

REPUBLIC OF SOUTH AFRICA

GENERAL AND FURTHER EDUCATION AND TRAINING QUALITY ASSURANCE BILL

*(As amended by the Select Committee on Education and Recreation (National Council
of Provinces)) (The English text is the official text of the Bill)*

(SELECT COMMITTEE ON EDUCATION AND RECREATION ON REQUEST OF MINISTER OF EDUCATION)

[B 57B—2001]

ISBN 0 621 31380 7

No. of copies printed 1 800

BILL

To provide for the establishment, composition and functioning of the General and Further Education and Training Quality Assurance Council; to provide for quality assurance in general and further education and training; to provide for control over norms and standards of curriculum and assessment; to provide for the issue of certificates at the exit points; to provide for the conduct of assessment; to repeal the South African Certification Council Act, 1986; and to provide for matters connected therewith.

PREAMBLE

WHEREAS monitoring and auditing achievements in terms of standards or qualifications registered on the National Qualifications Framework is the responsibility of bodies accredited by the South African Qualifications Authority;

AND WHEREAS it is necessary to—

- * ensure that a quality assurance framework is developed for general and further education and training; and
- * improve and monitor learning achievements and, after students and learners have reached the required standards, to certify such achievements;

AND WHEREAS there is a need to establish a body to be a quality assurer for the general and further education bands of the National Qualifications Framework;

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

CHAPTER 1

DEFINITIONS, APPLICATION AND OBJECTS OF ACT

Definitions

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

“accreditation” means the certification of a person, a body or an institution as having the capacity to fulfill a particular function in the quality assurance system set up by the South African Qualifications Authority in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

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“assessment” means the process of identifying, gathering and interpreting information about a learner’s achievement in order to—

(a) assist the learner’s development and improve the process of learning and teaching; and

(b) evaluate and certify competence in order to ensure qualification credibility;

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“assessment body” means a department of education or any other body registered with the Council as a body responsible for conducting external assessment;

“certificate” means a certificate contemplated in section 16(4)(e);
 “Council” means the General and Further Education and Training Quality Assurance Council established by section 4;
 “department of education” means the department responsible for education at national level or a department responsible for education in a province; 5
 “Director-General” means the Director-General of the department responsible for education at national level;
 “Education and Training Quality Assurance Body” means an education and training quality assurance body accredited in terms of section 5(1)(a)(ii)(bb) of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); 10
 “employee” means any person who is in the full-time or part-time employ of the Council;
 “exit point” means a point in general or further education and training at which a learner is required to demonstrate competence with a view to obtaining documentary proof of proficiency; 15
 “external assessment” means any assessment conducted by an assessment body, the outcomes of which count towards the achievement of a qualification;
 “financial year” means the period from 1 April in any year to 31 March in the following year;
 “further education and training” means all learning and training programmes leading to qualifications from levels 2 to 4 of the National Qualifications Framework, which levels are above general education and training but below higher education; 20
 “general and further education and training” means general education and training and further education and training; 25
 “general education and training” means all learning and training programmes leading to a qualification on level 1 of the National Qualifications Framework, which level is below further education and training;
 “head of department” means the head of a department responsible for education in a province; 30
 “internal assessment” means any assessment conducted by the provider, the outcomes of which count towards the achievement of a qualification;
 “learner” means any person receiving or obliged to receive education at any education institution contemplated in section 2 within the general and further education and training sectors; 35
 “Minister” means the Minister of Education;
 “moderation” means the process which ensures that assessment of the outcomes described in the National Qualifications Framework standards or qualifications is fair, valid and reliable and “verification” has the same meaning;
 “moderator” means a person, body or organisation that ensures that the assessment of the outcomes described in National Qualifications Framework standards or qualifications is fair, valid and reliable; 40
 “National Qualifications Framework” means the National Qualifications Framework contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); 45
 “provider” means any body which—
 (a) delivers learning programmes which culminate in a specified National Qualifications Framework standard or qualification; and
 (b) manages the assessment of such learning programmes,
 but, in respect of public schools, public further education and training institutions and public adult learning centres, “provider” means the department responsible for education in the relevant province; 50
 “qualification” means the formal recognition of the achievement of the required number and range of credits and such other requirements at specific levels of the National Qualifications Framework as may be determined by the relevant bodies registered for such purpose by the South African Qualifications Authority; 55
 “raw marks” means the actual marks or other quantifiable outcomes obtained by a learner before any adjustment of the marks is made by the Council;

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

“standard” means registered statements of desired education and training outcomes and their associated assessment criteria;

“this Act” includes any regulation made under section 27.

