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GOVERNMENT GAZETTE

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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

NO. 1655.

19 December 1997

No. 1655.

19 Desember 1997

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

No. 101 of 1997: Higher Education Act, 1997.

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

No. 101 van 1997: Wet op Hoer Onderwys, 1997.

ACT

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 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 TO—

ESTABLISH a single co-ordinated higher education system which promotes co-operative governance and provides for programme-based higher education;

RESTRUCTURE AND TRANSFORM programmes and institutions to respond better to the human resource, economic and development needs of the Republic;

REDRESS past discrimination and ensure representivity and equal access;

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 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;

AND WHEREAS IT IS DESIRABLE for higher education institutions to 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;

(English text signed by the President.)
(Assented to 26 November 1997.)

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

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

Definitions 50

1. In this Act, unless the context otherwise indicates—
 (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; (xxiii) 5
- (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 institution; (xxxii) 15
- (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 school as defined in the South African Schools Act, 1996 (Act No. 84 of 1996); (vii) 20
- (xiii) “higher education” means all learning programmed leading to qualifications higher than grade 12 or its equivalent in terms of the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), and includes tertiary education as contemplated in Schedule 4 of the Constitution; (ix) 25
- (xiv) “higher education institution” means any institution that provides higher education on a full-time, part-time or distance basis and which is—
 (a) established or deemed to be established as a public higher education institution under this Act; 30
 (b) declared as a public higher education institution under this Act; or
 (c) registered or conditionally registered as a private higher education institution under this Act; (xi)
- (xv) “Higher Education Quality Committee” means the committee of the CHE established in terms of section 7(1); (xvi) 35
- (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 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) 40
- (xix) “Minister” means the Minister of Education; (xvii)
- (xx) “organ of state” means an organ of state as defined in section 239 of the Constitution; (xxvi)
- (xxi) “prescribed” means prescribed by regulation; (xxx) 45
- (xxii) “principal” means the chief executive and accounting officer of a public higher education institution, and includes a vice-chancellor and a rector; (x)
- (xxiii) “private higher education institution” means any institution registered or conditionally registered as a private higher education institution in terms of Chapter 7; (xx) 50
- (xxiv) “public higher education institution” means any higher education institution that is established, deemed to be established or declared as a public higher education institution under this Act; (xviii)
- (xxv) “registrar” means the registrar designated by the Director-General in terms of section 50(1); (xxii) 55
- (xxvi) “SAQA” means the South African Qualifications Authority established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); (xxiv)
- (xxvii) “senate” means the body contemplated in section 28. and includes an academic board; (xxv) 60
- (xxviii) “student” means any person registered as a student at a higher education institution; (xxvii)

- (xxix) “**technikon**” means any **technikon** established, deemed to be established or declared as a **technikon** under this Act; (xxviii)
- (xxx) “this Act” includes the regulations made under this Act; (viii)
- (xxxi) “university” means any university established, deemed to be established or declared as a university under this Act; (xxix) 5
- (xxxi) “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.

Determination of higher **education** policy

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

CHAPTER 2 COUNCIL ON HIGHER EDUCATION

15

Establishment of Council on Higher Education (CHE)

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

Functions of CHE

5. (1) The CHE may advise the Minister on any aspect of higher education on its own 20 initiative and must—
- (a) advise the Minister on any aspect of higher education at the request of the Minister;
- (b) *arrange* and co-ordinate conferences;
- (c) subject to section 7(2), through its permanent committee, the Higher 25 Education Quality Committee—
- (i) promote quality assurance in higher education;
- (ii) audit the quality assurance mechanisms of higher education institutions; and
- (iii) accredit programmed of higher education; 30
- (d) publish information regarding developments in higher education, including an annual report on the state of higher education, on a regular basis;
- (e) promote the access of students to higher education institutions; and
- (f) perform any other function— 35
- (i) conferred on or assigned to it 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—
- (a) quality promotion and quality assurance;
- (b) research;
- (c) the structure of the higher education system; 40
- (d) the planning of the higher education system;
- (e) a mechanism for the allocation of public funds;
- (f) student financial aid;
- (g) student support services;
- (h) governance of higher education institutions and the higher education system; 45 and
- (i) language policy.
- (3) The Minister must—
- (a) consider the advice of the CHE; and
- (b) provide reasons in writing to the CHE if the Minister does not accept the 50 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.
- (5) If the Minister acts without the advice of the CHE the Minister must— 55
- (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 and provincial department of state, every publicly funded science, research and professional council and every higher education institution must provide the CHE with such information as the CHE may reasonably require for the performance 5 of its functions in terms of this Act.

