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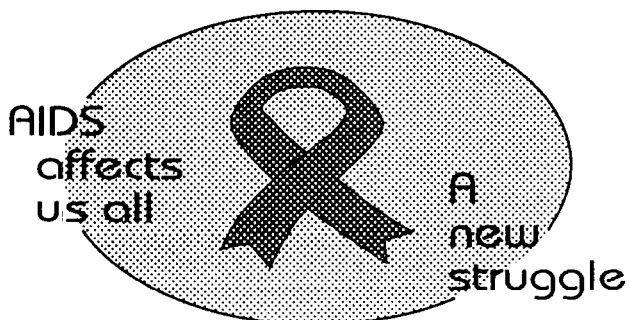
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DEPARTMENT OF HEALTH

G E N E R A L N O T I C E S

NOTICE 1444 OF 2000

DEPARTMENT OF EDUCATION

The Minister of Education hereby publishes the following draft Bills for comment:

- (A) Adult General Education and Training Bill, 2000;
- (B) Education Laws Amendment Bill, 2000;
- (C) General And Further Education And Training Quality Assurance Bill, 2000; and
- (D) Higher Education Amendment Bill, 2000

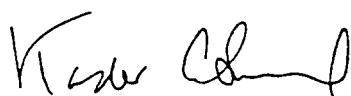
All interested persons and organisations are invited to comment in writing on the draft Bills and to direct the comments to:

The Director-General, Department of Education, Private Bag X895, Pretoria, 0001 for attention Ms M Locke. Fax No.: (012) 326 9128 or e-mail: locke.m@educ.gov.za, telephone number (012) 312 5356.

Kindly provide the name, address, telephone number, fax number and e-mail address of the person or organisation submitting the comments.

The comments should reach the Department not later than 23 April 2000.

Copies of the draft Bills and explanatory memoranda can be obtained from the Department of Education at the above address and the Government Printer in Pretoria.



PROFESSOR KADER ASMAL, MP
MINISTER OF EDUCATION

DATE:

28/3/2000

NOTICE 1445 OF 2000

HIGHER EDUCATION AMENDMENT BILL, 2000**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 Higher Education Act, 1997, so as to provide that the policy determined by the Minister may prescribe the scope of operations of public and private higher education institutions; to provide that vacancies in the CHE are filled for the unexpired term of office of the predecessor; to provide for nominations to fill vacancies in the CHE; to provide that public higher education institutions may not without the concurrence of the Minister enter into a loan agreement or develop infrastructure; to empower the Minister to differentiate between foreign higher education institutions and local private higher education institutions if it is deemed to be in the best interest of public higher education institutions; to provide that the Minister must make regulations to give effect to the registration of private higher education institutions; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 101 of 1997

1. Section 1 of the Higher Education Act, 1997, (hereinafter referred to as the principal Act) is hereby amended-

(a) by the addition after the definition of "financial year" of the following definition:

“foreign legal person” means a person -

- (i) established as a legal person in terms of a law of a foreign country to function as a higher education institution; and
- (ii) recognised or registered as an external company in terms of the Companies Act, 1976 (Act No. 61 of 1973);;

(b) by the addition after the definition of “institutional statute” of the following definition:

“local legal person” means a person originally established as a legal person in South Africa in terms of the Companies Act, 1973 (Act No. 61 of 1973) or the Close Corporation Act, 1984 (Act No. 69 of 1984);;

(c) by the addition after the definition of “this Act” of the following definition:

“to provide higher education’ means the registering of students for whole qualifications or unit standards, the taking of responsibility for the provision and delivery of the curricula, the assessment of such learning programmed and the conferring of certificates.”.

Amendment of section 3 of Act 101 of 1997

2. Section 3 of the principal Act is hereby amended by the addition of the following subsections:

“(3) The Minister may, in terms of the policy contemplated in subsection (1) and in the interest of the higher education system as a whole, prescribe the scope of operations of public and private higher education institutions.

(4) The policy contemplated in subsection (1) may be determined with reference to the size and institutional configuration of the higher education system, the high level human resource needs of the country, the geographical location of higher education institutions and the mode of delivery of academic programmes.”.

Amendment of section 11 of Act 101 of 1997

3. Section 11 of the principal Act is hereby amended by -

(a) by numbering it as subsection (1); and

(b) by the addition of the following subsections:

"(2) A vacancy filled by nomination in accordance with subsection (1),
must be for the unexpired term of office of the predecessor.

(3) Notwithstanding section 8(3) the Minister must invite nominations to fill such vacancies by writing to -

(a) national organisations representing students, academic employees, employees other than academic employees, university principals, technikon principals, private higher education institutions, business and labour; and

(b) research and science councils."

Amendment of section 20 of Act 101 of 1997

4. Section 20 of the principal Act is hereby amended by the addition of the following subsections:

"(6) Notwithstanding subsection (4), a public higher education institution; may
not, without the concurrence of the Minister, enter in any one financial year into loan or overdraft agreements which total a value of 10% or more of its annual budget for the financial year immediately prior to the loan or overdraft application.

