

REPUBLIC OF SOUTH AFRICA

EDUCATION LAWS AMENDMENT BILL

*(As introduced in the National Assembly as a section 76 Bill; explanatory summary of Bill
published in Government Gazette No 23559 of 26 June 2002) (The English text is the
official text of the Bill)*

(MINISTER OF EDUCATION)

[B 31—2002]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP ONDERWYSWETTE

*(Soos ingedien by die Nasionale Vergadering as 'n artikel 76-wetsontwerp; verduidelikende
opsomming van Wetsontwerp in Staatskoerant No. 23559 van 26 Junie 2002 gepubliseer)
(Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

(MINISTER VAN ONDERWYS)

[W 31—2002]

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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.

BILL

To amend the South African Schools Act, 1996, so as to provide for a national curriculum and the process for the assessment of learner achievement in public and independent schools; to make provision for the appointment of an intermediary to assist minor learners in disciplinary hearings; and to provide for admission age requirements for public and independent schools; to amend the Employment of Educators Act, 1998, so as to make provision for an appointment of an intermediary to assist minor learners in disciplinary hearings and for certain definitions; to amend the Further Education and Training Act, 1998, so as to provide for safety measures at public and private further education and training institutions; to provide for a national curriculum and the process for assessment of student achievement for public and private further education and training institutions; and to effect textual corrections relating to the registration of private further education and training institutions; to amend the Adult Basic Education and Training Act, 2000, so as to effect textual corrections; to provide for safety measures at public and private centres; and to provide for a national curriculum and the process for the assessment of learner achievement for public and private centres; to amend the General and Further Education and Training Quality Assurance Act, 2001, so as to effect textual corrections; 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 84 of 1996

1. Section 1 of the South African Schools Act, 1996 (hereinafter referred to as the Schools Act), is amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) Footnotes appearing in *this Act* must not be used in the interpretation of any provision of *this Act*.”.

Amendment of section 5 of Act 84 of 1996

2. Section 5 of the Schools Act is amended by the substitution for subsection (4) of the following subsection:

- “(4) (a) The admission age of a learner to a public school to—
- (i) *grade R* is age four turning five by 30 June in the year of admission; 5
 - (ii) *grade 1* is age five turning six by 30 June in the year of admission.
- (b) Subject to the availability of suitable *school* places and other educational resources, the *Head of Department* may admit a learner who—
- (i) is under the age contemplated in paragraph (a) if good cause is shown; and
 - (ii) complies with the criteria contemplated in paragraph (c). 10
- (c) The *Minister* may, by regulation, prescribe—
- (i) criteria for the admission to a public school, at an age lower than the admission age, of an underage learner who complies with the criteria¹;
 - (ii) age requirements for different *grades* at a public school.
- (d) For the purpose of paragraph (b)(i), good cause shown means that— 15
- (i) it can be shown that exceptional circumstances exist which necessitate the admission of an underage learner because admission would be in his or her best interest; and
 - (ii) the refusal to admit that learner would be severely detrimental to his or her development.”. 20

Insertion of section 6A in Act 84 of 1996

3. The Schools Act is amended by the insertion after section 6 of the following section:

“Curriculum and assessment

- 6A.** (1) The *Minister* must, by notice in the Government Gazette, 25
determine—
- (a) a national curriculum; and
 - (b) a national process for the assessment of learner achievement.
- (2) The curriculum and the process for the assessment of learner achievement contemplated in subsection (1) must be applicable to public and independent schools.”. 30

Amendment of section 8 of Act 84 of 1996

4. Section 8 of the Schools Act is amended by the addition after subsection (5) of the following subsections:

- “(6) A learner must be accompanied by his or her parent or a person designated 35
by the parent at disciplinary proceedings.
- (7) Whenever disciplinary proceedings are pending before any governing body, and it appears to such governing body that it would expose a witness under the age of eighteen years to undue mental stress or suffering if he or she testifies at such proceedings, the governing body may, if practicable, appoint a competent person as 40

1. It is acknowledged that criteria for admission of an underage learner are complex and take some considerable time to develop. The criteria must be reliable and effective and their proper implementation will require the training of evaluators. The criteria must be based on an educationally sound basis in order to ensure that—

- (a) learners are admitted on an equitable basis;
- (b) there is no unfair discrimination to learners;
- (c) the admission is fair to the individual learner as well as other learners in the classroom;
- (d) recognition is given to the diversity of language, culture and economic background;
- (e) notice is taken of the differences between urban and rural environments; and
- (f) the physical, psychological and mental development of the child is taken into account.

an intermediary in order to enable such witness to give his or her evidence through that intermediary.

