsection (1) must determine—

(a) the date of establishment of the institution;

(b) the type and name of the institution; and 30

(c) the physical location and official address of the institution.

(4) Every public higher education institution established, regarded as having been established or declared as a public higher education institution under this Act, is a juristic person.

(5) Notwithstanding subsection (4), a public higher education institution may not, without the concurrence of the Minister, dispose of or alienate in any manner, any immovable property acquired with the financial assistance of the State or grant to any person any real right therein or servitude thereon. 35

#### **Declaration of education institutions as public higher education institutions**

21. (1) The Minister may, after consulting the CHE and by notice in the *Gazette*, declare any education institution providing higher education as— 40

(a) a university, technikon or college; or

(b) a subdivision of a university, technikon or college.

(2) The notice contemplated in subsection (1) must determine—

(a) the date on which the education institution becomes a university, technikon or college or a subdivision of a university, technikon or college, as the case may be; 45

(b) the name of the university, technikon or college; and

(c) the physical location and the official address of the university, technikon or college. 50

- (3) The Minister may act under subsection (1) only—
- (a) after consulting—
    - (i) the governing body of the education institution, if it is a public institution;
    - (ii) the council of the existing public higher education institution, if the education institution is to be declared a subdivision of such existing public higher education institution; or
    - (iii) the responsible Minister, Member of the Executive Council or authority, if the education institution is administered, controlled or funded by an organ of state other than the Department of Education; and
  - (b) after having—
    - (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;
    - (ii) given any interested persons an opportunity to make representations; and
    - (iii) considered such representations;
  - (c) if it is a private institution, with the concurrence of the owner of the education institution and the Minister of Finance.
- (4) Nothing contained in this Act or any other law may be regarded as obliging the Minister to declare an education institution to be a public higher education institution in terms of this section.
- (5) An education institution may only be declared a public higher education institution after the employer has complied with its obligations in terms of the applicable labour law.

#### **Consequences of declaration as public higher education institutions**

- 22.** (1) From the date determined in terms of section 21(2)(a)—
- (a) the education institution is regarded as a public higher education institution established under this Act or a subdivision of such public higher education institution, as the case may be;
  - (b) the assets, liabilities, rights and obligations of the education institution devolve upon the public higher education institution; and
  - (c) any agreement lawfully entered into by or on behalf of the education institution is regarded as having been concluded by the public higher education institution.
- (2) Immovable property devolving upon the public higher education institution in terms of subsection (1)(b) must, subject to the concurrence of the Minister of Finance, be transferred to such institution without payment of transfer duty, stamp duty or other money or costs, but subject to any existing right, encumbrance, duty or trust on or over that property.
- (3) The officer in charge of a deeds office or other office where the immovable property contemplated in subsection (2) is registered must, on submission of the title deed and on application by the public higher education institution, make such endorsements on that title deed and such entries in the registers as may be required to register the transfer concerned.
- (4) The declaration of an education institution as a public higher education institution under section 21(1) does not affect anything lawfully done by the education institution prior to the declaration.
- (5) All funds which, immediately prior to the date determined in terms of section 21(2)(a), were vested in the education institution by virtue of a trust, donation or bequest must be applied by the public higher education institution in accordance with the trust, donation or bequest, as the case may be.
- (6) Notwithstanding subsection (2), any fees charged by the Registrar of Deeds resulting from such transfer must be paid in full or in part from funds appropriated by Parliament for that purpose.

#### **Merger of public higher education institutions**

- 23.** (1) Subject to subsection (2), the Minister may, after consulting the CHE and by

notice in the *Gazette*, merge two or more public higher education institutions into a single public higher education institution.

(2) The Minister must—

- (a) give written notice of the intention to merge to the public higher education institutions concerned; 5
- (b) publish a notice in one or more daily newspapers circulating in the area in which the public higher education institutions concerned provide higher education, containing the reasons for the merger in all the official languages used as media of instruction by the public higher education institutions; 10
- (c) give the councils of the public higher education institutions concerned and any other interested persons an opportunity to make representations within at least 90 days of the date of the notice referred to in paragraph (b);
- (d) consider such representations; and
- (e) be satisfied that the employers at the public higher education institutions concerned have complied with their obligations in terms of the applicable labour law. 15

(3) The single public higher education institution contemplated in subsection (1) is regarded as a public higher education institution established under this Act.