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Application of Act

2. This Act applies to all education institutions which have been established, declared or registered under the—

- (a) South African Schools Act, 1996 (Act No. 84 of 1996);
- (b) Further Education and Training Act, 1998 (Act No. 98 of 1998); or
- (c) Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000).

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Objects of Act

3. The objects of this Act are to—

- (a) establish a quality assurance body to ensure that continuous enhancement of quality is achieved in the delivery and outcomes of the general and further education and training sectors of the national education and training system;
- (b) develop a quality assurance framework for the general and further education bands of the National Qualification Framework; and
- (c) regulate the relationship between the national Department of Education, the South African Qualifications Authority, other Education and Training Quality Assurance Bodies, providers and the Council.

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CHAPTER 2

ESTABLISHMENT AND ACCREDITATION

Establishment of Council

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4. A juristic person to be known as the General and Further Education and Training Quality Assurance Council is hereby established.

Accreditation as Education and Training Quality Assurance Body

5. (1) The Council must be regarded as having been accredited by the South African Qualifications Authority in terms of section 5(1)(b)(i) of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), as the body responsible for establishing education and training standards or qualifications for general and further education and training at education institutions contemplated in section 2.

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(2) If the Council fails to comply substantially with the accreditation requirements for an Education and Training Quality Assurance Body, the South African Qualifications Authority must—

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- (a) notify the Council in writing and set out the criterion which the Council failed to comply with; and
- (b) specify in the notice a reasonable period within which the Council must comply with the criterion.

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(3)(a) If the Council does not comply with the criterion within the period specified in the notice contemplated in subsection (2)(a), the South African Qualifications Authority must inform the Minister of the failure.

(b) The South African Qualifications Authority must submit a copy of the written notice contemplated in subsection (2)(a) to the Minister when it acts in terms of paragraph (a).

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(4) Subject to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), the Minister must request the Chairperson of the Council to give a detailed report on why the Council has not complied with the criterion.

(5) After consideration of all the relevant factors, the Minister must direct the South African Qualifications Authority and the Council as to what reasonable steps each must take to solve the problem.

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Composition of Council

6. (1) (a) The Council consists of 15 members appointed by the Minister in terms of subsection (5).
- (b) The Minister must appoint one of the members as chairperson.
- (2) In addition to the members contemplated in subsection (1), the Chief Executive Officer is a member by virtue of his or her office. 5
- (3) The selection of members contemplated in subsection (1) must be undertaken in such a manner as to ensure, insofar as is practically possible, that—
- (a) the functions of the Council in terms of this Act are performed according to the highest professional standards; 10
- (b) the membership taken as a whole—
- (i) is broadly representative of the general and further education and training sectors and related interests;
- (ii) has thorough knowledge and understanding of general and further education and training; 15
- (iii) appreciates the role of the general and further education and training system in reconstruction and development;
- (iv) has known and attested commitment to the interests of general and further education and training;
- (v) has knowledge and understanding of accreditation, assessment and certification of general and further education and training programmes; 20
- (vi) has experience in statistics; and
- (vii) has experience in the financial field; and
- (c) due attention is given to the representivity of the Council in terms of such relevant factors as race, gender and disability. 25
- (4) The Minister must invite nominations for the appointment of the members contemplated in subsection (1) by notice in the *Gazette* and, in particular, must invite nominations from persons, roleplayers or organisations active or involved in general and further education and training.
- (5) The Minister must consider the nominations and appoint the members with due regard to the criteria contemplated in subsection (3). 30
- (6) Any member contemplated in subsection (1)—
- (a) holds office for a period not exceeding four years; and
- (b) may be reappointed at the expiry of his or her term of office, but may not serve for more than two consecutive terms of office. 35
- (7) The members contemplated in subsection (1) must elect one person as a deputy chairperson from amongst their number.