(8) (a) An examination, cross-examination or re-examination of a witness in respect of whom a *governing body* has appointed an intermediary under subsection (7), except examination by the *governing body*, must not take place in any manner other than through that intermediary.

(b) Such intermediary may, unless the *governing body* directs otherwise, convey the general purport of any question to the relevant witness.

(9) If a *governing body* appoints an intermediary under subsection (7), the *governing body* may direct that the relevant witness must give his or her evidence at any place which—

(a) is informally arranged to put that witness at ease;

(b) is arranged in a manner in which any person whose presence may upset that witness, is outside the sight and hearing of that witness; and

(c) enables the *governing body* and any person whose presence is necessary at the relevant proceedings to hear, through the medium of any electronic or other devices, that intermediary as well as that witness during his or her testimony.”.

Insertion of section 10A in Act 84 of 1996

5. The Schools Act is amended by the insertion after section 10 of the following section:

“Prohibition of initiation practices

10A. (1) A person may not conduct or participate in any initiation practices against a *learner* at a *school* or in a hostel accommodating *learners* of a *school*.

(2) (a) Any person who contravenes subsection (1) is guilty of misconduct and disciplinary action must be instituted against such a person in accordance with the applicable code of conduct, prescribed in sections 8 and 18A of *this Act* and Schedule 2 to the Employment of Educators Act, 1998 (Act No. 76 of 1998).

(b) In addition to paragraph (a), a *learner* may institute civil action against a person or a group who manipulated and forced that *learner* to conduct or participate in any initiation practices.

(3) For the purposes of *this Act*, “initiation practices” means any act which in the process of initiation, admission into, or affiliation with, or as condition for continued membership of, a *school*, a group, intramural or extramural activities, interschools sports team, or organisation—

(a) endangers the mental or physical health or safety of a person;

(b) undermines the intrinsic worth of human beings by treating some as inferior to others;

(c) subjects individuals to humiliating or violent acts which undermine the constitutional guarantee to dignity in the Bill of Rights;

(d) undermines the fundamental rights and values that underpin the *Constitution*;

(e) impedes the development of a true democratic culture that entitles an individual to be treated as worthy of respect and concern; or

(f) destroys public or private property.”.

Insertion of section 18A in Act 84 of 1996

6. The Schools Act is amended by the insertion after section 18 of the following section:

“Code of conduct of governing body

18A. (1) The *Member of the Executive Council* must, by notice in the Provincial Gazette, determine a code of conduct for the members of the *governing body* of a *public school* after consultation with an association of *governing bodies* in that province, if applicable.

(2) The code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful *school* environment dedicated to the improvement and maintenance of a quality governance structure at a *public school*.

(3) All members of a *governing body* must adhere to the code of conduct. 5

(4) The code of conduct must contain provisions of due process, safeguarding the interests of the members of the *governing body* in disciplinary proceedings.

(5) The Head of Department may suspend or terminate the membership of a *governing body* member for a breach of the code of conduct after due process. 10

(6) A member of the *governing body* may appeal to the *Member of the Executive Council* against a decision of a *Head of Department* regarding the suspension or termination of his or her membership as a *governing body member*.”. 15

Amendment of section 38 of Act 84 of 1996

7. Section 38 of the Schools Act is amended by the addition after subsection (2) of the following subsection:

“(3) The notice contemplated in subsection (2) must also inform the *parents* that the budget will be available for inspection at the *school* at least 14 days prior to the meeting.”. 20

Insertion of section 45A in Act 84 of 1996

8. The Schools Act is amended by the insertion after section 45 of the following section:

“Admission age to independent school 25

45A. (a) The admission age of a *learner* to an *independent school* to—

(i) *grade R* is age four turning five by 30 June in the year of admission;

(ii) *grade 1* is age five turning six by 30 June in the year of admission.

(b) An *independent school* may admit a *learner* who—

(i) is under the age contemplated in paragraph (a) if good cause is shown; 30
and

(ii) complies with the criteria contemplated in paragraph (c).