Quality promotion and quality assurance functions of CHE

7. (1) 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. 10

(2) The CHE and the Higher Education Quality Committee must comply with the policies and criteria formulated by SAQA in terms of section 5(1)(a)(ii) of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).

(3) The Higher Education Quality Committee may, with the concurrence of the CHE, delegate any quality promotion and quality assurance functions to other appropriate 15 bodies capable of performing such functions.

(4) The delegation under subsection (3)—

(a) must be in writing and published by notice in the *Gazette*;

(b) is subject to such conditions as the Higher Education Quality Committee may determine; and 20

(c) does not prevent the performance of such functions by the Higher Education Quality Committee.

(5) The CHE may charge fees for any service rendered by the Higher Education Quality Committee to any person, institution or organ of state.

(6) The Minister must make regulations to give effect to quality promotion and quality 25 assurance in terms of this Act.

Composition of CHE

8. (1) The CHE consists of—

(a) a chairperson;

(b) ordinary members; 30

(c) co-opted members; and

(d) non-voting members.

(2) The selection of the chairperson, ordinary members and co-opted members must be undertaken in such a manner as to ensure, insofar as is practically possible, that—

(a) the functions of the CHE in terms of this Act are performed according to the 35 highest professional standards;

(b) the membership taken as a whole—

(i) is broadly representative of the higher education system and related interests;

(ii) has deep knowledge and understanding of higher education and research; 40

(iii) appreciates the role of the higher education system in reconstruction and development; and

(iv) has known and attested commitment to the interests of higher education; 45

(c) due attention is given to representivity of the CHE on such relevant grounds as race and disability; and

(d) the members contemplated in subsection (1)(b) and (c) consist of equal numbers of women and men.

(3) The Minister must, by notice in the *Gazette* and in two national newspapers circulating in every province of the Republic, and by any other means regarded necessary by him or her, invite nominations for the chairperson and the ordinary 50 members of the CHE from—

(a) the public;

(b) national organisations representing students, academic employees, employees other than academic employees, university principals, technikon principals,

principals of colleges of education, principals of other higher education colleges, principals of private higher education institutions, the further education sector, the distance education sector, educators, organised business and organised labour;

(c) research and science councils; and

(d) non-governmental organisations.

(4) The Minister must consider the nominations as contemplated in subsection (3), and from the persons so nominated, the Minister must appoint—

(a) the chairperson of the CHE; and

(b) no more than 13 ordinary members of the CHE. 10

(5) At least three of the members contemplated in subsection (4)(b) must be external to the higher education sector and must be appointed on account of their particular experience and expertise.

(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), and SAQA. 15 20

(7) The CHE may co-opt no more than three members.

Term of office of members

9. (1) The chairperson of the CHE holds office for a period of five years.

(2) Every ordinary member of the CHE holds office for a period of four years.

(3) Any co-opted member of the CHE holds office for a period determined by the CHE. 25

(4) A member of the CHE may not serve for more than two consecutive terms of office.

Vacation of office by members

10. A person ceases to be a member of the CHE if he or she— 30

(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 CHE without the leave of the chairperson or, in the case of the chairperson, the leave of the executive committee of the CHE; 35

(c) 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

(d) is declared unable to attend to his or her personal affairs by a court of law.

Filling of vacancies 40.

11. If a member vacates his or her office, the resultant vacancy must be filled by nomination, appointment or co-option in accordance with section 8.

Executive officer and employees of CHE

12. (1) The CHE must appoint an executive officer to—

(a) perform the functions determined by the CHE; 45

(b) supervise the employees of the CHE; and

(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.

Executive committee of CHE

- 13. (1)** The CHE must establish an executive committee and determine its functions. 5
- (2) The executive committee consists of—
- (a) the chairperson of the CHE; and
 - (b) four other members appointed by the CHE.
- (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. 10
- (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).

Committees of CHE

- 14. (1)** The CHE may establish other committees in addition to the Higher Education 15
Quality Committee and the executive committee, to assist it in the performance of its functions.
- (2) Any committee other than the executive committee may include persons who are not members of the CHE.
- (3) The chairperson of a committee must be appointed by the CHE. 20
- (4) Members of the committees contemplated in subsection (2) may be appointed for such period or periods as the CHE may determine.

Meetings of CHE and committees

- 15. (1)** Meetings of the CHE and its committees must be held at such times and places 25
as may be determined by the chairperson concerned, but the chairperson must convene a meeting at least twice a year or 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.
- (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. 30
- (3) The CHE may 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.
- (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 35
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;
 - (b) donations, contributions and other income received by the CHE from 40
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—
- (a) must in each financial year, at such time and in such manner as the Minister 45
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 50
concurrence of the Minister of Finance;
 - (c) may not incur any expenditure which exceeds the total amount approved in terms of paragraphs (a) and (b).

