

REPUBLIC OF SOUTH AFRICA

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# **SOUTH AFRICAN COUNCIL FOR EDUCATORS BILL**

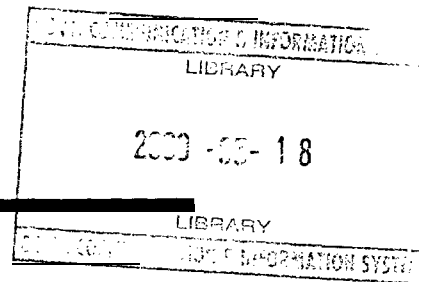
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*(As introduced in the National Council of Provinces as a section 76 Bill) (Explanatory  
summary of Bill published in Government Gazette No. 20956 of 3 March 2000)  
(The English text is the official text of the Bill)*

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(SELECT COMMITTEE ON EDUCATION AND RECREATION)

[B 26—2000]



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REPUBLIEK VAN SUID-AFRIKA

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# **WETSONTWERP OP DIE SUID-AFRIKAANSE RAAD VIR OPVOEDERS**

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*(Soos ingedien in die Nasionale Raad van Provinsies as 'n artikel 76-wetsontwerp)  
(Verduidelikende opsomming van Wetsontwerp in Staatskoerant No. 20956 van 3 Maart  
2000 gepubliseer) (Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

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(GEKOSE KOMITEE OOR ONDERWYS EN ONTSPANNING)

[w 26—2000]

ISBN O 621294993

# BILL

To provide for the continued existence of the South African Council for Educators; to provide anew for the functions of the said council; and to provide anew for the composition of the said council; and to provide for matters incidental thereto.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## CHAPTER 1

### INTERPRETATION AND OBJECTS OF ACT

#### Definitions 5

1. In this Act, unless the context indicates otherwise—
- (i) **“adult learning centre”** means a public or private centre which provides basic education to adults and of which the educators are employed in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998); (ix)
  - (ii) **“council”** means the South African Council for Educators referred to in section 4; (viii)
  - (iii) **“educator”** means any person referred to in section 3 and who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and educational psychological services, at an institution; (vii) 15
  - (iv) **“further education and training institution”** means a public or private further education and training institution defined in section 1 of the Further Education and Training Act, 1998 (Act No. 98 of 1998), or any technical college, youth college, community college, state college or other college which is wholly or partly funded by the state; (iv) 20
  - (v) **“institution”** means any school, further education and training institution or adult learning centre; (iii)
  - (vi) **“member”** means a member of the council appointed in terms of section 6; (v)
  - (vii) **“Minister”** means the Minister of Education; (vi) 25
  - (viii) **“official of the organised profession”** means a person employed by a relevant trade union or federation of trade unions, whether or not that person is employed in a full-time or part-time capacity; (i)
  - (ix) **“organised profession”** means all trade unions or federations of trade unions which are members of the Education Labour Relations Council; (ii) 30
  - (x) **“school”** means a public or independent school defined in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996); (x)

#### Objects of Act

2. The objects of this Act are—
- (a) to provide for the registration of educators; 35
  - (b) to promote the professional development of educators; and
  - (c) to set, maintain and protect ethical and professional standards for educators, by means of the functioning of the council.

## Application of Act

### 3. This Act applies to all educators appointed—

- (a) in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998);
- (b) in terms of the South African Schools Act, 1996 (Act No. 84 of 1996);
- (c) at an independent school;
- (d) in terms of the Further Education and Training Act, 1998 (Act No. 98 of 1998);
- (e) at a further education and training institution;
- (f) at an adult learning centre.

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## CHAPTER 2

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### CONTINUATION, POWERS AND DUTIES, COMPOSITION AND GOVERNANCE OF COUNCIL

#### Continuation of council

4. The South African Council for Educators referred to in section 27 of the Employment of Educators Act, 1998 (Act No. 76 of 1998), continues to exist as a juristic person despite the repeal of that section by section 28 of this Act.