(c) The *Minister* may, by regulation, prescribe—

(i) criteria² for the admission to an *independent school* at an age lower than the admission age of an underage *learner* who complies with the criteria; 35

(ii) age requirements for different *grades* at an *independent school*.

(d) For the purpose of paragraph (b)(i), good cause shown means that—

(i) it can be shown that exceptional circumstances exist which necessitate the admission of an underage *learner* because admission would be in his or her best interest; and 40

(ii) the refusal to admit that *learner* would be severely detrimental to his or her development.”.

2. It is acknowledged that criteria for admission of an underage learner are complex and take some considerable time to develop. The criteria must be reliable, effective and their proper implementation will require the training of evaluators. The criteria must be based on an educationally sound basis in order to ensure that—

(a) learners are admitted on an equitable basis;

(b) there is no unfair discrimination to learners;

(c) the admission is fair to the individual learner as well as other learners in the classroom;

(d) recognition is given to the diversity of language, culture and economic background;

(e) notice is taken of the differences between urban and rural environments; and

(f) the physical, psychological and mental development of the child are taken into account.

Substitution of section 61 of Act 84 of 1996, as amended by section 5 of Act 53 of 2000

9. Section 61 of the Schools Act is amended by the substitution for section 61 of the following section:

“Regulations

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- 61.** The *Minister* may make regulations—
- (a) to provide for safety measures at *public and independent schools*;
 - (b) on any matter which must or may be prescribed by regulation under *this Act*; **[and]**
 - (c) to prescribe a national curriculum applicable to *public and independent schools*; 10
 - (d) to prescribe a national process for the assessment of *learner achievement in public and independent schools*;
 - (e) to prescribe a national process for the assessment, monitoring and evaluation for quality education in *public and independent schools*; 15
 - (f) on initiation practices at *public and independent schools*;
 - (g) to prescribe the age norm per grade in *public and independent schools*;
 - (h) to provide for norms and minimum standards for *school funding*; and
 - (i) on any matter which may be necessary or expedient to prescribe in order to achieve the objects of *this Act*.” 20

Insertion of section 6A in Act 76 of 1998

10. The Employment of Educators Act, 1998 (hereinafter referred to as the Educators Act), is amended by the insertion after section 6 of the following section:

“First appointment or appointment after break in service of educator

- 6A.** (1) Despite section 6(3)(a), in the case of a first appointment or an appointment after one or more years' break in service to any provincial department of education, the employer may— 25
- (a) receive applications from first-time applicants or applicants returning after a break in service;
 - (b) process the applications and match applications to vacant posts; and 30
 - (c) make appointments to a school subject to subsection (2).
- (2) The appointment contemplated in subsection (1) may only be made after the employer has—
- (a) consulted the relevant governing body on the requirements of the post;
 - (b) ensured that the applicant to be appointed matches the requirements of the post; and 35
 - (c) ensured that the applicant has prescribed qualifications.”

Amendment of section 8 of Act 76 of 1998, as amended by section 16 of Act 48 of 1999

11. Section 8 of the Educators Act is amended by the addition of the following subsection: 40

“(7) Despite section 6(3)(a), in the case of an educator who has been awarded a bursary by the employer to follow a course approved by the employer, the employer may transfer such an educator, with his or her consent, to any suitable post on the educator establishment of a public school, a further education and training institution or an adult basic education and training centre.” 45

Amendment of item 2 of Schedule 1 to Act 76 of 1998

12. Item 2 of Schedule 1 to the Educators Act is amended by the substitution for subitem (2) of the following subitem:

- “(2) Despite section 4 of this Act, the performance of educators must be evaluated according to performance standards **[agreed upon by the parties to the Educators Labour Relations Council]** prescribed by the Minister.”. 5

Amendment of item 7 of Schedule 2 to Act 76 of 1998

13. Item 7 of Schedule 2 to the Educators Act, 1998, is amended—

- (a) by the insertion after subitem (7) of the following subitem:

“(7A)(a) The record referred to in subitem (7) includes an electronic recording of the proceedings. 10

(b) A transcript of electronic recordings or a portion of the transcript of a recording may be made on request of the educator or his or her representative on payment of the prescribed fee contemplated in section 22 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).”; and 15

- (b) by the insertion after subitem (10) of the following subitem:

“(10A) (a) Whenever disciplinary proceedings are pending before any presiding officer, and it appears to the Head of Department that it would expose a witness under the age of 18 years to undue mental stress or suffering if he or she testifies at such proceedings, the Head of Department may, if practicable, appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary. 20

(b) (i) An examination, cross-examination or re-examination of a witness in respect of whom the Head of Department has appointed an intermediary under paragraph (a), except examination by the presiding officer, must not take place in any manner other than through that intermediary. 25

(ii) Such intermediary may, unless the presiding officer directs otherwise, convey the general purport of any question to the relevant witness. 30

(c) If the Head of Department appoints an intermediary under paragraph (a), the presiding officer may direct that the relevant witness must give his or her evidence at any place which— 35

(i) is informally arranged to put that witness at ease;

(ii) is arranged in a manner in which any person whose presence may upset that witness, is outside the sight and hearing of that witness; and

(iii) enables the presiding officer and any person whose presence is necessary at the relevant proceedings to hear, through the medium of any electronic or other devices, that intermediary as well as that witness during his or her testimony.”. 40

Amendment of section 1 of Act 98 of 1998

14. Section 1 of the Further Education and Training Act, 1998 (hereinafter referred to as the Education and Training Act), is amended by— 45

- (a) the insertion after the definition of “financial year” of the following definition:

“ ‘foreign juristic person’ means a person—

(i) registered or established as a juristic person in terms of a law of a foreign country; and 50

(ii) recognised or registered as an external company in terms of the Companies Act, 1973 (Act No. 61 of 1973).”; 55

- (b) the substitution for paragraph (c) of the definition of “further education and training institution” of the following paragraph:

“(c) registered or **[conditionally]** provisionally registered as a private further education and training institution under this Act.”;

- (c) the insertion after the definition of "higher education" of the following definition:

" 'local juristic person' means a person established as a juristic person in South Africa in terms of the Companies Act, 1973 (Act No. 61 of 1973);"

- (d) the substitution for the definition of "registrar" of the following definition:

" 'registrar' means the registrar [designated by the Director-General] referred to in [terms of] section 23(1);"; and

- (e) the insertion after the definition of "this Act" of the following definition:

" 'to provide further education and training' means—

- (a) the registering of students for all learning and training programmes leading to qualifications from levels 2 to 4 of the National Qualifications Framework contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), which levels are above general education but below higher education; and

- (b) the taking of responsibility for the registration of students, the provision and delivery of the curriculum and assessment of students."

Insertion of section 16A in Act 98 of 1998

15. The Education and Training Act is amended by the insertion after section 16 of the following section:

"Prohibition of corporal punishment and initiation practices

16A. (1) A person may not administer corporal punishment to a student at a further education and training institution.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which may be imposed for assault.

(3) A person may not conduct or participate in initiation practices at public and private further education and training institutions.

(4) Any person who contravenes subsection (3) is guilty of misconduct and disciplinary action must be instituted against such a person.

(5) In addition to subsection (4), a person may institute civil action against a person or a group who manipulated and forced that person to conduct or participate in any initiation practices."

Amendment of section 23 of Act 98 of 1998

16. Section 23 of the Education and Training Act is amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) The Director-General [must designate an employee of the Department as] is the registrar of private further education and training institutions.

(2) The [Director-General] Minister may designate any other employee of the Department of Education to assist the registrar in the performance of his or her functions in terms of this Act."

Substitution of section 24 of Act 98 of 1998

17. The following section is substituted for section 24 of the Education and Training Act:

"Registration of private further education and training institution

24. (1) A person other than a public further education and training institution or an organ of state may not provide further education and training unless that person is—

- (a) registered or recognised as a juristic person in terms of the Companies Act, 1973 (Act No. 61 of 1973); and

- (b) registered or provisionally registered as a private further education and training institution in terms of this Act.”.

Amendment of section 26 of Act 98 of 1998

18. Section 26 of the Education and Training Act is amended by the substitution for subparagraphs (ii) and (iii) of paragraph (b) of subsection (1) of the following subparagraphs, respectively: 5

- “(ii) will comply with the requirements of the General and Further Education and Training Quality Assurance Council; and
 (iii) complies with any other reasonable requirement prescribed by the Minister; and”.