Vacation of office and filling of vacancies

7. (1) A member of the Council contemplated in section 6(1) must vacate his or her office if he or she— 40
- (a) resigns by giving written notice to the chairperson, or in the case of the chairperson, to the Minister;
- (b) is absent from three consecutive meetings of the Council, without leave of the Council;
- (c) is declared insolvent, is removed from an office of trust by a court of law or is convicted of an offence for which the sentence is imprisonment without the option of a fine; or 45
- (d) is declared unable to manage his or her personal affairs by a court of law.
- (2) The Minister may revoke the appointment of any member of the Council appointed in terms of section 6(5) at any time before the expiry of his or her term of office, if there are sound reasons for doing so. 50
- (3) If a member of the Council vacates his or her office or if his or her appointment is revoked in terms of subsection (2), the resultant vacancy must be filled by appointment in accordance with section 6.

Committees of Council

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8. (1) (a) The Council may establish one or more committees which may perform such functions of the Council as the Council may determine.

(b) A committee established under paragraph (a) must perform its functions subject to the instructions of the Council.

(2) A committee may include a person who is not a member of the Council but the Council must give due regard to the criteria contemplated in section 6(3) when it appoints such a person to a committee.

(3) The Council must appoint a member of the Council as chairperson of a committee.

(4) A member of a committee is appointed for such period as the Council may determine.

Meetings of Council and committees

9. (1) The Council and its committees must meet at least twice a year at such times and places as the relevant chairperson may determine by notice in writing to the members concerned.

(2) The chairperson must convene a meeting of the Council—

(a) within 14 days of the receipt of a written request signed by at least one third of the members of the Council; or

(b) if requested by the Minister to convene a meeting.

(3) If the chairperson and deputy chairperson of the Council are absent from any meeting, the members present must appoint a person from among themselves to preside at that meeting.

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

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

Allowances and remuneration of members of Council and committees

10. Any member of the Council appointed in terms of section 6(5) and any person appointed as a member of a committee in terms of section 8(2) 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 Council or a committee, as the case may be, be paid by the Council—

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

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

Appointment of Chief Executive Officer and staff

11. (1) The Minister must appoint a Chief Executive Officer for the Council on the recommendation of the members of the Council appointed in terms of section 6(5).

(2) If the Minister does not agree with a recommendation of the members of the Council, they must make another recommendation for consideration by the Minister.

(3) The Council must appoint such number of employees to assist the Council in the performance of its functions as it may deem necessary.

(4) Despite subsection (1), the Council is the employer of the Chief Executive Officer and employees and must determine their remuneration, allowances, subsidies and other conditions of service.

Functions of Chief Executive Officer

12. The Chief Executive Officer—

(a) is responsible for the work in connection with the performance by the Council of its functions in terms of this Act;

(b) must assign responsibilities and supervise the employees of the Council;

(c) is the accounting officer to the Council charged with accounting for moneys received, payments made and movable property purchased by the Council in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999); and

(d) must keep minutes of the proceedings and decisions of the Council.

Funds of Council

- 13.** (1) The funds of the Council consist of—
- (a) money appropriated by Parliament;
 - (b) donations and contributions received by the Council;
 - (c) money received by the Council in respect of fees charged for services; 5
 - (d) interest received on investments referred to in subsection (5);
 - (e) money obtained by way of loans, subject to chapter 8 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
 - (f) any other income received by the Council.
- (2) The Council— 10
- (a) must keep a record of all funds received and spent and of all assets, liabilities and financial transactions;
 - (b) subject to Chapter 6 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and at such time and in such manner as the Minister may determine, must in each financial year submit a budget for the ensuing financial year to the Minister for his or her approval; 15
 - (c) may in any financial year submit adjusted budgets to the Minister for his or her approval; and
 - (d) may not incur any expenditure which exceeds the total amount approved in terms of paragraphs (b) and (c). 20
- (3) If the Minister does not approve the budget of the Council, the Minister must require the Council to provide a revised budget to him or her within a specified period.
- (4) Subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), the funds contemplated in subsection (1) must be used by the Council in accordance with the approved budget. 25
- (5) Subject to subsection (4) and the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Council may invest surplus funds.

Alienation and encumbrance of property

- 14.** The Council may not without the prior approval of the Minister, granted with the concurrence of the Minister of Finance— 30
- (a) let, sell, exchange or otherwise alienate its immovable property; or
 - (b) as long as a guarantee in terms of section 70 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), is in force in respect of any loan granted to the Council—
 - (i) mortgage or otherwise encumber its immovable property acquired with money obtained by means of that loan; and 35
 - (ii) let, sell, exchange or otherwise alienate, or hypothecate or otherwise encumber its movable property acquired with money obtained by means of that loan.