(4) Section 22(1)(b) to (6), with the changes required by the context, applies to a merger referred to in subsection (1). 20

### **Merger of subdivisions of public higher education institutions**

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

(2) The assets, liabilities, rights and obligations of the subdivision concerned devolve upon the public higher education institution with which the subdivision has merged 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. 25

(3) Sections 22(2) to (6) and 23(2), with the changes required by the context, apply to a merger referred to in subsection (1). 30

### **Closure of public higher education institutions**

**25.** (1) The Minister may, after consulting the CHE and by notice in the *Gazette*, close a public higher education institution.

(2) If a public higher education institution is closed under subsection (1), all assets and liabilities of such public higher education institution must after closure be dealt with according to law by the Minister and any assets remaining after payment of all liabilities vest in the Minister. 35

(3) Sections 22(2) to (6) and 23(2), with the changes required by the context, apply to a closure referred to in subsection (1). 40

## **CHAPTER 4 GOVERNANCE OF PUBLIC HIGHER EDUCATION INSTITUTIONS**

### **Institutional governance structures**

**26.** (1) Every public higher education institution must establish the following structures and offices: 45

- (a) a council;
- (b) a senate;
- (c) a principal;
- (d) a vice-principal;
- (e) a students' representative council; 50
- (f) an institutional forum; and
- (g) such other structures and offices as may be determined by the institutional statute.

(2) A structure referred to in subsection (1)(a), (b), (e), (f) and (g) must elect a chairperson, vice-chairperson and other office-bearers from among its members in the manner determined by the institutional statute or an Act of Parliament. 55

### **Council of public higher education institution**

**27.** (1) The council of a public higher education institution must govern the public higher education institution, subject to this Act, any other law and the institutional statute.

(2) The council, with the concurrence of the senate, must determine the language policy of a public higher education institution and must publish and make it available on request. 5

(3) The council of a public higher education institution must consist of—

(a) the principal; 10

(b) the vice-principal or vice-principals;

(c) not more than five persons appointed by the Minister;

(d) members of the senate elected by the senate;

(e) academic employees of the public higher education institution, elected by such employees;

(f) students of the public higher education institution, elected by the students' representative council; 15

(g) 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.

(4) The number of persons contemplated in subsection (3)(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. 20

(5) At least 60 per cent of the members of a council must be persons who are not employed by, or students of, the public higher education institution concerned.

(6) The members of a council— 25

(a) must be persons with knowledge and experience relevant to the objects and governance of the public higher education institution concerned; and

(b) must participate in the deliberations of the council in the best interests of the public higher education institution concerned.

### **Senate of public higher education institution** 30

**28.** (1) The senate of a public higher education institution is accountable to the council for the academic and research functions of the public higher education institution and must perform such other functions as may be delegated or assigned to it by the council.

(2) The senate of a public higher education institution must consist of—

(a) the principal; 35

(b) the vice-principal or vice-principals;

(c) academic employees of the public higher education institution;

(d) employees of the public higher education institution other than academic employees;

(e) members of the council; 40

(f) members of the students' representative council; and

(g) such additional persons as may be determined by the institutional statute.

(3) The number of persons contemplated in subsection (2)(b), (c), (d), (e), (f) and (g) and the manner in which they are appointed or elected, as the case may be, must be determined by the institutional statute or an Act of Parliament. 45

### **Committees of council and senate**

**29.** (1) The council and the senate of a public higher education institution may each establish committees to perform any of their functions and may appoint persons, who are not members of the council or the senate, as the case may be, as members of such committees. 50

(2) The council and the senate are not divested of responsibility for the performance of any function assigned to a committee under this section.

(3) The council and the senate of a public higher education institution may jointly nominate committees, to be known as joint committees, to perform functions that are common to the council and the senate. 55

(4) The composition, manner of election, functions, procedure at meetings and

dissolution of a committee and a joint committee are determined by the institutional statute, institutional rules or an Act of Parliament.

### **Principal of public higher education institution**

**30.** The principal of a public higher education institution is responsible for the management and administration of the public higher education institution. 5

### **Institutional forum**

- 31.** (1) The institutional forum of a public higher education institution must—
- (a) advise the council on issues affecting the public higher education institution; and
  - (b) perform such functions as determined by the council. 10
- (2) The institutional forum of a public higher education institution must consist of representatives of—
- (a) the management, as determined by the institutional statute or an Act of Parliament;
  - (b) the council; 15
  - (c) the senate;
  - (d) the academic employees;
  - (e) the employees other than academic employees;
  - (f) the students; and
  - (g) any other category determined by the institutional statute. 20
- (3) The number of persons contemplated in subsection (2) and the manner in which they are appointed or elected, as the case may be, are determined by the institutional statute or an Act of Parliament.