(7) Notwithstanding subsection (4), a public higher education institution may not, without the concurrence of the Minister, embark on any immovable infrastructural development or the purchasing of immovable property or long term leases of immovable property."

Amendment of section 51 of Act 101 of 1997**5. Section 51 of the principal Act is hereby amended-**

(a) by numbering it as subsection (l); and

(b) by the addition of the following subsections:

“(2) The person contemplated in subsection (1) must be a person registered or recognised as a legal person in terms of –

(a) the Companies Act, 1973 (Act No. 61 of 1973); or

(b) the Close Corporation Act, 1984 (Act No. 69 of 1984).

(3) When determining an application for registration as contemplated in section 54, the registrar may differentiate between a foreign legal person and a local legal person.

(4) The Minister must make regulations to provide for any matters pertaining to registration.”.

Amendment of section 53 of Act 101 of 1997 as amended by Act 55 of 1999**6. Section 53 of the principal Act is hereby amended -**

(a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words

“The registrar [must] may register an applicant as a private higher education institution if the registrar has reason to believe that the applicant-”;

(b) by the deletion of subparagraph (iii) of subsection (1)(b); and

(c) by the addition to subsection (1) 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 expressions or any derivatives of the words or expressions ‘university’, ‘technikon’ or ‘higher education college’ may appear in the name of the applicant.”.

Amendment of section 54 of Act 101 of 1997

7. Section 54 of the principal Act is hereby amended -

(a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words -

“(l) The registrar [must]- “;

(b) by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs:

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

(b) may register the applicant as a private higher education institution if the requirements for registration contemplated in section 53 are fulfilled.”;

(c) by the substitution for subsection (3) of the following subsection:

“(3) Notwithstanding subsection (1), the registrar may conditionally register an applicant other than a foreign legal person, who does not fulfil the requirements for registration, if the registrar believes that the applicant will be able to fulfil the relevant requirements within a reasonable period.”; and

(d) by the addition of the following subsection:

“(7) A private higher education institution may not confer a Professorship or an honorary degree or use the titles of rector, vice-chancellor or chancellor, unless it is registered as a private university or a private technikon.”.

Amendment of section 57 of Act 101 of 1997

8. Section 57 of the principal Act is hereby amended by the addition of the following subsection:

“(3) Every private higher education institution must keep student records and in the event of the cancellation of its registration must provide such records to the registrar within one month of the cancellation of its registration.”.

Amendment of section 66 of Act 101 of 1997

9. Section 66 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Any person who contravenes section 51(1), 54(7) 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.”.

Amendment of section 76 of Act 101 of 1997 as amended by section 10 of Act 55 of 1999

10. Section 76 of the principal Act is hereby amended by the addition of the following subsection:

“(7) The University Staff (Education and Training) Act, 1984 (Act No. 91 of 1984) is hereby repealed in its entirety.”.

Short title

11. This Act is the Higher Education Amendment Act, 2000.

**EXPLANATORY MEMORANDUM TO THE HIGHER EDUCATION AMENDMENT
BILL, 2000**

1. INTRODUCTION

This Bill provides for the amendment of the Higher Education Act, 1997 (Act No. 101 of 1997) so as to provide for additional provisions to the Act and to make certain technical adjustments.

2. BACKGROUND

The implementation of the Higher Education Act, 1997 has exposed, amongst others, the following problem areas:

- 2.1 the procedure of the filling of a vacancy in the CHE's membership **which resulted from a member who vacates** his or her office before the expiry of his or her term of office **is too complicated, time-consuming and costly;**
- 2.2 **institutions running** into huge overdrafts;
- 2.3 the risk of a higher education institution developing infrastructure **without proper planning and budgeting;**
- 2.4 **the influx of external private higher institutions** into our higher education system.

3. REASONS FOR AND SUBSTANCE OF BILL

- 3.1 The long process of filling of vacancies has been shortened by means of empowering the Minister to write directly to the role players inviting for nominations.
- 3.2 In terms of section 20(4), every higher education institution is a juristic person. This in effect means that it can sue and be sued, in its own name and that it can enter into agreements, including loan agreements and

overdrafts in its own name. A number of institutions are now in dire financial situations (bankrupt) with huge overdrafts.

3.3 The development of infrastructure without proper planning and budgeting has already placed some institutions in financial difficulties.

3.4 It is therefore advisable that the conclusion of any loan agreement or request for an overdraft or the development of any infrastructure be entered into or made in concurrence with the Minister.

3.5 The registrar of private higher institutions is empowered, if it is in the best interest of the higher education system as a whole, to discriminate in a fair manner between foreign private higher education institutions and local private higher education institutions and between private higher education institutions and public higher education institutions.

4. DISCUSSION

After extensive consultations with all relevant role players, a Bill has been drafted which incorporates the above considerations.

5. PARLIAMENTARY PROCEDURE

The Department is of the opinion that this Bill must be dealt with in terms of the procedures tabled in section 76 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).