Audit and annual report 40

- 15.** (1) The statements of account and balance sheet of the Council must be audited at the end of each financial year by a person registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), and appointed by the Council with the approval of the Auditor-General.
- (2) The Council must not later than five months after the end of each financial year submit to the Minister an annual report in such form as the Minister may determine on the performance of its functions during that financial year, including an audited balance sheet and a statement of income and expenditure. 45
- (3) The Minister must table the annual report, including the balance sheet and statement of income and expenditure referred to in subsection (2), in Parliament within one month after receipt thereof, if Parliament is then sitting, and if Parliament is not then sitting, within one month after the commencement of the next sitting. 50

Functions of Council

- 16.** (1) The Council must perform its functions subject to—
- (a) the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); 55
 - (b) the National Education Policy Act, 1996 (Act No. 27 of 1996); and

- (c) any directive prescribed to it by the Minister.
- (2) The Council must meet the criteria for accreditation and perform the functions of an Education and Training Quality Assurance Body for the general and further education and training bands of the National Qualifications Framework.
- (3) The Council may, with the approval of the Minister and the South African Qualifications Authority, assume its functions progressively depending on its capacity. 5
- (4) Subject to subsection (3), the Council must—
- (a) accredit providers as contemplated in Chapter 3;
 - (b) monitor the suitability and adequacy of standards and qualifications;
 - (c) ensure that providers adopt quality management systems for learner achievement; 10
 - (d) assure the quality of learner assessment at exit points;
 - (e) issue certificates of learner achievement in terms of standards or qualifications registered on the National Qualifications Framework;
 - (f) maintain an acceptable data bank and follow acknowledged recording and reporting procedures; 15
 - (g) promote quality improvement among providers; and
 - (h) monitor and report to the Minister on the performance of departments of education as providers, and recommend steps to rectify any deficiencies.
- (5) Subject to policy determined in terms of section 3(4) of the National Education Policy Act, 1996 (Act No. 27 of 1996), the Council, with regard to external assessment— 20
- (a) must perform the external moderation of assessment of all providers and assessment bodies;
 - (b) must, in concurrence with the Director-General and the relevant provider, approve the publication of the results of learners if the Council is satisfied that the provider or assessment body has— 25
 - (i) conducted the assessment free from any irregularity that may jeopardise the integrity of the assessment or its outcomes;
 - (ii) complied with the requirements prescribed by the Council for conducting assessments; 30
 - (iii) applied the norms and standards prescribed by the Council and the South African Qualifications Authority, which a learner is required to comply with in those assessments in order to obtain a certificate; and
 - (iv) complied with every other condition determined by the Council; and 35
 - (c) may adjust raw marks during the standardisation process.
- (6) The Council may accredit an assessment body in accordance with the criteria determined by the South African Qualifications Authority and approved by the Minister.
- (7) Subject to section 74 of the Higher Education Act, 1997 (No. 101 of 1997), the Council may endorse a certificate of a learner who has complied with the minimum requirements for admission to study at a higher education institution with the approval of the South African Universities Vice-Chancellors' Association, the Committee for Technikon Principals or any other similar body recognised by the Minister, as the case may be. 40

Internal assessment that forms part of final assessment 45

- 17.** (1) The Council may issue directives for internal assessment to ensure the reliability of assessment outcomes.
- (2) The directives contemplated in subsection (1) must include measures for verification.
- (3) Assessment bodies must monitor the implementation of the Council's directives and report any irregularity without delay to the Council in writing, as well as the steps taken to deal with the irregularity. 50

Functions of provider or assessment body with regard to external assessment

- 18.** In respect of an external assessment and subject to policy determined in terms of section 3(4) of the National Education Policy Act, 1996 (Act No. 27 of 1996), an assessment body— 55
- (a) must take adequate measures to combat irregularities at assessment and marking centres and must take adequate security measures to ensure the confidentiality and integrity of the assessments;

- (b) must ensure that assessment is representative of the prescribed subject matter;
- (c) must ensure that assessment is moderated by at least one competent internal moderator appointed by the assessment body;
- (d) must submit assessment material to an external moderator for confirmation that the material conforms to the required standards; 5
- (e) must ensure that a sample of the assessment scripts or other assessment is moderated by an external moderator appointed by the Council;
- (f) must schedule a particular assessment session for a stipulated date and time on the assessment time-table;
- (g) must supply the Council on or before a date, and in the form, determined by the Council with a mark or other record as required for each assessment undertaken; 10
- (h) must without delay and in writing supply the Council and the Director-General with full details of any irregularity that occurred in respect of such assessment and the steps taken to deal with the irregularity; 15
- (i) must publish the results of the assessment after obtaining the approval of the Council; and
- (j) may recommend to the Council during the standardisation process that raw marks be adjusted.