### **Institutional statutes and institutional rules**

- 32.** (1) The council of a public higher education institution may make— 25
- (a) an institutional statute, subject to section 33, to give effect to any law relating to the public higher education institution and to promote the effective management of the institution in respect of matters not expressly prescribed by any law; and
  - (b) institutional rules to give effect to the institutional statute. 30
- (2) An institutional statute or institutional rules in connection with—
- (a) the composition of the senate concerned may not be made, amended or repealed except on the recommendation of such senate;
  - (b) the academic functions of the public higher education institution concerned, including the studies, instruction and examinations of students and research, 35 may not be made, amended or repealed except with the concurrence of the senate of such institution;
  - (c) the composition, manner of election, term of office, functions and privileges of the students' representative council concerned may not be made, amended or repealed except with the concurrence of such students' representative 40 council; and
  - (d) the disciplinary measures and disciplinary procedures relating to students, may not be made except after consultation with the senate and the students' representative council of the public higher education institution concerned.

### **Institutional statutes to be approved or made by Minister** 45

**33.** (1) Any institutional statute must be submitted to the Minister for approval, and if so approved must be published by notice in the *Gazette* and comes into operation on the date mentioned in such notice.

(2) The Minister must table any institutional statute made under section 32 in Parliament as soon as reasonably practicable after it has been published as contemplated 50 in subsection (1).

(3) The Minister must make a standard institutional statute, which applies to every public higher education institution that has not made an institutional statute until such

time as the council of such public higher education institution makes its own institutional statute under section 32.

#### **Appointment and conditions of service of employees of public higher education institutions**

**34.** (1) The council of a public higher education institution must appoint the employees of the public higher education institution: Provided that the academic employees must be appointed after consultation with the senate. 5

(2) The council must determine the conditions of service, disciplinary provisions, privileges and functions of the employees of the public higher education institution, subject to the applicable labour law. 10

#### **Students' representative council**

**35.** The establishment and composition, manner of election, terms of office, functions and privileges of the students' representative council of a public higher education institution must be determined by the institutional statute.

#### **Disciplinary measures** 15

**36.** Every student at a public higher education institution is subject to such disciplinary measures and disciplinary procedures as may be determined by the institutional statute, subject to section 32(2)(d).

#### **Admission to public higher education institutions**

**37.** (1) Subject to this Act, the council of a public higher education institution, after consulting the senate of the public higher education institution, determines the admission policy of the public higher education institution. 20

(2) The council must publish the admission policy and make it available on request.

(3) The admission policy of a public higher education institution may not unfairly discriminate in any way. 25

(4) Subject to this Act, the council may, with the approval of the senate—

(a) determine entrance requirements in respect of particular higher education programmes;

(b) determine the number of students who may be admitted for a particular higher education programme and the manner of their selection; 30

(c) prescribe the minimum requirements for readmission to study at the public higher education institution concerned; and

(d) refuse readmission to a student who fails to satisfy such minimum requirements for readmission.

#### **Regional co-operation between public higher education institutions** 35

**38.** (1) Public higher education institutions may co-operate with each other in any manner to achieve the optimal utilisation of resources and the performance of their functions.

(2) Public higher education institutions may establish regional structures to assist and facilitate the co-operation contemplated in subsection (1). 40

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

### **CHAPTER 5**

#### **FUNDING OF PUBLIC HIGHER EDUCATION** 45

#### **Allocation of funds by Minister**

**39.** (1) The Minister must, after consulting the CHE and with the concurrence of the Minister of Finance, determine the policy on the funding of public higher education and publish such policy by notice in the *Gazette*.

(2) The Minister must, subject to the policy determined in terms of subsection (1), allocate public funds to public higher education on a fair and transparent basis.

(3) The Minister may, subject to the policy determined in terms of subsection (1), impose—

- (a) any reasonable condition in respect of an allocation contemplated in subsection (2); and 5
- (b) different conditions in respect of different public higher education institutions, different instructional programmes or different allocations, if there is a reasonable basis for such differentiation.

#### **Funds of public higher education institutions** 10

**40.** The funds of a public higher education institution consist of—

- (a) funds allocated by the Minister in terms of section 39 for purposes of public higher education;
- (b) any donations or contributions received by the institution;
- (c) money raised by the institution; 15
- (d) money raised by means of loans;
- (e) income derived from investments;
- (f) money received for services rendered to any other institution or person;
- (g) money payable by students for higher education programmes provided by the institution; 20
- (h) money received from students or employees of the institution for accommodation or other services provided by the institution; and
- (i) other receipts from whatever source.

