

REPUBLIC OF SOUTH AFRICA

GENERAL AND FURTHER EDUCATION AND TRAINING QUALITY ASSURANCE AMENDMENT BILL

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



[B 35D—2008]

ISBN 978-1-77037-476-8

No. of copies printed 1 800

GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the General and Further Education and Training Quality Assurance Act, 2001, so as to make it consistent with the National Qualifications Framework Act, 2008; and to provide for matters connected therewith.

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

Deletion of Preamble of Act 58 of 2001

1. The Preamble to the General and Further Education and Training Quality Assurance Act, 2001 (hereinafter referred to as the principal Act), is hereby deleted. 5

Amendment of section 1 of Act 58 of 2001, as amended by section 8 of Act 1 of 2004

2. Section 1 of the principal Act is hereby amended—

- (a) by the substitution for the definition of “**accreditation**” of the following definition:

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

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- (b) by the substitution for the definition of “**assessment body**” of the following definition:

“**‘assessment body’** means a department of education or [any other body registered with] a body accredited by the Council as a body responsible for conducting external assessment;”;

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- (c) by the substitution for the definition of “**certificate**” of the following definition:

“**‘certificate’** means a certificate contemplated in section [16(4)(e)] 17A(6);”;

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- (d) by the deletion of the definition of “**Education and Training Quality Assurance Body**”;

- (e) by the insertion before the definition of “**employee**” of the following definition:
 “**‘education institution’** means an education institution contemplated in section 2;”;
- (f) by the substitution for the definition of “**further education and training**” of the following definition: 5
 “**‘further education and training’** means all learning and training programmes leading to qualifications [from] on levels [2 to 4] 2, 3 and 4 of the National Qualifications Framework[, which levels are above general education and training but below higher education];”;
- (g) by the substitution for the definition of “**general education and training**” of the following definition: 10
 “**‘general education and training’** means all learning and training programmes leading to a qualification on level 1 of the National Qualifications Framework[, which level is below further education and training];”;
- (h) by the substitution for the definition of “**internal assessment**” of the following definition: 15
 “**‘internal assessment’** means any assessment conducted by [the provider] an education institution contemplated in section 2, the outcomes of which count towards the achievement of a qualification;”;
- (i) by the substitution for the definition of “**National Qualifications Framework**” of the following definition: 20
 “**‘National Qualifications Framework’** means the National Qualifications Framework contemplated in the [South African Qualifications Authority Act, 1995 (Act 58 of 1995)] National Qualifications Framework Act;”;
- (j) by the insertion after the definition of “**National Qualifications Framework**” of the following definitions: 25
 “**‘National Qualifications Framework Act’** means the National Qualifications Framework Act, 2008; 30
 ‘part qualification’ means an assessed unit of learning that is registered on the National Qualifications Framework as part of a qualification;
 ‘private education institution’ means an education institution which, in terms of a law referred to in section 2, is an independent school, a private college or a private centre;”;
- (k) by the deletion of the definition of “**provider**”;
- (l) by the substitution for the definition of “**qualification**” of the following definition: 35
 “**‘qualification’** means [the formal recognition of the achievement of the required number and range of credits and such other requirements at specific levels of the National Qualifications Framework as may be determined by the relevant bodies registered for such purpose] a qualification registered by the South African Qualifications Authority;”;
- (m) by the insertion after the definition of “**raw marks**” of the following definitions: 40
 “**‘registrar’** means the registrar of private colleges referred to in section 27 of the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006); 45
 ‘SAQA’ means the South African Qualifications Authority; 50
- (n) by the substitution for the definition of “**South African Qualifications Authority**” of the following definition: 55
 “**‘South African Qualifications Authority’** means the South African Qualifications Authority established by [section 3 of the South African Qualifications Authority Act, 1995 (Act 58 of 1995)] the National Qualifications Framework Act;”;
- (o) by the deletion of the definition of “**standard**”.