#### Powers and duties of council

### 5. Subject to this Act and the National Education Policy Act, 1996 (Act No. 27 of 1996), the council—

- (a) with regard to the registration of educators—
  - (i) must determine minimum criteria and procedures for registration or provisional registration;
  - (ii) must consider and decide on any application for registration or provisional registration;
  - (iii) must keep a register of the names of all persons who are registered or provisionally registered;
  - (iv) must determine the form and contents of the registers and certificates to be kept, maintained or issued in terms of this Act, the periods within which they must be reviewed and the manner in which alterations thereto may be effected; and
  - (v) may prescribe the period of validity of the registration or provisional registration;
- (b) with regard to the promotion and development of the education and training profession—
  - (i) must promote, develop and maintain a professional image;
  - (ii) must advise the Minister on matters relating to the education and training of educators, including but not limited to—
    - (aa) the minimum requirements for entry to the profession;
    - (bb) the standards of programmed of pre-service and in-service educator education;
    - (cc) the requirements for promotion within the education system;
    - (dd) educator professionalism;
  - (iii) must research and develop a professional development policy;
  - (iv) must promote in-service training of all educators;
  - (v) may develop resource materials to initiate and run, in consultation with an employer, training programmed, workshops, seminars and short courses that are designed to enhance the profession;
  - (vi) may compile, print and distribute a professional journal and other publications;
  - (vii) may establish a professional assistance facility for educators;
- (c) with regard to professional ethics—

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- (i) must compile, maintain and from time to time review a code of professional ethics for educators who are registered or provisionally registered with the council;
- (ii) must determine a fair hearing procedure;
- (iii) subject to subparagraph (ii), may—
  - (*au*) caution or reprimand;
  - (*bb*) impose a fine not exceeding one month's salary on; or
  - (*cc*) remove from the register the name of, an educator found guilty of a breach of the code of professional ethics; and
- (iv) may suspend a sanction imposed under subparagraph (iii)(*bb*) or (*cc*) for a period and on conditions determined by the council;
- (d) with regard to fees—
  - (i) must, in consultation with the Minister, determine fees payable to the council by registered educators and educators applying for registration;
  - (ii) may require from the relevant employers to deduct fees from the salaries of educators and to pay it over to the council;
  - (iii) may, after a fair hearing—
    - (*aa*) caution or reprimand; or
    - (*bb*) remove from the register the name of, **an educator found guilty of failing to pay the fees determined by the council; and**
  - (iv) **may suspend a sanction imposed under subparagraph (iii)(*bb*) for a period and on conditions determined by the council; and**
- (e) in general—
  - (i) must advise the Minister on any educational aspect which the Minister may request it to advise on;
  - (ii) may appoint staff and determine their conditions of service;
  - (iii) may establish committees and assign duties to them;
  - (iv) must perform any duty which is necessary for the proper functioning of the council; and
  - (v) may advise the Minister on any relevant educational aspect.

### Composition of council

6. (1) The council consists of the following members, appointed by the Minister with due consideration to representation in respect of race, gender, disability and geographic distribution:

- (a) The chairperson, subject to section 7;
  - (b) 18 educators collectively nominated by the organised profession;
  - (c) five persons nominated by the Department of Education;
  - (d) two persons nominated by the national associations representing school governing bodies contemplated in section 20(3) of the South African Schools Act, 1996 (Act No. 84 of 1996);
  - (e) one person nominated by the Council on Higher Education established by section 4 of the Higher Education Act, 1997 (Act No. 101 of 1997);
  - (f) one person nominated by the councils of further education and training institutions contemplated in section 8 of the Further Education and Training Act, 1998 (Act No. 98 of 1998);
  - (g) one person nominated by national bodies representing independent or private institutions recognised by the Minister; and
  - (h) the chief executive officer of the council, subject to section 17.
- (2) The members referred to in subsection (1)(b) must consist of educators, including principals, employed at or in each of the following institutions or sectors:
- (a) A public ordinary school;
  - (b) an independent school;
  - (c) a public further education and training institution;
  - (d) a private further education and training institution;
  - (e) early childhood development sector;
  - (f) an adult learning centre;
  - (g) learners with special education needs sector.

(3) Nominees referred to in subsection (1) may not be officials of the organised profession.

(4) If the organised profession is unable to reach agreement collectively with regard to the 18 nominations referred to in subsection (1)(b), the Minister must appoint 18 members from the nominations by individual organisations from the organised profession.