#### **Records to be kept and information to be furnished by council**

**41.** The council of a public higher education institution must, in respect of the preceding year and by the date and in the manner determined by the Minister— 25

- (a) keep records of all its proceedings;
- (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; 30
- (c) provide the Minister with—
  - (i) a report on the overall governance of the public higher education institution;
  - (ii) a duly audited statement of income and expenditure; and 35
  - (iii) a balance sheet and cash flow statement;
- (d) provide the Minister with the information that must be furnished in terms of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992); and
- (e) provide the Minister with such additional information as the Minister may reasonably require. 40

#### **Action on failure of council to comply with this Act or certain conditions**

**42.** (1) If the council of a public higher education institution fails to comply with any provision of this Act under which an allocation from money appropriated by Parliament is paid to the institution, or with any condition subject to which any such allocation is paid to such institution, the Minister may call upon such council to comply with the provision or condition within a specified period. 45

(2) If such council thereafter fails to comply with the provision or condition, the Minister may, despite anything to the contrary in any law contained, withhold payment of the whole or any portion of the allocation appropriated by Parliament in respect of the public higher education institution concerned. 50

(3) Before taking action under subsection (2), the Minister must—

- (a) give notice to the public higher education institution concerned of the intention so to act;
- (b) give such council a reasonable opportunity to make representations; and
- (c) consider such representations. 55

(4) If the Minister acts under subsection (2), a report regarding such action must be tabled in Parliament by the Minister as soon as reasonably practicable after such action.

## **CHAPTER 6 INDEPENDENT ASSESSOR**

### **Appointment of independent assessment panel** 5

**43.** The CHE must appoint an independent assessment panel consisting of at least three suitable persons who—

- (a) have knowledge and experience of higher education;
- (b) are not members of the CHE; and
- (c) comply with any other requirements determined by the CHE. 10

### **Appointment of independent assessor**

**44.** (1) The Minister may, from the independent assessment panel contemplated in section 43, appoint an assessor who is independent in relation to the public higher education institution concerned, to conduct an investigation at the public higher education institution— 15

- (a) in the cases referred to in section 45; and
- (b) after consulting the council of the public higher education institution concerned, if practicable.

(2) The council of the public higher education institute and any person affected by the investigation must assist and co-operate with the independent assessor in the performance of his or her functions in terms of section 47. 20

### **Cases where independent assessor may be appointed**

**45.** An independent assessor may be appointed under section 44 if—

- (a) the appointment is in the best interests of higher education in an open and democratic society; and 25
- (b) the council of a public higher education institute requests the appointment; or
- (c) circumstances arise at a public higher education institution that—
  - (i) involve financial or other maladministration of a serious nature; or
  - (ii) seriously undermine the effective functioning of the public higher education institution; or 30
- (d) the council of the public higher education institute has failed to resolve such circumstances.

### **Independent assessor may be appointed for two or more public higher education institutions**

**46.** The Minister may appoint an independent assessor under section 44 to conduct an investigation at two or more public higher education institutions. 35

### **Functions of independent assessor**

**47.** (1) An independent assessor appointed under section 44 must, within 30 days and on the terms of reference specified by the Minister—

- (a) conduct an investigation at the public higher education institution concerned; 40
- (b) report in writing to the Minister on the findings of his or her investigation; and
- (c) suggest appropriate measures.

(2) The Minister must as soon as practicable provide a copy of the report referred to in subsection (1) to the council concerned and publish such report in the *Gazette*.

### **Assistance to independent assessor** 45

**48.** An independent assessor appointed under section 44 may, with the concurrence of the Minister, appoint any other person with suitable knowledge and experience to assist him or her in the performance of his or her functions.

## Remuneration and allowances

49. The Minister, with the concurrence of the Minister of Finance, may determine the remuneration and allowances to be paid to an independent assessor and any other person appointed under section 48.

## CHAPTER 7 PRIVATE HIGHER EDUCATION INSTITUTIONS

5

### Designation of registrar

50. (1) The Director-General must designate an employee of the Department of Education as the registrar of private higher education institutions to perform the functions of registrar in terms of this Act. 10

(2) The Director-General may designate any other employee of the Department of Education to assist the registrar in the performance of his or her functions in terms of this Act.

(3) The registrar may delegate or impose any of his or her functions in terms of this Act to an employee contemplated in subsection (2). 15

### Registration of private higher education institutions

51. No person other than a public higher education institution or an organ of state may provide higher education without being registered or conditionally registered as a private higher education institution in terms of this Act.

