

REPUBLIC OF SOUTH AFRICA

HIGHER EDUCATION AMENDMENT BILL

*(As introduced in the National Assembly as a section 75-Bill; explanatory summary of Bill
published in Government Gazette No 22440 of 2 July 2001)
(The English text is the official text of the Bill)*

(MINISTER OF EDUCATION)

[B 61—2001]

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

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

To amend the Higher Education Act, 1997, so as to provide that the Higher Education Quality Committee is deemed to be accredited as an Education and Training Quality Assurance Body; to provide for the establishment of interim councils for new, declared or merged public higher education institutions; to provide for the dissolution of the council of a public higher education institution if 75 per cent or more of the members resign, and for the constitution of a new council; to provide for a seat for a public higher education institution; to provide for the conferring of degrees and honorary degrees by a public higher education institution; to provide for the repeal of the Certification Council for Technikon Education Act 1986, the universities' Private Acts and certain obsolete Acts; to make certain textual alterations; and to provide for matters connected therewith.

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

1. Section 7 of the Higher Education Act, 1997 (hereinafter referred to as “the principal Act”), is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) The Higher Education Quality Committee is deemed to be accredited by SAQA as an Education and Training Quality Assurance body primarily responsible for higher education.”.

2. Section 8 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) The Minister must appoint six non-voting members of the CHE nominated respectively by the Director-General, the Provincial Heads of Education, the Director-General of the Department of Arts, Culture, Science and Technology, the Director-General of the Department of Labour, **[the Foundation for Research Development, established in terms of the Research Development Act, 1990**

(Act No. 75 of 1990), the Centre for Science Development of the Human Sciences Research Council, established in terms of the Human Sciences Research Act, 1968 (Act No. 23 of 1968)] the National Research Foundation established in terms of the National Research Foundation Act, 1998 (Act No. 23 of 1998), and SAQA.”.

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Amendment of section 20 of Act 101 of 1997

3. Section 20 of the principal Act is hereby amended—

(a) by the deletion of subsection (2); and

(b) by the addition of the following subsections:

“(6) The Minister must in the notice contemplated in subsection (1) establish an interim council for a period not exceeding six months, to perform the functions relating to the governance of the institution, except the making of an institutional statute.

(7) The Minister may extend the period referred to in subsection (6) once for a further period not exceeding six months.

(8) The members of the interim council contemplated in subsection (6) are appointed by the Minister and consist of—

(a) the chairperson; and

(b) four other members.

(9) The interim council must co-opt three members of the interim management contemplated in subsection (10)(a) and these co-opted members have no voting powers.

(10) Apart from the functions contemplated in subsection (6), the interim council must in particular—

(a) appoint an interim body to manage the day-to-day activities of the institution;

(b) ensure that a council is constituted in terms of the standard institutional statute contemplated in section 33(3); and

(c) ensure that such other structures as may be determined in the standard institutional statute contemplated in section 33(3) are constituted.

(11) Any decision of the interim council which may affect the right of any structure of the public higher education institution, may only be taken after consultation with such structure.”.

Amendment of section 21 of Act 101 of 1997

4. Section 21 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsection:

“(3A) Section 20(6) to (11), with the changes required by the context, applies to a declaration referred to in subsection (1)(a).”.

Amendment of section 23 of Act 101 of 1997

5. Section 23 of the principal Act is hereby amended by the addition of the following subsections:

“(5) The Minister must in the notice contemplated in subsection (1) establish an interim council for a period not exceeding six months, to perform the functions relating to the governance of the single public higher education institution contemplated in subsection (1), except the making of an institutional statute.

(6) The Minister may extend the period referred to in subsection (5) once for a further period not exceeding six months.

(7) The members of the interim council contemplated in subsection (5) are appointed by the Minister and consist of—

(a) the chairperson; and

(b) four other members.

(8) The four members contemplated in subsection (7)(b)—

- (a) must be appointed by the Minister from nominations received from the public higher education institutions concerned; and
- (b) may not include any member of staff, or student, from the public higher education institutions concerned.
- (9) The interim council must co-opt three members of the interim management contemplated in subsection (10)(a) and these members have no voting powers.
- (10) Apart from the functions contemplated in subsection (5) the interim council must in particular—
 - (a) appoint an interim body to manage the day-to-day activities of the institution;
 - (b) ensure that a council is constituted in terms of the standard institutional statute contemplated in section 33(3); and
 - (c) ensure that such other structures as may be determined in the standard institutional statute contemplated in section 33(3) are constituted.
- (11) Any decision of the interim council which may affect the right of any structure of the public higher education institution, may only be taken after consultation with such structure.”.