(3) If the Minister does not approve the CHE'S statement of its estimated income and expenditure, the Minister must require the CHE to provide a revised statement within a specified period to him or her.

(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. 5

(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— 10

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

(b) in the case of the chairperson of the CHE, such additional remuneration, 15 as the Minister with the concurrence of the Minister of Finance may determine.

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. 5

Annual report

20

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.

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

CHAPTER 3

25

PUBLIC HIGHER EDUCATION INSTITUTIONS

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. 30

(2) Notwithstanding subsection (1), a university may also be established by an Act of Parliament and when so established it is deemed to be 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; 35

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

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

(4) Every public higher education institution established, deemed to have been established or declared as a public higher education institution under this Act, is a juristic person. 40

(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.

Declaration of education institutions as public higher education institutions

45

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

(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— 50

- (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;
- (b) the name of the university, **technikon** or college; and
- (c) the physical location and the official address of the university, **technikon** or college. 5
- (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; 10
- (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 15
- (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; 20
- (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. 25
- (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. 30

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 deemed to be a public higher education institution established under this Act or a subdivision of such public higher education institution, as the case may be; 35
- (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 deemed to have been concluded by the public higher education institution. 40
- (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. 45
- (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. 50
- (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. 55
- (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 5 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; 10
- (b) publish a notice giving the reasons for the proposed merger in at least one national and one regional newspaper circulating in the area in which the public higher education institutions concerned are situated;
- (c) give the councils of the public higher education institutions concerned and any other interested persons an opportunity to make representations within at least 15 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. 20

(3) The single public higher education institution contemplated in subsection (1) is deemed to be 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).

Merger of subdivisions of public higher education institutions 25

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 30 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.

(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). 35

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 40 according to law by the Minister and any assets remaining after payment of all liabilities vest in the Minister.

(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).

CHAPTER 4

GOVERNANCE OF PUBLIC HIGHER EDUCATION INSTITUTIONS 45

Institutional governance structures

26. (1) Every public higher education institution may appoint a chancellor as its titular head.

(2) Every public higher education institution must establish the following structures 50 and offices:

- (a) A council;
- (b) a senate;
- (c) a principal;
- (d) a vice-principal; 55

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

(3) A structure referred to in subsection (2)(u), (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. 5

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. 10

(2) Subject to the policy determined by the Minister, 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.

(3) The council, after consultation with the students' representative council, must provide for a suitable structure to advise on the policy for student support services within the public higher education institution. 15

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

- (a) the principal;
- (b) the vice-principal or vice-principals; 20
- (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; 25
- (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.

(5) The number of persons contemplated in subsection (4)(b), (d), (e), (f), (g) and (h) and the manner in which they are elected, where applicable, must be determined by the institutional statute or an Act of Parliament. 30

(6) 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.

(7) The members of a council— 35

- (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

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. 40

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

- (a) the principal; 45
- (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; 50
- (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. 55

(4) The majority of members of a senate must be academic employees of the public higher education institution concerned.

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. 5

(2) The council and the senate are not divested of responsibility for the performance of any function delegated or 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. 10

(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 15 management and administration of the public higher education institution.

Institutional forum

31. (1) The institutional forum of a public higher education institution must—

- (a) advise the council on issues affecting the institution, including—
- (i) the implementation of this Act and the national policy on higher 20 education;
 - (ii) race and gender equity policies;
 - (iii) the selection of candidates for senior management positions;
 - (iv) codes of conduct, mediation and dispute resolution procedures; and
 - (v) the fostering of an institutional culture which promotes tolerance and 25 respect for fundamental human rights and creates an appropriate environment for teaching, research and learning; and
- (b) perform such functions as determined by the council.

(2) The institutional forum of a public higher education institution must consist of 30 representatives of—

- (a) the management, as determined by the institutional statute or an Act of Parliament;
- (b) the council;
- (c) the senate;
- (d) the academic employees; 35
- (e) the employees other than academic employees;
- (f) the students; and
- (g) any other category determined by the institutional statute.

(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 40 statute or an Act of Parliament.

Institutional statutes and institutional rules

32. (1) The council of a public higher education institution may make—

- (a) an institutional statute, subject to section 33, to give effect to any law relating 45 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.