(5) When any nomination becomes necessary in terms of subsection (1), the council must invite the relevant bodies or authorities in writing to nominate persons who qualify for nomination within a specified period of at least 30 days. 5

(6) If the council receives any nomination it must, within 30 days after the expiry date specified in the invitation, submit the nomination to the Minister.

(7) If the council receives no nominations or receives insufficient nominations within the period specified in the invitation, the Minister may, after consultation with the council, appoint persons who meet the requirements up to the number required, as members. 10

(8) The Minister must by notice in the *Gazette*, as soon as practicable after the appointment of the members, publish the name of every person appointed as a member, together with the date from which the appointment takes effect and the period for which the appointment is made. 15

### **Chairperson and deputy chairperson of council**

**7. (1) (a) At the first meeting** in a new term of office of members, the members must nominate three persons for consideration by the Minister for appointment as chairperson. 20

(b) A person who is not a member may be nominated for appointment as chairperson.

(2) The chief executive officer must act as chairperson until such time as a chairperson is appointed.

(3) After the appointment of the chairperson by the Minister, the members must elect one of their number as deputy chairperson of the council to act as chairperson when the chairperson is not available. 25

(4) The chairperson and deputy chairperson hold office during the term of office of the members.

(5) In the event of the chairperson being appointed from the members of the council, the vacancy that arises must be filled in accordance with section 10.

(6) Whenever both the chairperson and the deputy chairperson are not available, the members must, from among themselves, elect a member to act as chairperson.

### **Term of office of members**

**8. Subject to section 10(2), all members, excluding the chief executive officer, hold office for a period of four years.** 35

### **Termination of office of chairperson, deputy chairperson or member**

**9. The term of office of the chairperson, deputy chairperson or any other member is terminated if the member—**

(a) resigns by giving notice in writing to the Minister and the council; 40

(b) is absent from three consecutive meetings of the council or from a committee of which the member is a member without leave of the relevant chairperson, or in the case of the chairperson, the leave of the executive committee of the council;

(c) brings the council or the profession into disrepute; 45

(d) no longer meets the requirements referred to in section 6(1) and (2);

(e) (i) is declared insolvent;

(ii) is removed from an office of trust by a court of law;

(iii) is convicted of an offence involving dishonesty or an offence for which the sentence imposed is imprisonment without the option of a fine; or 50

(iv) is declared by a competent court to be of an unsound mind or under a legal disability.

### **Filling of vacancies**

**10. (1) If the term of office of a member is terminated in terms of section 9, the vacancy must be filled, with the necessary changes, in accordance with section 6.** 55

(2) The term of office of a member appointed in terms of subsection (1), is the remainder of the term of office of the relevant predecessor.

(3) (a) If the office of chairperson becomes vacant in terms of section 9, the remaining members and the Minister must act in accordance with section 7(1).

(b) The person so appointed as chairperson holds office for the remainder of the term of office of the relevant predecessor.

#### **Executive committee**

**11. (1) The executive committee** of the council consists of—

- (a) the chairperson of the council, who is the chairperson of the committee;
- (b) six other members appointed by the council of whom at least one is a member referred to in section 6(1)(c); and
- (c) the chief executive officer.

(2) The council must, subject to this Act, determine the functions of the executive committee.

(3) A decision of the executive committee is regarded as a decision of the council, 1S unless the decision is revoked by the council at its ensuing meeting.

(4) Anything done in implementing the decision of the executive committee before it is revoked by the council, is not invalid by reason only of the fact that the decision is subsequently revoked by the council.

#### **Registration committee**

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**12. (1) The registration committee** of the council consists of—

- (a) the chairperson, who is a member of, and appointed by, the council;
- (b) four other members appointed by the council; and
- (c) the chief executive officer.

(2) Subject to Chapter 3, the registration committee must—

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- (a) consider and make recommendations to the council on minimum criteria and procedures for the registration or provisional registration of educators;
- (b) consider and make recommendations to the council on any application for registration or provisional registration;
- (c) recommend the period of validity of the registration of an educator to the council; and
- (d) exercise or perform any other power or duty delegated or assigned to it by the council.