Amendment of section 26 of Act 101 of 1997, as amended by section 3 of Act 55 of 1999

6. Section 26 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 20
- “(3) Subject to subsection (4), a structure referred to in subsection (2)(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]**.”.

Amendment of section 27 of Act 101 of 1997 25

7. Section 27 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
 - “(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.”; and
 - (b) by the addition of the following subsections:
 - “(8) If 75 per cent or more of the members of the council of a public higher education institution resign at a meeting of council, it is deemed that the council has resigned.
 - “(9) If a council resigns as contemplated in subsection (8) a new council must be constituted in terms of the institutional statute of the public higher education institution.”.

Amendment of section 28 of Act 101 of 1997

8. Section 28 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 40
- “(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]**.”.

Amendment of section 29 of Act 101 of 1997

9. Section 29 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection: 45
- “(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 **[,] or institutional rules [or an Act of Parliament]**.”.

Amendment of section 31 of Act 101 of 1997

10. Section 31 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) the management, as determined by the institutional statute **[or an Act of Parliament]**”; and
 - (b) by the substitution for subsection (3) of the following subsection:

“(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]**.”.

Amendment of section 32 of Act 101 of 1997

11. Section 32 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(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]** matter not expressly prescribed by this Act; and”.

Substitution of section 35 of Act 101 of 1997

12. The following section is hereby substituted for section 35 of the principal Act:
- “Students’ representative council**
35. The establishment and composition, manner of election, term of office, functions and privileges of the students’ representative council of a public higher education institution must be determined by the institutional statute and the institutional rules.”.

Substitution of section 36 of Act 101 of 1997

13. The following section is hereby substituted for section 36 of the principal Act:
- “Disciplinary measures**
36. Every student at a public higher institution is subject to such disciplinary measures and disciplinary procedures as may be determined by the institutional statute**[, subject to section 32(2)(d)]** or the institutional rules.”.

Substitution of section 41A of Act 101 of 1997

14. Section 41A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) If an audit of the financial records of a public higher education institution, or an investigation by an independent assessor as contemplated in section 47, reveals financial or other maladministration of a serious nature at a public higher education institution or the serious undermining of the effective functioning of a public higher education institution, the Minister may, after consultation with the council of the public higher education institution concerned, if practicable, and notwithstanding any other provision of this Act **[or a private Act of Parliament]**, appoint a person as administrator to take over the authority of the council or the management of the institution and perform the functions relating to governance or management on behalf of the institution for a period [not exceeding six months] determined by the Minister.”.

Amendment of section 53 of Act 101 of 1997, as amended by section 8 of Act 55 of 1999 and section 7 of Act 54 of 2000

15. Section 53 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

- “(c) complies with any other reasonable requirement **[determined by the registrar which may include a requirement that none of the words or any derivatives of the words ‘university’ or ‘technikon’ may appear in the name of the applicant]** prescribed by the Minister.”.

Amendment of section 54 of Act 101 of 1997, as amended by section 8 of Act 54 of 2000

16. Section 54 of the principal Act is hereby amended—

- (a) by the substitution for subsections (3) and (4) of the following subsections, respectively:

“(3) Notwithstanding subsection (1), the registrar may **[conditionally]** provisionally register an applicant, other than a foreign juristic person, who does not fulfil the requirements for registration **[other than a foreign juristic person]** contemplated in section 53 if the registrar believes that the applicant will be able to fulfill the relevant requirements within a reasonable period.

(4) If the registrar **[conditionally]** provisionally 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;
- (c) issue a certificate of **[conditional]** provisional registration, stating the terms and the duration of such registration;
- (d) provide the certificate of **[conditional]** provisional registration to the applicant; and
- (e) as soon as practicable after the decision, publish the certificate of **[conditional]** provisional registration in the *Gazette*.”; and
- (c) by the substitution in subsection (6) for paragraph (b) of the following paragraph:
- “(b) fails to satisfy the requirements for registration specified by the registrar, the applicant’s **[conditional]** provisional registration lapses.”.