Duty of Council to report irregularities to Director-General 20

19. The Council must report any irregularity which may jeopardise the integrity of an assessment or its outcome to the Director-General.

Functions of Minister and Director-General with regard to external assessment

20. (1) The Director-General must—
- (a) promote the integrity of the external assessment system; 25
 - (b) monitor the conduct of the Council and assessment bodies; and
 - (c) inform the Minister of any irregularity reported in terms of section 19.
- (2) The Minister may institute an investigation into any irregularity contemplated in subsection (1)(c).

Cancellation of certificates 30

21. (1) The Council may refuse to issue a certificate if a substantial irregularity has occurred in relation to an external assessment.

(2) The Council may cancel a certificate that has been issued to a learner if on investigation the Council found that the learner has not met the requirements for the qualification. 35

(3) The Council may by notice in writing direct a learner whose certificate has been cancelled to return the certificate to the Council within three weeks after such notice.

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

CHAPTER 3 40

ACCREDITATION OF PROVIDERS

PART 1

PUBLIC PROVIDERS

Accreditation of provincial education departments

22. (1) Every department responsible for education in a province must be regarded as having been accredited as a public provider by the Council. 45

(2) The Council must develop criteria for accreditation to which a department responsible for education in a province must adhere and submit them to the Minister for approval.

(3) The Minister must determine policy in respect of such criteria in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996). 5

(4) The policy contemplated in subsection (3) is binding on any department responsible for education in a province and on public education institutions established in terms of legislation referred to in section 2.

(5) The Council must monitor compliance with the policy contemplated in subsection (3). 10

(6) If a department responsible for education in a province fails to comply substantially with the policy contemplated in subsection (3), the Council must—

(a) notify such department in writing of its failure and set out the policy which the department failed to comply with; and

(b) specify in the notice a reasonable period within which the department must comply with the policy. 15

(7) (a) If the department does not comply with the policy within the period specified in the notice contemplated in subsection (6), the Council must inform the Minister of the failure.

(b) The Council must submit a copy of the written notice contemplated in subsection (6)(a) to the Minister when it acts in terms of paragraph (a). 20

(8) Subject to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and section 8 of the National Education Policy Act, 1996 (Act No. 27 of 1996), the Minister must request the member of the executive council responsible for education in the province in question to give a detailed report on why the provincial education department has not complied with the policy. 25

(9) After consideration of all the relevant factors, the Minister must direct the Council and the provincial education department as to what reasonable steps each must take to solve the problem.

PART 2 30

PRIVATE PROVIDERS

Accreditation of private providers

23. (1) The Council must develop criteria for accreditation of private providers and submit them to the Minister.

(2) The Minister must determine policy in respect of such criteria in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996). 35

(3) The policy contemplated in subsection (2) is binding on all private providers.

(4) Any person who is required to register as—

(a) an independent school in terms of the South African Schools Act, 1996 (Act No. 84 of 1996); 40

(b) a private further education and training institution in terms of the Further Education and Training Act, 1998 (Act No. 98 of 1998); or

(c) a private centre in terms of the Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000),

must apply to the Council for accreditation in the manner determined by the Council. 45

(5) An applicant for accreditation must submit any additional information required by the Council.

(6) (a) The Council must conclude its evaluation of the applicant and its educational programmes within a period of six months.

(b) The Minister may extend the period contemplated in paragraph (a) if there are reasonable grounds for an extension. 50

(7) The Council may—

(a) grant accreditation;

(b) grant provisional accreditation;

- (c) refuse accreditation; or
- (d) refer the application back to the applicant for additional information.