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Amendment of section 27 of Act 98 of 1998

19. Section 27 of the Education and Training Act is amended by—

- (a) the substitution for subsection 1 of the following subsection:

“(1) The registrar—

- (a) must consider any application for registration as a private further education and training institution and any further information, particulars or documents provided by the applicant; 15
 (b) may, when considering the application, differentiate between a foreign juristic person and local juristic person with regard to matters such as its scope and range of operations, its size and its institutional configuration; and 20
 (c) may register the applicant as a private further education and training institution if the requirements for registration contemplated in section 26 are fulfilled.”;

- (b) the substitution for subsections (3) and (4) of the following subsections, 25 respectively:

“(3) Notwithstanding subsection (1), the registrar may [**conditionally**] provisionally register an applicant, other than a foreign juristic person, who does not fulfill the requirements for registration contemplated in section 26, if the registrar believes that the applicant will be able to fulfill the relevant requirements within a reasonable period. 30

(4) If the registrar [**conditionally**] provisionally registers an applicant under subsection (3), the registrar must—

- (a) determine the period within which the applicant must satisfy the requirements for registration; 35
 (b) enter the applicant’s name in the appropriate register of private further education and training institutions;
 (c) issue a certificate of [**conditional**] provisional registration, stating the terms and the duration of such registration;
 (d) [**furnish**] provide the certificate of [**conditional**] provisional registration to the applicant; and 40
 (e) as soon as practicable after the decision, publish the certificate of [**conditional**] provisional registration in the *Gazette*.”; and

- (c) the substitution in subsection (6) for paragraph (b) of the following paragraph: 45

“(b) If, by the expiry of the period, the applicant fails to satisfy the requirements for registration specified by the registrar, the applicant’s [**conditional**] provisional registration lapses.”.

Amendment of section 28 of Act 98 of 1998

20. Section 28 of the Education and Training Act is amended by the substitution for subsections (1) and (2) of the following subsections, respectively: 50

“Certificate of registration

28. (1) A private further education and training institution must conspicuously display—

- (a) its certificate of registration or [**conditional**] provisional registration or a certified copy thereof on its premises; and 55

(b) its registration number and an indication that it is registered or **[conditionally] provisionally** registered on all its official documents.

(2) If the registrar has cancelled the registration or **[conditional] provisional** registration of a private further education and training institution in terms of section 35, the private further education and training institution must return the original certificate of registration or **[conditional] provisional** registration to the registrar within 14 days of such cancellation.”. 5

Amendment of section 31 of Act 98 of 1998

21. Section 31 of the Education and Training Act is amended by the substitution for 10 the words preceding paragraph (a) of the following words:

“A private further education and training institution may apply to the registrar to amend its registration or **[conditional] provisional** registration—”.

Amendment of section 32 of Act 98 of 1998

22. Section 32 of the Education and Training Act is amended by the substitution for 15 subparagraph (i) of subsection (3)(a) of the following subparagraph:

“(i) amend the certificate of registration or **[conditional] provisional** registration accordingly;”.

Amendment of section 33 of Act 98 of 1998

23. Section 33 of the Education and Training Act is amended by the substitution for 20 paragraphs (b) and (c) of subsection (1) of the following paragraphs, respectively:

“(b) its **[conditional] provisional** registration; or
(c) any amendment of its registration or **[conditional] provisional** registration.”.

Amendment of section 35 of Act 98 of 1998

24. Section 35 of the Education and Training Act is amended by the substitution for 25 subsection (1) of the following subsection:

“(1) Subject to section 36, the registrar may, on reasonable grounds, cancel any registration or **[conditional] provisional** registration in terms of this Act.”.

Amendment of section 37 of Act 98 of 1998

25. Section 37 of the Education and Training Act is amended by the deletion of 30 subsection (4).

Substitution of section 47 of Act 98 of 1998

26. Section 47 of the Education and Training Act is amended by the substitution for section 47 of the following section:

“Regulations

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47. [1] The Minister may make regulations consistent with this Act on—

- (a) safety measures at public and private further education and training institutions;
- (b) a national assessment of student achievement for public and private further education and training institutions;
- (c) a national process for the assessment, monitoring and evaluation for quality education in public and private further education and training institutions;
- (d) initiation practices at public and private further education and training institutions;

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- (e) any matter which the Minister is empowered or required to prescribe by regulation in terms of this Act; **[and]** or
 [(b)] (f) any other matter in respect of which regulations are necessary or expedient in order to achieve the purpose of this Act.”.