Substitution of section 55 of Act 101 of 1997

17. The following section is hereby substituted for section 55 of the principal Act:

“Certificate of registration

55. (1) A private higher education institution must conspicuously display—

- (a) its certificate of registration or **[conditional]** provisional registration or a certified copy thereof on its premises; and
- (b) its registration number and an indication that it is registered or **[conditionally]** provisionally registered on all its official documents.

(2) If the registrar has cancelled the registration or **[conditional]** provisional registration of a private higher education institution under section 62, the private higher education institution must return the original certificate of registration or **[conditional]** provisional registration to the registrar within 14 days.”.

Amendment of section 58 of Act 101 of 1997

18. Section 58 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“A private higher education institution may apply to the registrar to amend its registration or **[conditional]** provisional registration—”.

Amendment of section 59 of Act 101 of 1997

19. Section 59 of the principal Act is hereby amended by the substitution in subsection (3)(a) for subparagraph (i) of the following subparagraph: 5

“(i) amend the certificate of registration or **[conditional]** provisional registration accordingly;”.

Amendment of section 60 of Act 101 of 1997

20. Section 60 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 10

“(1) The registrar may impose any reasonable condition, which may include a condition that none of the words or any derivatives of the words ‘university’ or ‘technikon’ may appear in its name, on a private higher education institution in respect of—

- (a) its registration; 15
- (b) its **[conditional]** provisional registration; or
- (c) any amendment of its registration or **[conditional]** provisional registration.”.

Amendment of section 62 of Act 101 of 1997

21. Section 62 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 20

“(1) Subject to section 63, the registrar may, on reasonable grounds, cancel any registration or **[conditional]** provisional registration in terms of this Act.”.

Insertion of sections 65A, 65B and 65C in Act 101 of 1997

22. The principal Act is hereby amended by the insertion after section 65 of the following sections: 25

“Seat of public higher education institution

65A. (1) The seat of a public higher education institution is the physical location of the institution, as contemplated in sections 20(3)(c) and 21(2)(c), where an institution carries out its teaching and research activities and must be defined in the institutional statute. 30

(2) Subject to the approval of the Minister, a public higher education institution may conduct its teaching and research activities beyond the seat contemplated in subsection (1).

(3) If the teaching and research activities contemplated in subsection (2) fall within the seat of another public higher education institution or at a place where the teaching and research activities of another public higher education institution are conducted, the Minister’s approval is subject to consultation with such other public higher education institution. 35

Degrees, diplomas and certificates

65B. (1) A public higher education institution may, subject to its institutional statute and this Act, award diplomas and certificates and confer degrees. 40

(2) Save as is provided in section 65C, no diploma or certificate may be awarded and no degree may be conferred by a public higher education institution upon any person who has not— 45

- (a) been registered as a student of such public higher education institution for the period prescribed by the senate of such institution; and
- (b) completed the work and attained the standard of proficiency determined through assessment as required by the senate of the public higher education institution, subject to section 7. 50

Honorary degrees

65C. (1) Subject to its institutional statute, a public higher education institution may, without examination, confer honorary degrees of master or doctor in any faculty upon any person whom the public higher education institution may deem worthy of such a degree.

(2) The award of a degree contemplated in subsection (1) does not entitle the holder to practise any profession.”.

Amendment of section 72 of Act 101 of 1997

23. Section 72 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any university established or incorporated by a Private Act of Parliament continues to exist **[in terms of such Private Act]** and is deemed to be a university established in terms of this Act, notwithstanding the repeal of such Private Act by the Higher Education Amendment Act, 2001.”.