Notification of accredited programmes

24. (1) The Council must within 14 days of accrediting the programmes as contemplated in section 23— 5
- (a) in the case of a provider contemplated in section 23(4)(b), notify the registrar of further education and training institutions; and
 - (b) in the case of a provider contemplated in section 23(4)(a) or (c), the relevant head of department.
- (2) The notification must indicate if any conditions are attached to the accreditation and the nature thereof. 10

Failure to comply with policy

25. (1) The Council must monitor private providers to ensure compliance with the policy contemplated in section 23(2).
- (2) If a private provider fails to comply with the policy, the Council must— 15
- (a) notify such private provider in writing and set out the nature and extent of the failure; and
 - (b) determine a reasonable period within which the private provider must comply with the policy.
- (3) At the expiry of the period contemplated in subsection (2)(b), the Council— 20
- (a) must evaluate the steps taken by the private provider to comply with the policy and take into account any submissions made by the provider; and
 - (b) may affirm the accreditation of the private provider or withdraw the accreditation as from a date specified by Council.
- (4) Before the Council withdraws an accreditation, it must notify the head of the department or registrar concerned, as the case may be, contemplated in section 24(1) of its intention to withdraw the accreditation and of the date of the intended withdrawal. 25

CHAPTER 4

GENERAL

Information to be provided to and by Council 30

26. (1) Every provider and every assessment body must provide the Council with such information as the Council may reasonably require for the performance of its functions in terms of this Act.
- (2) The Council must on request provide such information as may be reasonably required by any provider or body contemplated in subsection (1). 35

Regulations

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

Delegation of powers and assignment of duties 40

28. (1) The Council may, on such conditions as it may determine, delegate any of its powers and assign any of its duties in terms of this Act to any of its committees or any other appropriate body capable of exercising such power or performing such duty.
- (2) The Council may delegate any quality promotion and quality assurance which may be performed in terms of this Act to any appropriate Education and Training Quality Assurance Body. 45

- (3) A delegation or assignment under subsection (1) or (2)—
- (a) must be in writing; and
 - (b) does not prevent the Council from exercising any power or performing any duty so delegated or assigned.

Repeal of laws, savings and transitional arrangements

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29. (1) Subject to this section, the South African Certification Council Act, 1986 (Act No. 85 of 1986), the South African Certification Council Amendment Act, 1992 (Act No. 89 of 1992), section 65 of the General Law Third Amendment Act, 1993 (Act No. 129 of 1993), and sections 1, 2 and 3 of the Education Laws Amendment Act, 1999 (Act No. 48 of 1999), are hereby repealed.

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(2) The South African Certification Council established by section 2 of the South African Certification Council Act, 1986 (Act No. 85 of 1986), continues to perform the functions which it performed prior to the commencement of this Act but ceases to exist on the day immediately before the date of the first meeting of the Council, and all rights, obligations, assets and liabilities acquired or incurred by the South African Certification Council immediately vest in the Council and the Council must be regarded as having acquired or incurred such rights, obligations, assets and liabilities in terms of this Act.

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(3) Any regulations made or anything done under any provision of any law repealed by subsection (1) must be regarded as having been made or done under the corresponding provision of this Act.

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(4) (a) Existing agreements of employment between the South African Certification Council and its employees on the date contemplated in subsection (2) must be regarded as agreements entered into between those employees and the Council, and continue to exist subject to applicable labour laws.

(b) The employees contemplated in paragraph (a) must be regarded as having been serving continuously under the same employer without interruption.

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Short title

30. This Act is called the General and Further Education and Training Quality Assurance Act, 2001.

MEMORANDUM ON THE OBJECTS OF THE GENERAL AND FURTHER EDUCATION AND TRAINING QUALITY ASSURANCE BILL, 2001

1. INTRODUCTION

The Bill proposes the establishment of the General and Further Education and Training Quality Assurance Council ("the Council"), to replace the South African Certification Council and seeks to repeal the South African Certification Council Act, 1986 (Act No. 85 of 1986). The Council will perform the role of an education and training quality assurance body for the general and further education and training bands of the National Qualification Framework in terms of the South African Qualifications Authority Act, 1995 (No. 58 of 1995). General and further education and training comprises all levels of learning below higher education. The Council's functions will include quality assurance and the assessment and certification of learners at the general and further education and training exit points.

2. BACKGROUND

2.1 The Department of Education appointed a task team to investigate, develop and produce a suitable quality assurance model for the general and further education and training bands of the National Qualification Framework.

2.2 After extensive consultations with all relevant stakeholders and also with quality assurance authorities in Scotland and Canada, the task team proposed a model which was accepted by the Heads of Education Department Committee and by the Council of Education Ministers.

2.3 In terms of the proposed model the main function of an education and training quality assurance body is to monitor and audit education and training achievements and systems in terms of national standards and qualifications.