(3) The registration committee must keep a record of its proceedings.

#### **Professional development committee**

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**13. (1) The professional development committee** of the council consists of—

- (a) the chairperson, who is a member of, and appointed by, the council;
- (b) four other members appointed by the council; and
- (c) the chief executive officer.

(2) The council must, subject to this Act, determine the functions of the professional development committee. 40

(3) The professional development committee must keep a record of its proceedings.

#### **Disciplinary committee**

**14. (1) The disciplinary committee of the council** consists of—

- (a) the deputy chairperson of the council, who is the chairperson of the committee;
- (b) four other members appointed by the council; and
- (c) the chief executive officer.

(2) The disciplinary committee must—

- (a) ensure that an alleged breach of the code of professional ethics is investigated; 50
- (b) establish panels to investigate and hear complaints against educators;
- (c) ensure that a fair hearing, in accordance with the procedure determined by the council in terms of section 5(c)(ii), is conducted;

- (d) on the basis of a recommendation of the relevant panel, make a finding and recommend appropriate action, if any, to ~~the~~ council; and
  - (e) exercise or perform any other power or duty delegated or assigned to it by the council.
- (3) A relevant **panel** must make a recommendation to the disciplinary committee in regard to a finding, and, if any, disciplinary action concerning a complaint referred to it. 5
- (4) For the purposes of the investigation and hearing, a panel may summon any person who—
- (a) may be able to give information of **material** importance concerning the subject of the investigation or hearing; or 10
  - (b) has possession, custody or control of or over any book, document or object which may have a bearing on the matter,
- to appear before the panel and to produce the book, document or object, if any.
- (5) The summons must be in a form prescribed by the council and be signed by the chairperson of the disciplinary committee or the chief executive officer and be served on a person by way of— 15
- (a) delivery by hand;
  - (b) **telefax**; or
  - (c) registered post.
- (6) The date on which the summons is served is regarded as, in a case of— 20
- (a) service by hand, the date of delivery;
  - (b) service by telefax, the dispatching date reflected on ~~the~~ telefax; and
  - (c) service by registered post, the date on which the letter was signed for,
- in the absence of proof to the contrary.
- (7) The disciplinary committee and a panel must keep a record of the proceedings of every investigation and disciplinary hearing. 25

#### **Committees of council**

- 15.** (1) The council may establish other committees to assist in the performance of its functions and may co-opt other persons to attend committee meetings on the basis of their expertise. 30
- (2) Any committee, other than the executive committee, may include persons who are not members of the council.
- (3) Subject to sections 11 and 14 the chairperson of a committee must be appointed by the council from among its members.
- (4) Members of committees referred to in subsection (1) may be appointed for such period as the council may determine. 35
- (5) Members of a panel referred to in section 14(2)(b) need not be members of the council.

#### **Meetings, and procedure at meetings of council and committees**

- 16. (1) The council must hold at least two meetings during each calendar year at its head office, and may in addition hold such other meetings as the chairperson of the council may determine.** 40
- (2) The council may make rules relating to the procedure at meetings of the council and its committees, and on any other matter necessary for the performance of its functions. 45
- (3) A majority of the members of the council or a committee constitutes a quorum at any meeting of the council or committee.
- (4) (a) A decision of the majority of the members of the council or of a committee present at any meeting constitutes a decision of the council or committee.
- (b) In the event of an equality of votes, the presiding member has a casting vote in addition to a deliberative vote. 50
- (5) A decision taken by the council or a committee is not invalid by reason only of a vacancy on the council or a committee, as the case may be, at the time when the decision was taken.

### **Appointment and functions of chief executive officer and staff**

- 17. (1)** The council must appoint a chief executive officer and may appoint other employees as it may deem necessary to assist it in the performance of its functions.
- (2) The chief executive officer is the accounting officer of the council.
- (3) The chief executive officer is, subject to the directions and in accordance with the policy of the council, responsible for the—
- (a) formation and development of an efficient administration;
  - (b) organisation, control, management and discipline of the staff; and
  - (c) implementation of the decisions of the council.
- (4) As accounting officer the chief executive officer is responsible for—
- (a) all income and expenditure of the council;
  - (b) all assets and the discharging of all liabilities of the council; and
  - (c) the proper and diligent implementation of the operational plans of the council.
- (5) The council is the employer and must determine the conditions of service of its employees.