Repeal of laws

24. The laws listed in the Schedule are hereby repealed.

Transitional arrangements pertaining to Certification Council for Technikon Education

25. (1) For the purposes of this section—

- (a) “agricultural college” means an agricultural college administered by the Department of Agriculture;
- (b) “agricultural college training” means higher education provided partly or in full at or by an agricultural college with a view to obtaining a certificate for agricultural college training, and which is aimed at—
 - (i) the advancement, application, development and transfer of agricultural technology;
 - (ii) the provision of community services relating to farms; and
 - (iii) the undertaking of research relating to agriculture;
- (c) “certificate for agricultural college training” means an education certificate or diploma that may be obtained as a result of successful study at an agricultural college, including a certificate of success in a subdivision of a higher education programme;
- (d) “CHE” means the Council on Higher Education established by section 4 of the principal Act;
- (e) “Council” means the Certification Council for Technikon Education established by section 2 of the Certification Council for Technikon Education Act, 1986 (Act No. 88 of 1986); and
- (f) “repealed Act” means the Certification Council for Technikon Education Act, 1986 (Act No. 88 of 1986), as it existed immediately before its repeal by section 24.

(2) The CHE must ensure that certificates for agricultural college training issued by the CHE and the relevant agricultural college, represent the required standard of education and training.

(3) (a) An agricultural college that was accredited as an examination body by the Council prior to the commencement of this Act continues to operate as an examining body.

(b) The norms, standards and conditions contemplated in section 9(1)(b) of the repealed Act which existed in respect of the accreditation of an examining body immediately before the commencement of this Act, remain of full force and effect until repealed or overridden in terms of the principal Act.

(c) The CHE may withdraw the accreditation contemplated in paragraph (a) if the higher education programme in question no longer complies with the norms and standards or the examining body does not comply with the conditions—

- (i) referred to in paragraph (b); or
- (ii) determined by the CHE.

(4) The CHE, in conjunction with an agricultural college, must issue certificates for agricultural college training, in the form prescribed by the CHE in conjunction with the agricultural college, to candidates who have complied with the norms and standards for higher education. 5

(5) From the date of commencement of this Act, all assets, liabilities, rights and obligations of the Council immediately prior to the commencement of this Act, devolve upon the CHE.

(6) As soon as possible after the commencement of this Act all records, documents and electronic information pertaining to any function performed by the Council must be handed to the CHE. 10

(7) The CHE is responsible for the safekeeping of all records, documents and electronic information received in terms of subsection (6).

Transitional arrangements pertaining to universities 15

26. (1) The institutional statutes of universities that existed prior to the commencement of this Act continue to exist and are deemed to have been made under the principal Act.

(2) If there is a matter contained in a Private Act but not dealt with in the principal Act or the relevant institutional statute, and which is indispensable for the effective functioning of a university, such provision in the Private Act is deemed to remain in force for a period not longer than two years, despite the repeal of such Private Act. 20

Short title

27. This Act is called the Higher Education Amendment Act, 2001.

SCHEDULE

Laws repealed (section 24)