### Application for registration

20

52. An application for registration as a private higher education institution must be made to the registrar in the manner determined by the registrar and must be accompanied by the prescribed fee.

### Requirements for registration

53. (1) The registrar must register an applicant as a private higher education institution unless the registrar has reason to believe that the applicant— 25

(a) is not financially capable of satisfying its obligations to prospective students;

(b) with regard to all its higher education programmes—

(i) will not maintain an acceptable standard, as determined in writing, and published, by the appropriate quality assurance body accredited by SAQA in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); 30

(ii) does not comply with any other reasonable requirement determined in writing, and published, by the registrar.

(2) The registrar may require further information, particulars and documents in support of any application for registration. 35

### Determination of application for registration

54. (1) The registrar must—

(a) consider any application for registration as a private higher education institution and any further information, particulars or documents provided by the applicant; and 40

(b) register the applicant as a higher education institution if the requirements for registration contemplated in section 33 are fulfilled.

(2) If the registrar decides—

(a) to grant the application, the registrar must— 45

(i) enter the applicant's name in the appropriate register of private higher education institutions;

(ii) issue a certificate of registration, stating the terms of such registration;

- (iii) provide the certificate to the applicant; and
  - (iv) as soon as practicable after the decision, publish the certificate of registration in the *Gazette*; or
  - (b) not to grant the application, the registrar must advise the applicant in writing of the decision and provide the applicant with written reasons for his or her decision. 5
- (3) Notwithstanding subsection (1), the registrar may conditionally register an applicant who does not fulfill the requirements for registration, if the registrar believes that the applicant will be able to fulfill the relevant requirements within a reasonable period. 10
- (4) If the registrar conditionally registers an applicant under subsection (3) the registrar must—
- (a) determine the period within which the applicant must satisfy the requirements for registration;
  - (b) enter the applicant's name in the appropriate register of private higher education institutions; 15
  - (c) issue a certificate of conditional registration, stating the terms and the duration of such registration;
  - (d) provide the certificate of conditional registration to the applicant; and
  - (e) as soon as practicable after the decision, publish the certificate of conditional registration in the *Gazette*. 20
- (5) The registrar may on good cause shown extend the period referred to in subsection (4)(a).
- (6) If, on the expiry of the period referred to in subsection (4)(a) or any extension thereof, the applicant— 25
- (a) satisfies the requirements for registration specified by the registrar, the registrar must register the applicant in accordance with subsection (2)(a); or
  - (b) fails to satisfy the requirements for registration specified by the registrar, the applicant's conditional registration lapses.

### **Certificate of registration** 30

- 55.** (1) A private higher education institution must conspicuously display—
- (a) its certificate of registration or conditional registration or a certified copy thereof on its premises; and
  - (b) its registration number and an indication that it is registered or conditionally registered on all its official documents. 35
- (2) If the registrar has cancelled the registration or conditional registration of a private higher education institution under section 62, the private higher education institution must return the original certificate of registration or conditional registration to the registrar within 14 days.

### **Access to information** 40

- 56.** (1) Any person may inspect—
- (a) the register of private higher education institutions; and
  - (b) the auditor's report provided in terms of section 57.
- (2) The registrar must provide a certified copy of, or extract from, any of the documents referred to in subsection (1) to any person who has paid the prescribed fee. 45

### **Records and audits**

- 57.** (1) Every private higher education institution must, in accordance with generally accepted accounting practice, principles and procedures—
- (a) keep books and records of income, expenditure, assets and liabilities;
  - (b) prepare financial statements within three months of the end of the year, including at least— 50
    - (i) a statement of income and expenditure for the previous year;
    - (ii) a balance sheet as at the end of the previous year; and
    - (iii) any other information the registrar may reasonably require.
- (2) Every private higher education institution must, within the period determined by the registrar— 55

- (a) ensure an annual audit of its books, records of account and financial statements by an auditor, who must conduct the audit in accordance with generally accepted auditing standards;
- (b) provide to the registrar a certified copy of the auditor's report in respect of the financial statements referred to in subsection (1); and 5
- (c) provide to the registrar any additional information, particulars or documents in the manner determined by the registrar.

### **Amendment of registration**

- 58.** A private higher education institution may apply to the registrar to amend its registration or conditional registration— 10
- (a) in the manner determined by the registrar; and
  - (b) by paying the prescribed fee.