Substitution of section 3 of Act 58 of 2001

3. The following section is hereby substituted for section 3 of the principal Act:

“Object of Act

3. The object of the Act is to enhance the quality of general and further education and training.”

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Substitution of heading to Chapter 2 of Act 58 of 2001

4. The following heading is hereby substituted for the heading to Chapter 2 of the principal Act:

“ESTABLISHMENT AND [ACCREDITATION] FUNCTIONS OF COUNCIL”.

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Repeal of section 5 of Act 58 of 2001

5. Section 5 of the principal Act is hereby repealed.

Amendment of section 6 of Act 58 of 2001

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

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“(2) In addition to the members contemplated in subsection (1), the **[Chief Executive Officer is a member by virtue of his or her officer]** chief executive officers of the following institutions are members by virtue of their office:

- (a) The Council;
- (b) the Council on Higher Education established by the Higher Education Act, 1997 (Act No. 101 of 1997);
- (c) the Quality Council for Trades and Occupations contemplated in the National Qualification Framework Act; and
- (d) the SAQA.”

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Substitution of section 16 of Act 58 of 2001

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7. The following section is hereby substituted for section 16 of the principal Act:

“Functions of Council

16. (1) The Council performs its functions subject to—

- (a) the National Qualifications Framework Act; and
- (b) the National Education Policy Act, 1996 (Act No. 27 of 1996).

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(2) The Council is the quality council for general and further education and training as contemplated in the National Qualifications Framework Act and has the functions contemplated in section 27 of that Act.

(3) The Council is responsible for the sub-framework for general and further education and training of the National Qualifications Framework determined by the Minister in terms of section 8(2)(e) of the National Qualifications Framework Act.

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(4) The Council, with the approval of the Minister, may assume its functions progressively, depending on its capacity.

(5) The Council must perform any function consistent with this Act that the Minister may determine.”

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Insertion of heading after section 16 of Act 58 of 2001

8. The following heading is hereby inserted after section 16 of the principal Act:

“CHAPTER 2A

ASSESSMENT”.

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Insertion of section 17A in Act 58 of 2001

9. The following section is hereby inserted in the principal Act after section 17:

“External assessment

17A. (1) The Council must assure the quality of assessment at exit points.

(2) (a) The Council must develop policy for the accreditation of assessment bodies other than departments of education and must submit it to the Minister for approval.

(b) The Minister must make regulations in which the policy for accreditation is set out.

(c) The Council must accredit an assessment body in accordance with the regulations contemplated in paragraph (b).

(3) The Council must perform the external moderation of assessment of all assessment bodies and education institutions.

(4) The Council may adjust raw marks during the standardisation process.

(5) The Council must, with the concurrence of the Director-General and after consultation with the relevant assessment body or education institution, approve the publication of the results of learners if the Council is satisfied that the assessment body or education institution has—

(i) conducted the assessment free from any irregularity that may jeopardise the integrity of the assessment or its outcomes;

(ii) complied with the requirements prescribed by the Council for conducting assessments;

(iii) applied the standards prescribed by the Council which a learner is required to comply with in order to obtain a certificate; and

(iv) complied with every other condition determined by the Council.

(6) The Council must issue certificates to learners who have achieved qualifications or part qualifications.”.

Amendment of section 18 of Act 58 of 2001

10. Section 18 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“Functions of [provider or] assessment body with regard to external assessment”; and

(b) by the substitution for the words preceding paragraph (a) of the following words:

“In respect of an external assessment and subject to policy determined by the Minister in terms of [section 3(4) of the National Education Policy Act, 1996 (Act No. 27 of 1996)] this Act, an assessment body—”.

Substitution of heading to Chapter 3 of Act 58 of 2001

11. The following heading is hereby substituted for the heading to Chapter 3 of the principal Act:

“[ACCREDITATION OF PROVIDERS] QUALITY ASSURANCE OF PRIVATE EDUCATION INSTITUTIONS”.