(2) An institutional statute or institutional rules in connection with—

- (a) the composition of the senate may not be amended or repealed except after 50 consultation with such senate;
- (b) the academic functions of the public higher education institution concerned, including the studies, instruction and examinations of students and research,

- may not be made, amended or repealed except with the concurrence of the senate of such institution;
- (c) the composition of the students' representative council may not be amended or repealed except after consultation with such students' representative council; and 5
- (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

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. 10

(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 in subsection (1). 15

(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 20

34. (1) The council of a public higher education institution **must appoint the employees** of the public higher education institution.

(2) Notwithstanding subsection (1) the academic employees of the public higher education institution must be appointed by the council after consultation with the senate. 25

(3) 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.

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. 30

Disciplinary measures

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). 35

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. 40

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

(3) The admission policy of a public higher education institution must provide appropriate measures for the redress of past inequalities and may not unfairly discriminate in any way.

(4) Subject to this Act, the council may, with the approval of the senate— 45

- (a) determine entrance requirements in respect of particular higher education programmed;
- (b) determine the number of students who maybe admitted for a particular higher education programme and the manner of their selection;
- (c) determine the minimum requirements for readmission to study at the public higher education institution concerned; and 50
- (d) refuse readmission to a student who fails to satisfy such minimum requirements for readmission.

Co-operation between public higher education institutions

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 or national structures to assist and facilitate the co-operation contemplated in subsection (1).

(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

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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, which must include appropriate measures for the redress of past inequalities, and publish such policy by notice in the *Gazette*. 15

(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— 20

(a) any reasonable condition in respect of an allocation contemplated in subsection (2); and

(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. 25

Funds of public higher education institutions

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

(a) funds allocated by the Minister in terms of section 39;

(b) any donations or contributions received by the institution;

(c) money raised by the institution; 30

(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 programmed provided by the institution; 35

(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. (1) The council of a public higher education institution must in the manner determined by the Minister— 40

(a) keep records of all its proceedings; and

(b) keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions of the public higher education institution as a whole, of its substructures and of other bodies operating under its auspices. 45

(2) The council of a public higher education institution must, in respect of the preceding year and by a date or dates and in the manner determined by the Minister, provide the Minister with—

(a) a report on the overall governance of the public higher education institution; 50

(b) a duly audited statement of income and expenditure; and

(c) a balance sheet and cash flow statement.

(3) The council of a public higher education institution must provide the Minister with— 55

- (a) the information that must be provided in terms of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992); and
- (b) such additional information as the Minister may reasonably require.

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 5 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.

(2) If such council thereafter fails to comply with the provision or condition, the 10 Minister may withhold payment of any commensurate portion of any allocation appropriated by Parliament in respect of the public higher education institution concerned.

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

- (a) give notice to the council of the public higher education institution concerned 15 of the intention so to act;
- (b) give such council a reasonable opportunity to make representations; and
- (c) consider such representations.

(4) If the Minister acts under subsection (2), a report regarding such action must be 20 tabled in Parliament by the Minister as soon as reasonably practicable after such action.

CHAPTER 6 INDEPENDENT ASSESSOR

Appointment of independent assessment panel

43. (1) The CHE must appoint an independent assessment panel consisting of at least 25 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.

(2) A member of the panel contemplated in subsection (1) is appointed for a period of 30 not more than two years, and may be reappointed.

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— 35

- (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 institution and any person affected by the investigation must assist and co-operate with the independent assessor in the 40 performance of his or her functions in terms of section 47.

Cases where independent assessor may be appointed

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

- (a) the council of a public higher education institution requests the appointment; or
- (b) circumstances arise at a public higher education institution that— 45
 - (i) involve financial or other maladministration of a serious nature; or
 - (ii) seriously undermine the effective functioning of the public higher education institution; or
- (c) the council of the public higher education institution has failed to resolve such 50 circumstances; and
- (d) the appointment is in the interests of higher education in an open and democratic society.

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.

Functions of independent assessor

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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;
- (b) report in writing to the Minister on the findings of his or her investigation; and
- (c) suggest appropriate measures.

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(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

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 15 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.

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CHAPTER 7 PRIVATE HIGHER EDUCATION INSTITUTIONS

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 25 functions of registrar in terms of this Act.

(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 any of his or her functions in terms of this Act to an 30 employee contemplated in subsection (2).

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 unless that person is registered or conditionally registered as a private higher education institution in terms of this Act.

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Application for registration

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

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

- (a) is financially capable of satisfying its obligations to prospective students;
- (b) with regard to all of its higher education programmes—

- (i) will maintain acceptable standards that are not inferior to standards at a comparable public higher education institution;
- (ii) will comply with the requirements of the appropriate quality assurance body accredited by SAQA in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); and
- (iii) complies with any other reasonable requirement determined by the registrar.