### **Requirements for amendment of registration and determination of application**

- 59.** (1) The registrar may not amend the registration of a private higher education institution unless the registrar is satisfied that such amendment is in the interests of higher education and complies with the provisions of this Act. 15
- (2) The registrar may require further information, particulars or documents in support of any application for such amendment.
- (3) If the registrar decides—
- (a) to grant the application, the registrar must— 20
    - (i) amend the certificate of registration or conditional registration accordingly;
    - (ii) provide a copy of the amended certificate to the applicant; and
    - (iii) as soon as reasonably practicable after the decision, publish the amended certificate in the *Gazette*; or 25
  - (b) not to grant the application, the registrar must advise the applicant in writing of the decision and provide the applicant with written reasons for the decision.

### **Conditions for registration**

- 60.** (1) The registrar may impose any reasonable condition on a private higher education institution in respect of— 30
- (a) its registration;
  - (b) its conditional registration; or
  - (c) any amendment of its registration or conditional registration.
- (2) The registrar may impose different conditions under subsection (1) in respect of different institutions, if there is a reasonable basis for such differentiation. 35

### **Amendment or cancellation of conditions**

- 61.** Subject to section 63, the registrar may, on reasonable grounds, amend or cancel any condition imposed under section 60 or impose new conditions under that section.

### **Cancellation of registration**

- 62.** (1) Subject to section 63, the registrar may, on reasonable grounds, cancel any registration or conditional registration in terms of this Act. 40
- (2) If the accreditation of any programme offered by private higher education institution is withdrawn, the registrar must review such institution's registration.

### **Steps before amendment or cancellation**

- 63.** The registrar may not act under section 61 or 62 unless the registrar— 45
- (a) has informed the private higher education institution of the intention so to act and the reasons therefor;

- (b) has granted the private higher education institution and other interested persons an opportunity to make representations in relation to such action; and
- (c) has considered such representations.

### **Appeal to Minister**

- 64.** (1) Any interested person may appeal to the Minister against any decision of the registrar in terms of this Chapter. 5
- (2) An appeal referred to in subsection (1) must be lodged with the Minister within 60 days of the date of the registrar's decision.
- (3) The Minister, on good cause shown, may extend the period within which an appeal may be noted against the decision of the registrar. 10
- (4) An appeal under this section does not suspend the operation of any decision of the registrar unless a competent court orders otherwise on good cause shown.

## **CHAPTER 8 GENERAL**

### **Offences** 15

- 65.** (1) Any person other than a higher education institution, who, without the authority of a higher education institution—
- (a) offers or pretends to offer any higher education programme or part thereof;
  - (b) purports to confer a qualification granted by a higher education institution, or in collaboration with a higher education institution; or 20
  - (c) purports to perform an act on behalf of a higher education institution,
- is guilty of an offence and on conviction is liable to a sentence which may be imposed for fraud.
- (2) Any person who pretends that a qualification has been awarded to him or her by a higher education institution, whereas in fact no such qualification has been so awarded, 25 is guilty of an offence and is liable upon conviction to a sentence which may be imposed for fraud.
- (3) Any person who contravenes section 51 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. 30
- (4) Any private higher education institution which does not comply with section 55(1) is guilty of an offence and is liable on conviction to a fine not exceeding R20 000.

### **Limitation of liability**

- 66.** The State, the CHE and any person appointed in terms of this Act are not 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 contemplated in this Act. 35

### **Delegation of powers**

- 67.** (1) The Minister may, on such conditions as he or she may determine, delegate any of his or her powers under this Act, except the power to make regulations, and assign any of his or her duties in terms of this Act, to— 40
- (a) the council of a public higher education institution;
  - (b) the CHE;
  - (c) any employee of the Department of Education;
  - (d) any organ of state.
- (2) The council of a public higher education institution may, on such conditions as it may determine, delegate any of its powers under this Act or delegated to it in terms of subsection (1), except the power to make an institutional statute, and assign any of its 45

duties in terms of this Act or assigned to it in terms of subsection (1), to the other internal structures, the principal or any other employee of the public higher education institution concerned.

### **Regulations**

- 68.** The Minister may make regulations consistent with this Act on— 5
- (a) any matter which the Minister is empowered or required to prescribe by regulation in terms of this Act; and
  - (b) any other matter in respect of which the Minister deems it necessary or expedient to achieve the objects of this Act.

### **Application of Act when in conflict with other laws** 10

**69.** This Act prevails over any other law dealing with higher education other than the Constitution.

## **CHAPTER 9 TRANSITIONAL AND OTHER ARRANGEMENTS**

### **Existing statutes and rules of public higher education institutions** 15

**70.** The existing statute and rules of a public higher education institution in force at the commencement of this Act continue to apply to the extent that such statute and rules are consistent with this Act.