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### **Remuneration and allowances of members of council and committees**

- 18. The chairperson of the council, the deputy chairperson, every member and any person appointed as a member of a committee or panel who is not in the service of the State may, in respect of services rendered by them in connection with the affairs of the council, a committee or panel, be paid by the council—**
- (a) such traveling, subsistence and other allowances; and
  - (b) in the case of the chairperson of the council, such additional remuneration, as the council may determine.

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### **Funds of council**

- 19. (1)** The funds of the council consist of—
- (a) compulsory fees;
  - (b) money received from donations, contributions, interest or fines; and
  - (c) other money received by the council from any other source.
- (2) The council—
- (a) must during each financial year, at such time and in such manner as the Minister may determine, submit to the Minister for approval a detailed statement of its estimated income and expenditure for the ensuing financial year;
  - (b) may during any financial year submit to the Minister for approval adjusted statements of its estimated income and expenditure; and
  - (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 statement of estimated income and expenditure of the council, the Minister must request the council to submit a revised statement of its estimated income and expenditure within a specified period.
- (4) (a) The funds contemplated in subsection (1) must be used by the council in accordance with the approved statement referred to in subsection (2).
- (b) Any unexpended balance must be carried forward as a credit to the following financial year.
- (5) Subject to subsection (4), the council may invest any portion of its funds in such manner as the council may approve.
- (6) The books of account and financial statements of the council must be audited at the end of each financial year by a chartered accountant registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), appointed by the council.
- (7) A copy of the audited financial statements must be submitted to the Minister within three months after the end of the council's financial year.

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### Annual report

20. (1) The council must, within three months after the end of each financial year, submit a report to the Minister on the performance of its functions during that financial year.

(2) The Minister must table the report in parliament as soon as is reasonably practicable.

## CHAPTER 3

### REGISTRATION OF EDUCATORS

#### Compulsory registration of educators

21. A person who qualifies for registration in terms of this Act must register with the council prior to being appointed as an educator.

#### Application for registration

22. (1) (a) An application for registration must be made to the council in the manner and form determined by the council.

(b) The applicant must submit the documentation and information required by the council together with the registration fee referred to in section 5(d)(i).

(2) The council must consider an application for registration in terms of the requirements for registration determined by the council.

(3) If an applicant for registration satisfies the requirements referred to in subsection (1), the council must register the applicant and issue a registration certificate to the educator.

(4) If an applicant does not satisfy all the requirements but the council is of the opinion that the requirements will be satisfied within a reasonable time, the council may register the applicant provisionally on such conditions as the council may determine.

(5) When an educator who is provisionally registered as contemplated in subsection (4) satisfies all the requirements for registration and the conditions referred to in that subsection, the council must register the educator in accordance with subsection (3).

(6) If an educator referred to in subsection (4) does not satisfy the requirements for registration within the period specified, the provisional registration lapses and the name of the person is removed from the register. 30

(7) The period for which an educator is provisionally registered may be extended by the council, and different conditions in respect of different applicants may be determined if there is a reasonable basis for the differentiation.

(8) Different categories of registration may be determined by the council to allow for the special circumstances of different sectors in education. 35

#### Removal of name from register

23. (1) The council may direct the chief executive officer to remove the name of an educator from the register if—

(a) after having been registered, the relevant qualification of the educator is withdrawn or cancelled by the higher education institution which issued it; 40

(b) the educator was registered by error or by means of fraud;

(c) the educator was found guilty of a breach of the code of professional ethics;

(d) the educator requests de-registration, permanently or for a specified period;

(e) the educator fails to pay the fees prescribed by the council within a specified period; or 45

(f) the educator dies.

(2) Notice of the removal of the name of an educator from the register must be given by the chief executive officer to the educator concerned by way of certified mail addressed to the relevant address appearing in the register.

(3) The name of an educator may not be removed from the register unless the educator was given a reasonable opportunity to make representations to the council. 50

(4) As from the date on which notice contemplated in subsection (2) has been given to the educator any registration certificate issued to the educator concerned is regarded to be cancelled.