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

Determination of application for registration 10

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
- (b) register the applicant as a higher education institution if the requirements for 15 registration contemplated in section 53 are fulfilled.

(2) If the registrar decides—

- (a) to grant the application, the registrar must—
 - (i) enter the applicant's name in the appropriate register of private higher education institutions; 20
 - (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 25 of the decision and provide the applicant with written reasons for his or her decision.

(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 30 period.

(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; 35
- (b) enter the applicant's name in the appropriate register of private higher education institutions;
- (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 40
- (e) as soon as practicable after the decision, publish the certificate of conditional registration in the *Gazette*.

(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 45 thereof, the applicant—

- (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. 50

Certificate of registration

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 55 registered on all its official documents.

(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

56. (1) Any person may inspect—
- (a) the register of private higher education institutions; and 5
 - (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.

Records and audits

57. (1) Every private higher education institution must, in accordance with generally accepted accounting practice, principles and procedures— 10
- (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— 15
 - (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—
- (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; 20
 - (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
 - (c) provide to the registrar any additional information, particulars or documents 25 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—
- (a) in the manner determined by the registrar; and 30
 - (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. 35
- (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— 40
 - (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
 - (b) not to grant the application, the registrar must advise the applicant in writing 45 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—
- (a) its registration; 50
 - (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.

Amendment or cancellation of conditions

61. Subject to section 63, the registrar may, on reasonable grounds, amend or cancel 5 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.

(2) If the accreditation of **any** programme offered by a private higher education 10 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—

- (a) **has informed the private higher education institution of the intention so to act and the reasons therefor;** 15
- (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 20 registrar in terms of this Chapter.

(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. 25

(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

Name change of public higher education institution 30

65. (1) A council of a public higher education institution other than a council of a university established or incorporated by a private Act of Parliament may, with the approval of the Minister and by notice in the Gazette, change the name of such higher education institution.

(2) A name of a university established or incorporated by a private Act of Parliament 35 may only be changed by amendment of such private Act.

Offences

66. (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; 40
- (b) purports to confer a qualification granted by a higher education institution, or in collaboration with a higher education institution; or
- (c) purports to perform an act on behalf of a higher education institution,

is guilty of an **offence** and is liable on conviction 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, is **guilty of an offence** and is liable on conviction to a sentence which may be imposed for fraud. 5

(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.

(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. 10

I-imitation of liability

67. 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. 15

Delegation of powers

68. (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—

- (a) the council of a public higher education institution; 20
- (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 duties in terms of this Act 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. 25

Regulations

69. The Minister may make regulations consistent with this Act on—

- (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. 35

Application of Act when in conflict with other laws

70. 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

71. 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

72. (1) Any **technikon** which was established or is deemed to have been 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 deemed to be 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 deemed to be a university established in terms of this Act. 5

(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 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 within 18 months after the commencement of this Act.

Abolition of University and Technikons Advisory Council

73. (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. 15

(2) The CHE commences its functions on a date determined by the Minister by notice in the *Gazette*. 20

Abolition of statutory status of Committee of University Principals, Matriculation Board and Committee of Technikon Principals

74. (1) The Committee of University Principals, the Matriculation Board and the Committee of **Technikon** Principals continue to exist and to perform their functions until the date or dates contemplated in subsection (2), as if the Universities Act, 1955 (Act No. 61 of 1955), and the **Technikons** Act, 1993 (Act No. 125 of 1993), had not been repealed. 25

(2) Subject to subsection (3), the Committee of University Principals, the Matriculation Board and the Committee of **Technikon** Principals cease to exist as statutory bodies on a date or dates determined by the Minister by notice in the *Gazette*. 30

(3) The Minister may only make a determination in terms of subsection (2)—

(a) after consulting SAQA and the body concerned; and

(b) after the Minister has considered the recommendations made by SAQA and the body concerned, as contemplated in section 15(2) of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995). 35

(4) Notwithstanding subsection (3)(b) the Minister may make a determination in terms of subsection (2) if SAQA and the body concerned have not made recommendations as contemplated in subsection (3)(b) within a reasonable period after a written request by the Minister to do so.

(5) The Committee of University Principals and the Committee of **Technikon** Principals must determine the manner in which their assets and liabilities are dealt with upon their dissolution as statutory bodies. 40

(6) 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), continue to exist until the date or dates contemplated in subsection (2). 45

Exemption of existing private higher education institutions

75. Sections 51 and 66(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*.

Repeal of laws

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

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

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(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

77. This Act is called the Higher Education Act, 1997