### **Existing technikons and universities**

**71.** (1) Any technikon which was established or is regarded as having been 20 established in terms of the Technikons Act, 1993 (Act No. 125 of 1993), and which existed immediately prior to the commencement of this Act, is regarded as a technikon established in terms of this Act.

(2) Any university established or incorporated by a Private Act of Parliament continues to exist in terms of such Private Act and is regarded as a university established 25 in terms of this Act.

(3) Subject to any other applicable law, all conditions of service or service benefits applicable immediately prior to the commencement of this Act to a university or technikon continue to exist until changed by the council of the public higher education 30 institution concerned.

(4) Councils, senates and forums of technikons and universities which existed at the commencement of this Act continue to exist and perform the functions which they performed prior to such commencement, but must comply with the provisions of this Act by a date determined by the Minister by notice in the *Gazette*.

### **Continued existence of University and Technikons Advisory Council** 35

**72.** (1) The University and Technikons Advisory Council established in terms of the University and Technikons Advisory Council Act, 1983 (Act No. 99 of 1983), continues to exist and to perform its functions as if that Act had not been repealed, until the CHE commences its functions in terms of this Act.

(2) The CHE commences its functions on a date determined by the Minister by notice 40 in the *Gazette*.

### **Continued existence of Committee of University Principals, Committee of Technikon Principals and Matriculation Board**

**73.** (1) The Committee of University Principals, the Committee of Technikon Principals and the Matriculation Board continue to exist as if the Universities Act, 1955 45 (Act No. 61 of 1955), and the Technikons Act, 1993 (Act No. 125 of 1993), had not been repealed.

(2) The Committee of University Principals, the Committee of Technikon Principals

and the Matriculation Board cease to exist on a date or dates determined by the Minister, by notice in the *Gazette*, after the Minister has—

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

(3) The Committee of University Principals and the Committee of Technikon Principals must determine the manner in which their assets and liabilities must be dealt with upon their dissolution. 10

(4) The joint statutes and joint regulations and rules made in terms of the Universities Act, 1955 (Act No. 61 of 1955), and the Technikons Act, 1993 (Act No. 125 of 1993), remain in force until the date or dates contemplated in subsection (2).

(5) The Committee of University Principals may, before the date determined by the Minister in terms of subsection (2), if it appears from a bursary, scholarship or prize administered by the Committee of University Principals, be it a donation agreement, trust or testamentary provision, that such bursary, scholarship or prize, due to changed circumstances, no longer conforms to the aims of its founder or donor, or that the interests of the beneficiaries are being prejudiced, or that it is no longer practicable, amend or delete any relevant provision for the better administration of the funds of such bursary, scholarship or prize, and may make any reasonable and equitable decision regarding the matter, including the consolidation of two or more such bursaries, scholarships or prizes. 15 20

#### **Exemption of existing private higher education institutions**

**74.** Sections 51 and 65(3) and (4) do not apply to a person who provides higher education at the date of commencement of this Act, until a date determined by the Minister by notice in the *Gazette*. 25

#### **Repeal of laws**

**75.** (1) The University and Technikons Advisory Council Act, 1983 (Act No. 99 of 1983), is hereby repealed in its entirety. 30

(2) The Universities Act, 1955 (Act No. 61 of 1955), is hereby repealed in its entirety.

(3) The Technikons Act, 1993 (Act No. 125 of 1993), is hereby repealed in its entirety.

(4) The Tertiary Education Act, 1988 (Act No. 66 of 1988), is hereby repealed in its entirety.

#### **Short title and commencement** 35

**76.** (1) This Act is called the Higher Education Act, 1997.

(2) This Act comes into operation on a date determined by the President by proclamation in the *Gazette*.

## MEMORANDUM ON THE OBJECTS OF THE HIGHER EDUCATION BILL, 1997

### GENERAL

1. The Higher Education Bill was prepared with reference to four important documents, namely—

- \* the Constitution;
- \* the Report of the National Commission for Higher Education;
- \* the Ministry of Education's Green Paper on Higher Education Transformation; and
- \* the Ministry of Education's White Paper.

