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THE PRESIDENCY

No. 1814

15 December 2003

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

No. 38 of 2003: Higher Education Amendment Act, 2003.



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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.

(English text signed by the President.)
(Assented to 10 December 2003.)

ACT

To amend the Higher Education Act, 1997, so as to provide for the regular reporting by the Council on Higher Education on the state of higher education; to provide for consequential changes arising out of the incorporation of public higher education institutions in relation to labour and student matters; to provide for the establishment of a National Institute for Higher Education in Mpumalanga and a National Institute for Higher Education in the Northern Cape to coordinate the regional provision of higher education; and to provide for matters connected therewith.

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

Amendment of section 5 of Act 101 of 1997

1. Section 5 of the Higher Education Act, 1997 (hereinafter referred to as “the principal Act”), is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph— 5
- “(d) publish information regarding developments in higher education, including [an annual report] reports on the state of higher education, on a regular basis;”.

Amendment of section 24 of Act 101 of 1997, as amended by section 6 of Act 63 of 2002 10

2. Section 24 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection—
- “(3) Sections 22(2) to (6) and 23(2) to (2H), with the changes required by the context, apply to an incorporation referred to in subsection (1).” 15

Insertion of sections 38A, 38B, 38C, 38D, 38E, 38F, 38G, 38H and 38I in Act 101 of 1997

3. The following sections are hereby inserted in the principal Act after section 38:

“Establishment of national institute for higher education

- 38A.** (1) The Minister may establish a national institute for higher education as a juristic person in Mpumalanga and in the Northern Cape. 20
- (2) A national institute for higher education is managed, governed and administered by a board.

Functions of national institute for higher education

38B. The functions of a national institute for higher education are to—

- (a) coordinate the regional provision of higher education;
- (b) ensure the coherent provision of higher education through programme collaboration between public higher education institutions operating in the province in question;
- (c) advise the Minister on matters relating to the coordination of the provision of higher education in the region in question; and
- (d) perform any other duty which may be prescribed.

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Composition of board

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38C. (1) The board of a national institute for higher education consists of—

- (a) a chairperson; and
- (b) not more than 10 ordinary members.

(2) The board may co-opt persons to the board for a period determined by the board.

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(3) The chairperson and members contemplated in subsection (1) are appointed by the Minister from nominations received in the manner prescribed for that national institute for higher education.

Term of office of chairperson and members

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38D. The chairperson and an appointed member of the board hold office for a renewable period of four years.

Vacation of office

38E. A person ceases to be a member of the board if he or she—

- (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 board without the leave of the chairperson;
- (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 unfit to attend to his or her personal affairs by a court of law.

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Filling of vacancies

38F. (1) In the event of a vacancy occurring in the office, such vacancy is filled by the Minister in terms of section 38C(3).

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(2) Any person appointed to fill a vacancy holds office for the unexpired portion of the vacating member's term.

Funds of national institute for higher education

38G. (1) The funds of a national institute for higher education consist of—

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- (a) money appropriated by Parliament;
- (b) donations or contributions;
- (c) interest; and
- (d) any other income received.

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(2) The board—

- (a) must keep a record of all—
- (i) funds received and spent;
 - (ii) assets and liabilities; and
 - (iii) financial transactions;
- (b) must, in each financial year, submit to the Minister, at the time and in the manner which the Minister may determine, a statement of estimated income and expenditure for the ensuing financial year for the Minister's approval, granted with the concurrence of the Minister of Finance; 5
- (c) may in any financial year submit an adjusted statement of its estimated income and expenditure to the Minister for approval, granted with the concurrence of the Minister of Finance; and 10
- (d) may not incur any expenses which exceed the total amount approved in terms of paragraphs (b) and (c). 15
- (3) If the Minister does not approve of the board's statement of estimated income and expenditure or adjusted statement of estimated income and expenditure, it must submit a revised statement to him or her within a specified period. 15
- (4) (a) The money contemplated in subsection (1) must be used in accordance with the approved statement referred to in subsection (2). 20
- (b) Any balance not spent within the specified financial year must be carried over as a credit to the following financial year.
- (5) Subject to subsection (4), the board may invest any portion of its funds in such manner as the Minister, with the concurrence of the Minister of Finance, may approve. 25

Annual audit

38H. The books of account and financial statements of a national institute for higher education must be audited by the Auditor-General at the end of each financial year.

Annual report 30

38I. The board must, within three months after the end of each financial year, submit a report to the Minister which includes a financial statement on the performance of its functions during the preceding financial year."

Short title

4. This Act is called the Higher Education Amendment Act, 2003. 35