Repeal of Part 1 of Chapter 3 of Act 58 of 2001

12. Part 1 of Chapter 3 of the principal Act is hereby repealed.

Deletion of heading in Chapter 3 of Act 58 of 2001

13. The principal Act is hereby amended by the deletion of the heading, “Part 2 Private Providers”, which precedes section 23.

Substitution of sections 23 and 24 of Act 58 of 2001

14. The following sections are hereby substituted for sections 23 and 24 of the principal Act, respectively:

“Quality assurance of private education institutions

23. (1) The Council must develop policy and criteria for quality assurance of private education institutions. 5
 (2) Any institution that is required to register as—
 (a) an independent school in terms of the South African Schools Act, 1996 (Act No. 84 of 1996);
 (b) a private college for further education and training in terms of the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006); or 10
 (c) a private centre in terms of the Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000),
 must comply with the policy and criteria contemplated in subsection (1).” 15

Notification of accredited programmes

24. (1) The Council must within 14 days of accrediting [the] programmes [as] in terms of the policy contemplated in section 23—
 (a) in the case of a [provider] private college contemplated in section [23(4)(b)] 23(2)(b), notify the registrar [of further education and training institutions]; and 20
 (b) in the case of [a provider] an independent school or a private centre contemplated in section [23(4)(a) or (c)] 23(2)(a) or (c), the relevant head of department.
 (2) The notification must indicate if any conditions are attached to the accreditation and the nature thereof.” 25

Amendment of section 25 of Act 58 of 2001

15. Section 25 of the principal Act is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections:

“(1) The Council must monitor private [providers] education institutions to ensure compliance with the policy contemplated in section [23(2)] 23(1). 30
 (2) If a private [provider] education institution fails to comply with the policy, the Council must—
 (a) notify such private [provider] education institution in writing and set out the nature and extent of the failure; and 35
 (b) determine a reasonable period within which the private [provider] education institution must comply with the policy.
 (3) At the expiry of the period contemplated in subsection (2)(b), the Council—
 (a) must evaluate the steps taken by the private [provider] education institution to comply with the policy and take into account any submissions made by the [provider] education institution; and 40
 (b) may affirm the accreditation of the private [provider] education institution or withdraw the accreditation as from a date specified by the Council.”.

Short Title

16. This Act is called the General and Further Education and Training Quality Assurance Amendment Act, 2008. 45

MEMORANDUM ON THE OBJECTS OF THE GENERAL AND FURTHER EDUCATION AND TRAINING QUALITY ASSURANCE AMENDMENT BILL, 2008

1. OBJECTS

This Bill seeks to effect amendments to the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001). These amendments are consequential to the provisions of the envisaged National Qualifications Framework Act. The National Qualifications Framework Bill, this Bill and the Higher Education Amendment Bill are tabled simultaneously and must be read in conjunction with one another. The reasons and objects of these Bills are dealt with in the Memorandum on the Objects of the National Qualifications Framework Bill.

2. OTHER DEPARTMENTS OR BODIES CONSULTED

The National Qualifications Framework Bill, this Bill and the Higher Education Amendment Bill were published for comments in the *Gazette*. The Bills were also referred to the Departments of Labour, Agriculture, Water Affairs and Forestry, the National Treasury and the South African Police Service.

Approximately 30 comments were received from various stakeholders and members of the public. All comments were evaluated by a committee, which included a deputy director-general, chief directors and directors. Those comments were presented to the Minister with a recommendation before the Bill was finalised and submitted to Cabinet for approval.

3. FINANCIAL IMPLICATIONS FOR STATE

The Bill merely provides for consequential amendments to existing legislation, and therefore no additional costs are foreseen.

4. PARLIAMENTARY PROCEDURE

4.1 The State Law Advisers and the Department of Education are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution of the Republic of South Africa, 1996, since it falls within a functional area listed in Schedule 4 to the Constitution, namely "Education at all levels, excluding tertiary education".

4.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.