Rhodes University (Private) Act, 1949 (Act No. 15 of 1949);
 University of the Orange Free State (Private) Act, 1949 (Act No. 21 of 1949);
 University Laws Amendment Act, 1953 (Act No. 23 of 1953);
 University of the Witwatersrand, Johannesburg, (Private) Act, 1959 (Act No. 15 of 1959);
 University of South Africa Act, 1959 (Act No. 19 of 1959);
 University of the Orange Free State (Private) Act Amendment Act, 1959 (Act No. 36 of 1959);
 Universities Amendment Act, 1959 (Act No. 82 of 1959);
 Rhodes University Act Amendment (Private) Act, 1960 (Act No. 6 of 1960);
 University of Natal (Private) Act, 1960 (Act No. 7 of 1960);
 Universities Amendment Act, 1961 (Act No. 46 of 1961);
 University of the Orange Free State (Private) Act Amendment (Private) Act, 1962 (Act No. 29 of 1962);
 University of Port Elizabeth Act, 1964 (Act No. 1 of 1964);
 University of South Africa Amendment Act, 1964 (Act No. 13 of 1964);
 Rhodes University (Private) Act Amendment Act, 1965 (Act No. 7 of 1965);
 University of Port Elizabeth Amendment Act, 1965 (Act No. 40 of 1965);
 Universities Amendment Act, 1965 (Act No. 43 of 1965);
 Rand Afrikaans University Act, 1966 (Act No. 51 of 1966);
 University of Port Elizabeth Amendment Act, 1967 (Act No. 31 of 1967);
 University of South Africa Amendment Act, 1967 (Act No. 53 of 1967);
 Universities Amendment Act, 1968 (Act No. 24 of 1968);
 University of the Witwatersrand, Johannesburg, (Private) Amendment Act, 1968 (Act No. 32 of 1968);
 University of Fort Hare Act, 1969 (Act No. 40 of 1969);
 University of Zululand Act, 1969 (Act No. 43 of 1969);
 University of the North Act, 1969 (Act No. 47 of 1969);
 University of South Africa (Private) Amendment Act, 1969 (Act No. 62 of 1969);
 University of Port Elizabeth (Private) Amendment Act, 1969 (Act No. 66 of 1969);
 Universities Amendment Act, 1969 (Act No. 67 of 1969);
 Rand Afrikaans University (Private) Amendment Act, 1969 (Act No. 70 of 1969);
 Rand Afrikaans University (Private) Amendment Act, 1970 (Act No. 84 of 1970);
 University of Fort Hare Amendment Act, 1971 (Act No. 28 of 1971);
 University of the Orange Free State (Private) Amendment Act, 1971 (Act No. 70 of 1971);
 Black Education Account Abolition Act, 1972 (Act No. 20 of 1972);
 Rhodes University (Private) Amendment Act, 1972 (Act No. 81 of 1972);
 Black Universities Amendment Act, 1973 (Act No. 6 of 1973);
 Rhodes University (Private) Amendment Act, 1973 (Act No. 21 of 1973);
 University of South Africa (Private) Amendment Act, 1973 (Act No. 22 of 1973);
 University of the Orange Free State (Private) Amendment Act, 1974 (Act No. 69 of 1974);
 Universities Amendment Act, 1975 (Act No. 67 of 1975);
 Medical University of Southern Africa Act, 1976 (Act No. 78 of 1976);
 University of Port Elizabeth (Private) Amendment Act, 1976 (Act No. 114 of 1976);
 Black Universities Amendment Act, 1977 (Act No. 57 of 1977);
 Universities Amendment Act, 1977 (Act No. 65 of 1977);
 University of Natal (Private) Amendment Act, 1977 (Act No. 66 of 1977);
 University of the Orange Free State (Private) Amendment Act, 1978 (Act No. 108 of 1978);
 Universities for Blacks Amendment Act, 1979 (Act No. 52 of 1979);
 Rhodes University (Private) Amendment Act, 1979 (Act No. 62 of 1979);
 University of Natal (Private) Amendment Act, 1979 (Act No. 71 of 1979);
 University of Port Elizabeth (Private) Amendment Act, 1979 (Act No. 86 of 1979);
 University of the Witwatersrand, Johannesburg, (Private) Amendment Act, 1980 (Act No. 37 of 1980);