2. The Bill creates new legislation regarding higher education and, for that purpose, provides, *inter alia*, for the establishment, composition and functions of a Council on Higher Education. It provides for the establishment of a single, co-ordinated system of higher education while encouraging diversity within such system. The funding of the higher education system and the effective utilisation of resources in the system are also important issues that are addressed in the Bill. The objects are to provide for programme-based public higher education, as well as quality assurance and quality promotion in higher education. It also provides for regional co-operation in higher education, the appointment of an independent assessor and the registration of private and foreign institutions of higher education. Certain laws with regard to the previous higher education system are repealed.

### THE CHAPTERS OF THE BILL

1. The first chapter of the Bill provides, *inter alia*, for the determination of policy on higher education by the Minister after consulting the Council on Higher Education.

2. The composition of the Council on Higher Education is important for the success of the new higher education dispensation. The objective of the second chapter is to establish the Council on Higher Education (CHE), to provide autonomous and strategic advice to the Minister and to ensure the necessary participation and momentum regarding the transformation and development of higher education.

The Minister will be required to consult the CHE on matters involving major elements of the policy framework affecting the development of the higher education system, such as policy regarding funding and the provision of public higher education, the level and distribution of public subsidies to higher education institutions, forms of financial assistance to students and the development of the higher education system.

The CHE will be responsible for quality assurance and quality promotion through a permanent subcommittee, the Higher Education Quality Committee.

3. Chapter 3 provides for the establishment of public higher education institutions as well as for the possible declaration of an existing institution as a public higher education institution by the Minister, after consultation with the CHE and other stakeholders. This chapter also provides for the merger, the subdivision as well as the closure of public higher education institutions.

4. Chapter 4 deals with the governance of public higher education institutions. Minimum requirements include a council, a senate, a students' representative council, a principal and such other structures and offices as may be determined by the institutional statute of the institution concerned.

The council is the highest decision-making body of a public institution. It is responsible for the good order and governance of an institution and for the mission, financial position, performance, quality and reputation thereof. The involvement of students and staff in the council, the senate, as well as the forum of a public higher education institution is provided for.

The senate is responsible for the academic functions of the institution and performs such other functions as are delegated or assigned to it by the council.

The council and senate may appoint one or more committees.

The chief executive officer is responsible for the management and administration of the institution.

This chapter also provides for a council to make an institutional statute and rules to give effect to any law relating to the institution and to promote the effective management of the institution in respect of matters not expressly prescribed by any law.

Chapter 4 also deals with the appointment, conditions of service and salaries of employees, the establishment and composition of a students' representative council, disciplinary measures, admission to a public higher education institution as well as regional co-operation between institutions. These provisions are enabling, not prescriptive.

5. The funding of public higher education is dealt with in chapter 5. The Minister must determine policy on the funding of higher education. Public funds must be allocated in fair and transparent manner.

A method of improving public accountability in higher education is making public funding for institutions conditional on their councils providing strategic plans and reporting their performance against their goals. Therefore, a report on the overall governance of an institution and a duly audited statement of income and expenditure and a balance sheet accompanied by the principal's report must be submitted to the Minister in respect of the previous year.

6. In order to ensure accountability for the use of public resources and to maintain the reputation of the higher education system, the Minister will have the right to seek independent assessment and advice on the conditions at a higher education institution when circumstances arise in an institution which warrant investigation. In this regard, provision is made in chapter 6 for the appointment and functions of an independent assessor.

The circumstances under which the Minister may appoint an independent assessor are provided for in the Bill.

7. The Bill provides in chapter 7 for the registration of private and foreign higher education institutions. It establishes a regulatory framework to ensure that private institutions providing higher education have the necessary infrastructure and resources to provide quality programmes. Private institutions will be required to offer programmes accredited through procedures established by the South African Qualifications Authority (SAQA), via the Higher Education Quality Committee.

Provision is made for the designation of an employee of the Department of Education as the registrar of private higher education institutions.

8. A number of higher education laws of the previous fragmented education system are repealed to ensure the coming into operation of the new single co-ordinated system of higher education provided for in this Bill.

In chapter 9 the Bill provides for transitional and other arrangements.

## **PERSONS AND INSTITUTIONS CONSULTED**

The following interest groups were consulted:

- \* Student organisations: SATSU, SUCA, PASO, SACSA, SASCO, SAU-SRC, SALSO, SASSU
- \* CUP, CTP, CTCP, CCERSA
- \* HDI FORUM
- \* STAFF ASSOCIATIONS
- \* FRD, HSRC, MRC, CSIR, ARC, DBSA
- \* BUSINESS and LABOUR

## **PARLIAMENTARY PROCEDURE**

In the view of the Department and the State Law Advisers, the procedure set out in section 75 of the Constitution should be followed with regard to this Bill.