## Registration certificates

24. (1) A registration certificate must be sent to the educator upon registration by the council.

(2) (a) The original certificate must be issued in English.

(b) If a copy of the certificate is requested in another official language, the council must, on payment of the fee prescribed by it, issue the certificate in that language.

(3) If the chief executive officer is satisfied, on proof submitted by a registered educator, that a registration certificate has been destroyed or lost, a duplicate registration certificate must be issued to that educator upon payment of the fee prescribed by the council.

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## CHAPTER 4

### GENERAL

#### Transitional provisions

25. (1) The terms of office of the members of the council in office immediately prior to the commencement of this Act, expire on the day prior to the date on which the appointment of the members takes effect in terms of section 6(8).

(2) Any function performed by the council prior to the commencement of this Act, is regarded to have been performed in terms of the corresponding provision of this Act.

(3) Despite the provisions of subsection (2), any disciplinary proceedings instituted against an educator for an alleged breach of the code of professional ethics prior to the commencement of this Act must be continued and concluded in terms of the procedure determined in terms of Chapter 6 of the Employment of Educators Act, 1998 (Act No. 76 of 1998).

(4) The constitution, registration procedure, code of professional ethics and other procedures of the council existing immediately prior to the commencement of this Act, 25 remain in force until amended or repealed by the council under this Act, except where they are in conflict with the provisions of this Act.

(5) The compulsory registration fees and other fees payable to the council immediately prior to the commencement of this Act, remain in force until amended or repealed by the council under this Act.

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(6) The agreements of employment existing immediately prior to the commencement of this Act between the employees of the council, and the council, continue to exist subject to applicable labour law.

(7) Practicing educators to whom the provisions of the Employment of Educators Act, 1998 (Act No. 76 of 1998), do not apply and who are required in terms of this Act to register are, subject to subsection (8), regarded to be provisionally registered with the council, irrespective of their qualifications.

(8) Provisional registration contemplated in subsection (7) remains valid until a date determined by the Minister, prior to which date the educators concerned must apply for and obtain registration in terms of Chapter 3 in order to remain registered.

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#### Information to be furnished to council

26. (1) A higher education institution and the employer of an educator must furnish the council, at its request, with such information as is reasonably required by the council for the performance of its functions.

(2) In each case where disciplinary steps are taken against any educator by the employer resulting in a sanction other than a caution or reprimand, a certified summary of the record of the proceedings at the hearing and of the sanction imposed must be forwarded to the council by such employer.

#### Offences and penalties

27. Any person who—

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(a) has been duly summoned under section 14(5) and who fails without sufficient cause—

- (i) to attend at the time and place specified in the summons: or
  - (ii) to remain in attendance until excused by the panel from further attendance:
  - (b) refuses to be sworn or to affirm as a witness; or
  - (c) fails without sufficient cause—
    - (i) to answer fully and satisfactorily any question lawfully put to that person; or
    - (ii) to produce any book, document or object in that person's possession or custody or under that person's control which that person was required to produce in terms of the said section 14(5).
- is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

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### **Repeal of law**

28. Chapter 6 of the Employment of Educators Act, 1998 (Act No. 76 of 1998), is hereby repealed,

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### **Short title**

29. This Act is called the South African Council for Educators Act, 2000.

## **MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN COUNCIL FOR EDUCATORS BILL, 2000**

### **INTRODUCTION**

1. The Bill proposes to provide for the continued existence of the South African Council for Educators (SACE), as a statutory body which is provided for in Chapter 6 of the Employment of Educators Act, 1998 (Act No. 76 of 1998), and which regulates the employment of state employed educators in public institutions. The scope of SACE is sought to be extended to all educators employed at private or independent institutions in the general and further education and training sectors.

### **BACKGROUND**

2. SACE was established in 1995 by means of a collective agreement in the Education Labour Relations Council. It was collectively agreed by the state as employer of educators and the trade unions on behalf of employees to establish such a professional council to register educators and discipline them if they are in breach of a code of conduct.

3. This council was therefore perceived to be an extension of the Education Labour Relations Council by the public and educators, and not as a professional body which promotes and controls the profession.