Rand Afrikaans University (Private) Amendment Act, 1980 (Act No. 49 of 1980);
 Universities for Blacks Amendment Act, 1982 (Act No. 14 of 1982);
 Rand Afrikaans University (Private) Amendment Act, 1982 (Act No. 93 of 1982);
 Technikons (Education and Training) Amendment Act, 1983 (Act No. 48 of 1983);
 University of Port Elizabeth (Private) Amendment Act, 1983 (Act No. 68 of 1983);
 Rhodes University (Private) Amendment Act, 1983 (Act No. 69 of 1983);
 University of Natal (Private) Amendment Act, 1983 (Act No. 71 of 1983);
 University of the Western Cape Act, 1983 (Act No. 78 of 1983);
 University of Durban-Westville Act, 1983 (Act No. 81 of 1983);
 Universities Amendment Act, 1983 (Act No. 83 of 1983);
 Rand Afrikaans University (Private) Amendment Act, 1983 (Act No. 107 of 1983);
 Universities, National Education Policy and Technikons Amendment Act, 1984 (Act No. 75 of 1984);
 Technikons (Education and Training) Amendment Act, 1984 (Act No. 77 of 1984);
 Tertiary Education (Education and Training) Act, 1984 (Act No. 92 of 1984);
 University of the Orange Free State (Private) Amendment Act, 1984 (Act No. 97 of 1984);
 University Staff (Education and Training) Amendment Act, 1985 (Act No. 28 of 1985);
 Universities and Technikons for Blacks, Tertiary Education (Education and Training) and Education and Training Amendment Act, 1986 (Act No. 3 of 1986);
 Universities Amendment Act, 1986 (Act No. 86 of 1986);
 Certification Council for Technikon Education Act, 1986 (Act No. 88 of 1986);
 Technikons (National Education) Amendment Act, 1986 (Act No. 89 of 1986);
 Rhodes University (Private) Amendment Act, 1986 (Act No. 99 of 1986);
 Universities (Education and Training) Amendment Act, 1987 (Act No. 34 of 1987);
 Rand Afrikaans University (Private) Amendment Act, 1987 (Act No. 44 of 1987);
 Education Laws (Education and Training) Amendment Act, 1987 (Act No. 95 of 1987);
 Education Laws (Education and Training) Amendment Act, 1988 (Act No. 31 of 1988);
 Technikons (National Education) Amendment Act (House of Assembly) Act, 1988 (Act No. 33 of 1988);
 University of Port Elizabeth (Private) Amendment Act, 1988 (Act No. 98 of 1988);
 Rand Afrikaans University (Private) Amendment Act, 1989 (Act No. 33 of 1989);
 University of the Orange Free State (Private) Amendment Act, 1989 (Act No. 34 of 1989);
 Universities Amendment Act, 1989 (House of Assembly) (Act No. 64 of 1989);
 Universities and Technikons (Education and Training) Amendment Act, 1990 (Act No. 41 of 1990);
 University of Pretoria (Private) Act, 1990 (House of Assembly) (Act No. 106 of 1990);
 Universities and Technikons Advisory Council Amendment Act, 1991 (Act No. 24 of 1991);
 University of the Witwatersrand, Johannesburg, (Private) Amendment Act, 1991 (House of Assembly) (Act No. 78 of 1991);
 Universities Amendment Act, 1991 (Act No. 123 of 1991);
 University of the Orange Free State (Private) Amendment Act, 1992 (House of Assembly) (Act No. 68 of 1992);
 University of Port Elizabeth (Private) Amendment Act, 1992 (House of Assembly) (Act No. 69 of 1992);
 University of Stellenbosch (Private) Act, 1992 (House of Assembly) (Act No. 107 of 1992);
 University of the North Amendment Act, 1992 (Act No. 150 of 1992);
 Universities Amendment Act, 1993 (Act No. 21 of 1993);
 University of Durban-Westville Amendment Act (House of Delegates), 1993 (Act No. 51 of 1993);
 University of South Africa (Private) Amendment Act (House of Assembly), 1993 (Act No. 54 of 1993);

University of the Witwatersrand, Johannesburg, (Private) Amendment Act, 1993 (House of Assembly) (Act No. 78 of 1993);

Potchefstroomse Universiteit vir Christelike Hoër Onderwys (Private) Act (House of Assembly), 1993 (Act No. 80 of 1993);

University of the Orange Free State (Private) Amendment Act, 1993 (House of Assembly) (Act No. 81 of 1993);

University of Pretoria (Private) Amendment Act, 1993 (House of Assembly) (Act No. 158 of 1993);

Rhodes University (Private) Amendment Act (House of Assembly) Act, 1993 (Act No. 159 of 1993);

University of Natal (Private) Amendment Act, 1993 (House of Assembly) (Act No. 163 of 1993);

Certification Council for Technikon Education Amendment Act, 1993 (Act No. 185 of 1993);

University of North-West (Private) Act, 1996 (Act No. 17 of 1996);

University of Zululand (Private) Amendment Act, 1996 (Act No. 80 of 1996);

University of Transkei (Private) Act, 1996 (Act No. 81 of 1996);

University of Durban-Westville (Private) Amendment Act, 1996 (Act No. 82 of 1996);

University of Port Elizabeth (Private) Amendment Act, 1996 (Act No. 83 of 1996);

University of Venda (Private) Act, 1996 (Act No. 89 of 1996);

University of the Witwatersrand, Johannesburg (Private) Amendment Act, 1997 (Act No. 21 of 1997);

Medical University of Southern Africa (Private) Amendment Act, 1997 (Act No. 25 of 1997);

University of Durban-Westville (Private) Amendment Act, 1997 (Act No. 32 of 1997);

University of Cape Town (Private) Act, 1999 (Act No. 8 of 1999).

MEMORANDUM ON THE OBJECTS OF THE HIGHER EDUCATION AMENDMENT BILL, 2001

1. INTRODUCTION

This Bill seeks to amend the Higher Education Act, 1997 (Act No. 101 of 1997).

