

PROPOSAL BY THE MINISTER TO AMEND THE

HIGHER EDUCATION AND TRAINING LAWS AMENDMENT BILL (B23 – 2012)

*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in
Government Gazette No. 35401 of 30 May 2012)
(The English text is the official text of the Bill)*

(Minister of Higher Education and Training)

NEW CLAUSE 4

1. On page 4, in line 33, to amend section 41A of Act 101 of 1997, by the repeal of subsections (1) and (2).

NEW CLAUSE 5

2. On page 4, after line 33, to insert the following new clause:

Investigation by Independent Assessor

45A (1) (a) The Independent Assessor has the power on receipt of a complaint or an allegation or on the ground of information that has come to his or her knowledge and which points to conduct such as referred to in section 45 of this Act, to conduct an investigation for the purpose of determining the merits of the complaint, allegation or information and the manner in which the matter concerned should be dealt with.

(b) (i) The format and the procedure to be followed in conducting any investigation shall be determined by the Independent Assessor with due regard to the circumstances of the case.

(ii) The Independent Assessor may direct that any category of persons or all persons whose presence is not desirable, shall not be present at any proceedings pertaining to any investigation or part thereof.

(2) Notwithstanding anything to the contrary contained in any law no person may disclose to any other person the contents of any document in the possession of the Independent Assessor or the record of any evidence given to the Independent Assessor during an investigation, unless the Independent Assessor determines otherwise.

(3) The Independent Assessor may, at any time prior to or during an investigation, request any person contemplated in section 48 to assist him or her in the performance of his or her functions with regard to a particular investigation or investigations in general.

(4) (a) For the purposes of conducting an investigation the Independent Assessor may direct any person to submit an affidavit or affirmed declaration or to appear before him or her to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person.

(b) The Independent Assessor or any person contemplated in section 48 and duly authorised thereto by him or her may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on a matter being or to be investigated.

(5) A direction referred to in subsection (4)(a) must contain particulars of the matter in connection with which the person is required to appear before the Independent Assessor and shall be signed by the Independent Assessor and served on the person either by a registered letter sent through the post or delivered by a person contemplated in section 48.

(6) The Independent Assessor may require any person appearing as a witness before him or her under subsection (4) to give evidence on oath or after having made an affirmation.

(7) The Independent Assessor or any person contemplated in section 48 may administer an oath to or accept an affirmation from any such person.

(8) (a) If it appears to the Independent Assessor during the course of an investigation that any person is implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse recommendation pertaining to that person may result, the Independent Assessor must afford such person or the Council an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances.

(b) If such implication forms part of the evidence submitted to the Independent Assessor during an appearance in terms of the provisions of subsection (4), such person must be afforded an opportunity to be heard in connection therewith by way of giving evidence.

(9) The Independent Assessor may allow a legal representative to assist a person contemplated in subsection (8), in accordance with section 3(5) of the Promotion of Administrative Justice Act, No. 3 of 2000.

NEW CLAUSE 6

3. On page 4, after line 33, to insert the following new clause:

Entering upon premises by the Independent Assessor

45B (1) The Independent Assessor shall be competent to enter, or authorise another person contemplated in section 48 to enter, any building or premises of the public higher education institution under investigation in terms of section 45 and there to make such investigation or assessment as he or she may deem necessary, and to copy any document on those premises which in his or her opinion has a bearing on the investigation.

NEW CLAUSE 7

4. On page 4, after line 33, to amend section 47 of Act 101 of 1997, by the following:

- (a) 47(1) (b)report in writing to the Minister of the findings of his or her investigation together with the reason upon which these findings are based; and
- (b) 47(1) (c)suggest appropriate measures and the reasons why the measures are needed.

NEW CLAUSE 8

5. On page 4, after line 33, to insert the following new clause:

Intervention by Minister

49A (1) The Minister may issue a directive to the Council of a public higher education institution to take such action specified by the Minister if the public higher education institution-

- (a) is in financial difficulty or is being otherwise mismanaged;

- (b) is unable to perform its functions effectively due to dissension among Council members;
- (c) has acted unfairly or in a discriminatory or inequitable way towards a person to whom it owes a duty under this Act;
- (d) has failed to comply with any law;
- (e) has failed to comply with any directive given by the Minister under this Act;
or
- (f) has obstructed the Minister or a person authorised by the Minister in performing a function in terms of this Act.

(2) A directive contemplated in subsection (1) must state-

- (a) the nature of the deficiency;
- (b) the steps which must be taken to remedy the situation; and
- (c) a reasonable period within which the steps contemplated in paragraph (b) must be taken.

(3) Before making a decision under subsection (1), the Minister must subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2002)-

- (a) give notice to the Council of the intention to issue a directive;
- (b) give the Council a reasonable opportunity to make representations; and
- (c) consider the representations contemplated in paragraph (b).

- (4) (a) If the Council fails to comply with the directive within the stated period, the Minister must dissolve the Council and appoint an administrator to take over the functions of the Council.
- (b) For the purposes of paragraph (a), sections 49B, 49C and 49D apply with the changes required by the context.

(5) If the Minister appoints an administrator in terms of subsection (4), the administrator may perform all the functions of the Council and an employee of the public higher education institution in question must comply with a directive given by the administrator.

(6) The costs associated with the appointment of an administrator shall be for the account of the public higher education institution in question.

NEW CLAUSE 9

6. On page 4, after line 33, to insert the following new clause:

Appointment of administrator

49B (1) Notwithstanding any other provision of this Act, the Minister may, after consultation with the Council of a public higher education and training institution, if practicable, appoint a person as administrator to take over the management, governance and administration of the public higher education and training institution and to perform the functions of the public higher education and training institution, if any of or if any combination of or if all the following circumstance occur:

- (a) An audit of the financial records of public higher education and training institution; or a report by an independent assessor reveals financial or other maladministration of a serious nature; or serious undermining of the effective functioning of the public higher education and training institution;
- (b) any other circumstances arising that reveal financial or other maladministration of a serious undermining or the serious of the effective functioning of the public higher education and training institution; or
- (c) the Council of the public higher education and training institution requests such appointment.

(2) The Minister may only act in terms of subsection (1)(a) or (b) if the appointment of an administrator is in the interest of the public higher education and training institution in question and of higher education and training in an open and democratic society.

- (3) (a) The Minister appoints an administrator for such period as may be determined by the Minister but such period may not exceed two years.

- (b) The Minister may extend the period contemplated in paragraph (a) once for a period not exceeding six months.

NEW CLAUSE 10

7. On page 4, after line 33, to insert the following new clause:

Assistance to administrator

49C An administrator appointed under section 49B may, with the approval of the Minister, appoint any other person with suitable knowledge and experience to assist him or her in the performance of his or her functions.

NEW CLAUSE 11

8. On page 4, after line 33, to insert the following new clause:

Remuneration and allowances

49D The Minister, with the approval of the Minister of Finance, may determine the remuneration and allowances to be paid to the administrator and to any other person appointed under section 49C.

NEW CLAUSE 12

9. On page 4, after line 33, to insert the following new clause:

Dissolution of council

49E The council is dissolved from the date the Minister appoints the administrator in terms of section 49B.