4. During 1998 the Employment of Educators Bill, 1998, was tabled in Parliament. This Bill sought to regulate the employment of educators employed by the state at public schools. During deliberations by the portfolio committee an amendment was introduced to include Chapter 6 in the said Bill to convert SACE from a labour orientated body to a statutory body. This was an attempt to move away from the influence of the Education Labour Relations Council, as SACE was regarded as an independent professional body.

5. The amendment so effected was not an ideal solution to the problem, and it was requested that a separate Bill be drafted in the near future to address the problem. The placement of Chapter 6 in the said Act, applicable to state educators, is very restrictive and undesirable as a model for the profession of educators. The scope and functions of SACE were restricted to educators at public schools and public further education and training institutions, and the intention is to get such a council to regulate the whole profession.

### **REASONS FOR AND CONTENTS OF BILL**

6. National and international models of professional councils of a similar nature have shown that they can only be effective in their functioning and have the right status and recognition if they have their "own Act".

7. The interim arrangement to provide for SACE as a statutory body by the inclusion of the said Chapter 6 was not the best or most effective manner to deal with the matter.

8. The fact that Chapter 6 (making provision for SACE as a statutory body) is part of the said Act, restricts the scope and application of this professional body to educators at public schools, public further education and training institutions and public adult learning centres. It is not possible to extend the current provisions of Chapter 6 to private or independent institutions in the general or further education and training sectors as the scope of the said Act only covers employment at public institutions.

9. The proposed composition of the "new SACE" is also important. Currently SACE only consists of members representative of the public institutions. In the Bill it is proposed that the majority of members ( 18) will be educators who are not officials or office bearers of a trade union. If approved, the Bill will require that educators employed at or in ordinary public schools, independent schools, public and private further education and training institutions, the early childhood development sector, the adult basic education sector and the sector for learners with special needs, must be represented

SACE. SACE will include members who represent national associations of school governing bodies and the Council for Higher Education. It will also include members nominated by national bodies representing independent or private institutions.

10. When deciding on the proposed manner of appointment of members to SACE, examples of similar bodies (nationally and internationally) were taken into account. It is proposed that nominations be made by specified organisations and appointments by the Minister. This is a well established model across the world and was judged the preferred option. The option of elected membership was also considered. In small systems such as the Scottish, this model is the preferred option. It is, however, a costly and time-consuming process to conduct a proper election. There is also a high risk involved as any deviation from the election procedures may be challenged in a court of law. To conduct an election in which more than 300 000 educators must take part; where some of them are employed in schools which do not have access to telephones or effective postal services; and where access to some schools is only possible by off-road vehicles, will create huge problems to ensure a fair election. This option was therefore discarded.

11. The proposed functions of SACE are clearly reflected in the Bill. SACE will be required to develop, maintain and promote the image of the profession; to register educators who comply with determined minimum criteria; to establish, maintain and from time to time review a code of professional ethics for educators; and to advise the Minister on any relevant educational aspect.

12. The Bill proposes to provide for statutory committees for registration, professional development and discipline in order to ensure that these functions of SACE are dealt with effectively. It will make the functioning of SACE transparent and accessible to all educators. These measures will ensure that professional standards are developed and maintained.

## CONSULTATION

13. The Bill was published for comment in the *Government Gazette*. The following key role players submitted comments:

- Independent Schools Association of South Africa
- South African Democratic Teacher's Union (Sadtu)
- National Professional Teachers' Union (Naptosa)
- Suid-Afrikaanse Onderwysersunie (SAOU)
- Association of Professional Educators of KwaZulu-Natal (Apek)
- Federation of Associations of Governing Bodies of South Africa (Fedsas)
- Greater Soweto Association of School Governing Bodies
- South African Council for Educators
- Department of State Expenditure

The Bill was drafted after extended deliberations with all relevant role players.

## FINANCIAL IMPLICATIONS FOR STATE

14. None.

## PARLIAMENTARY PROCEDURE

15. The State Law Advisers and the Department are of the opinion that the Bill must be dealt within accordance with the procedure prescribed by section 76(1) or (2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it falls within a functional area listed in Schedule 4 to the Constitution, namely "Education at all levels, excluding tertiary education".