2. REASONS FOR AND SUBSTANCE OF BILL

Repeal of the Private Acts

- 2.1 (a) In the Education White Paper 3 it was indicated that the Minister of Education will request the Council on Higher Education “to investigate and consult upon . . . and provide advice on the desirability or otherwise of perpetuating Private University Acts, in the absence of such Private Acts for Technikons and Colleges”.
- (b) This was necessary as the Higher Education Act created the legal basis for the establishment of a single, national higher education system and replaced previous legislation dealing with higher education. However, it left intact the Private Acts of universities. This is anomalous as the Higher Education Act supersedes the Private Acts, and as technikons are not governed by Private Acts.
- (c) The CHE advised that the repeal of the Private Acts should depend on the outcome of the broader process for the restructuring of the higher education system. The latter is not, however, dependent on the continued existence of the Private Acts.
- (d) The Institutional Statutes of all higher education institutions have been brought into line with the Higher Education Act in terms of the composition and functions of councils, senates and institutional forums. As the Private Acts have not been amended, the old composition and functions of councils and senates are still in place in the Private Acts. Thus, the majority of the universities’ institutional statutes are not in compliance with their own Private Acts, which causes confusion. Furthermore, although the Higher Education Act supersedes the Private Acts, there are matters that are contained in the Private Acts on which the Higher Education Act is silent.
- (e) A number of obsolete Acts relating to higher education are still in force and should now be repealed.

Repeal of the Certification Council for Technikon Education (SERTEC)

- 2.2 The Higher Education Quality Committee (HEQC) of the Council on Higher Education has been recognised as the Education and Training Quality Assurer for Higher Education by the South African Qualifications Authority (SAQA). It will therefore take over the functions currently being performed by the Certification Council for Technikon Education (SERTEC) in the case of Technikons. Given this, the SERTEC Act will be repealed and the assets of SERTEC will be dealt with through transitional arrangements in the Amendment Bill. As the HEQC will in future perform all the functions SERTEC had performed, SERTEC’s assets and liabilities will be taken over by Council on Higher Education. Transitional arrangements to ensure that the certification and accreditation functions of SERTEC with regard to Agricultural Colleges are also taken over by the HEQC, are included in the Bill.

The dissolution of institutional councils

- 2.3 The Higher Education Act does not provide for the dissolution of institutional councils. However, as councils of two higher education institutions have in

the recent past been dissolved, it is important to provide the necessary legal framework for such dissolution. The amendment therefore provides for the dissolution of an institutional council if 75 per cent or more of the members of a council resign at a full meeting of the council.

The establishment of interim councils for new, declared or merged public institutions

- 2.4 The Higher Education Act does not provide a governance framework where a new university, technikon or college is to be established or where an existing institution is to be declared as a higher education institution or where two or more institutions are to be merged. The Bill seeks to address this vacuum. The amendment provides for the establishment of a small interim council with specific functions (i.e. the establishment of the council in terms of the institutional statute) by the Minister.

Provisional registration

- 2.5 The current terminology regarding registration in terms of section 54(3) of the Act is confusing. The Act provides that if an applicant does not comply with the “requirements for registration” but has the potential to comply, the Registrar may “conditionally register” such an institution. The proposed change to section 54 makes it clear that the requirements are those contemplated in section 53.

Seats of institutions

- 2.6 There is a need to bring legal certainty to the operational areas of higher education institutions, given the proliferation of satellite campuses and the implications thereof for the establishment of a single co-ordinated system of higher education. The seats of universities were prescribed by the Private Acts which are to be repealed by the Bill. There is no prescription of operational areas for technikons in any current legislation. The amendment will ensure that higher education institutions operate within prescribed policy.

Degrees, diplomas and certificates

- 2.7 The repeal of the Private Acts of universities and the Certification Council for Technikon Education Act necessitates an amendment to ensure that higher education institutions can confer degrees, diplomas and certificates. This amendment is in line with existing practice in higher education.

3. CONSULTATION

Extensive consultations have been held with all relevant roleplayers (Council on Higher Education, SAUVCA and CTP), on the above issues. The Bill was published for the public to make comments on any of the provisions of the Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

No additional costs are foreseen as a result of these amendments.

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Education are of the view that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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