2.4 As the South African Certification Council Act, 1986, emanates from the time of apartheid, various of its provisions are outdated and the language used is not user and gender friendly. The Minister of Education proposed that new legislation should be drafted to establish an education and training quality assurance body for the general and further education and training bands on the basis of the model proposed by the task team.

3. DISCUSSION

3.1 In terms of the Bill the Council is regarded as an education and training quality assurance body for all education institutions in the general and further education bands of the National Qualification Framework.

3.2 The proposed composition of the Council is such that general and further education and training systems and related interests are represented on the Council. Due attention is given to representivity on the Council with regard to race, gender and disability. The Minister of Education is to appoint the members of the Council from nominations made by roleplayers in terms of certain proposed criteria.

3.3 Provision is also made for the appointment of a Chief Executive Officer and other staff for the Council. The Council is to be the employer of the staff and must determine their remuneration, allowances, subsidies and other conditions of service.

3.5 The Council's main functions are—

- (a) to accredit general and further education and training providers;
- (b) to recognise learners' achievements and award qualifications and credits towards qualifications registered on the National Qualifications Framework;
- (c) to issue certificates;
- (d) to co-operate with the relevant bodies appointed to moderate quality assurance against specified standards or qualifications, for which one or more education and training quality assurance bodies are accredited; and

- (e) to recommend new standards or qualifications to the National Standards Bodies for consideration or modifications to existing standards and to maintain a data base.

All the functions of the Council are subject to criteria determined by the Council within the framework of national policy and criteria determined by the South African Qualifications Authority (SAQA).

3.5 All private and independent institutions are required to be accredited by the Council. If they do not maintain the required standards, the accreditation may, after following a due process of law, be withdrawn. All provincial education departments are regarded, in terms of the Bill, as public providers. This approach is consistent with other education legislation where the educational institution is responsible for the governance of the institution but the actual delivery of education in the classroom is the responsibility of the provincial education departments. The Council must develop criteria for accreditation to which all provincial education departments must adhere. If any provincial education department fails to adhere substantially to these criteria, the Council and the relevant department must try to resolve the problem. If they cannot resolve the issue, the Minister of Education must facilitate the process and provide guidance to resolve the problem.

3.6 Since the Council is to be a juristic person established by law and regarded by law as having been accredited by SAQA as an education and training quality assurance body for general and further education and training, its accreditation may not be withdrawn by a decision of SAQA as contemplated in SAQA's regulations. Only Parliament has the power to repeal legislation. The Council is similar to the Council on Higher Education but different from other education and training quality assurance bodies which are established in terms of SAQA's regulations. The Council is to be the education and quality assurance body for all general and further education institutions established, declared or registered in terms of education legislation. It may delegate its functions to other quality assurance bodies but will remain primarily responsible for the general and further education and training bands of the National Qualifications Framework, especially in the accreditation of private providers.

3.7 The Bill also proposes certain transitional arrangements regarding the date on which the South African Certification Council ceases to exist and the transfer of employees of the South African Certification Council to the Council.

4. FINANCIAL IMPLICATIONS FOR STATE

4.1 As the new statutory body is merely replacing another statutory body, this limits the financial implications to the Department of Education. However, the Council will have a much wider range of functions than its predecessor and will need additional funds. There will be financial implications for the provincial education departments relating to the quality assurance of provincial education. These will be more clearly assessed once the criteria for accreditation have been proposed by the Council and determined as policy by the Minister.

4.2 The Council will need funds for—

- * operational costs, which includes the salaries of its staff;
- * development work; and
- * special projects.

4.3 The Council's main sources of funding will include—

- * fees charged for rendering services such as certification of learners and accreditation of providers;
- * government allocations; and
- * donor funding.

The intention is to retain some of the functions of the South African Certification Council but in a modified form, whereby operational costs are generated from within the organisation through fees that are charged for the rendering of services. Fees for certifying learners at the end of grade 12 (for the schooling sector) and at the end of N3 (for Technical Colleges) are currently being paid by the provincial departments of education. These fees will increase when more qualifications are awarded, namely, at the

end of the compulsory phase (grade 9 and Adult Basic Education and Training, level 4). The payment for services rendered will have direct financial implications for all the providers, including provincial departments of education.

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Education are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within a functional area listed in Schedule 4 of the Constitution, namely “Education at all levels, excluding tertiary education”.

Printed by Creda Communications

ISBN 0 621 31380 7