Insertion of section 18A in Act 52 of 2000

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27. The Adult Basic Education and Training Act, 2000 (hereinafter referred to as the Adult Basic Education and Training Act), is amended by the insertion after section 18 of the following section:

“Curriculum and assessment

- 18A.** (1) The Minister must, by notice in the *Government Gazette*, determine— 10
 (a) a national curriculum;
 (b) a national process for the assessment of learner achievement.
 (2) The curriculum and process for the assessment contemplated in subsection (1) must be applicable to public and private centres.”. 15

Insertion of section 20A in Act 52 of 2000

28. The Adult Basic Education and Training Act is amended by the insertion after section 20 of the following section:

“Prohibition of corporal punishment and initiation practices

- 20A.** (1) A person may not administer corporal punishment to a learner at any adult basic education and training centre. 20
 (2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which may be imposed for assault.
 (3) The Minister may by notice in the *Government Gazette*, after consultation with the Council of Education Ministers, determine— 25
 (a) safety measures at adult basic education and training centres; and
 (b) prohibition measures against initiation practices at adult basic education and training centres.”.

Substitution of section 32 of Act 52 of 2000

29. Section 32 of the Adult Basic Education and Training Act is amended by the substitution for section 32 of the following section: 30

“Quality assurance and promotion in adult basic education and training

- 32.** Quality assurance and promotion in adult basic education and training must be conducted as contemplated in the **[South African Certification Council Act, 1986 (Act No. 85 of 1986)] General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001).**” 35

Substitution of section 41 of Act 52 of 2000

30. Section 41 of the Adult Basic Education and Training Act is amended by the substitution for section 41 of the following section: 40

“Regulations

- 41.** The Minister or the Member of the Executive Council, as the case may be, may make regulations consistent with this Act on **[any]**— 45
 (a) any matter which the Minister and the Member of the Executive Council are empowered or required to prescribe by regulation in terms of this Act; **[and]**

- (b) any matter in respect of which regulations are necessary or expedient in order to achieve the purpose of this Act[.];
- (c) safety measures at public and private centres;
- (d) a national curriculum applicable to public and private centres;
- (e) a national process for the assessment of learner achievement for public and private centres;
- (f) a national process for the assessment, monitoring and evaluation for quality education in public and private centres;
- (g) initiation practices at public and private centres; or
- (h) norms and minimum standards for funding.”.

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Amendment of section 5 of Act 58 of 2001

31. Section 5 of the General and Further Education and Training Quality Assurance Act, 2001, is amended by the substitution for subsection (1) of the following subsection:

“(1) The Council must be regarded as having been accredited by the South African Qualifications Authority in terms of section **[5(1)(b)(i)] 5(1)(a)(ii)(bb)** of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), as the body responsible for **[establishing education and training standards or qualifications for]** quality assurance in respect of general and further education and training at education institutions contemplated in section 2.”.

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Short title and commencement

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- 32.** (1) This Act is called the Education Laws Amendment Act, 2002.
(2) Sections 1 and 8 come into operation on 1 January 2004.

EXPLANATORY MEMORANDUM ON THE OBJECTS OF THE EDUCATION LAWS AMENDMENT BILL, 2002

1. PURPOSE OF BILL

1.1 The main purpose of the Bill is to amend the following Acts:

- The South African Schools Act, 1996 (Act No. 84 of 1996);
- The Employment of Educators Act, 1998 (Act No. 76 of 1998);
- The Further Education and Training Act, 1998 (Act No. 98 of 1998);
- The Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000);
- The General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001).

1.2 These Acts are amended so as to make the necessary technical adjustments and to incorporate matters which are necessary for the proper implementation of the Acts.

2. RATIONALE BEHIND AMENDMENTS

2.1 *South African Schools Act, 1996*

Lowering of admission age by six months

Section 5(4) of the Act is amended for the sake of clarity and certainty regarding the admission age to Grade R and Grade 1 at public schools and not at schools as contemplated in the current Act. The definition of the term "school" refers to both public and independent schools. However, the heading of section 5 is "Admission to Public Schools". Hence, the use of the term "schools" in section 5(4) is in conflict with the heading. Furthermore, the amendment, unlike the current Act, stipulates the admission age. The minimum age of admission is lowered by six months. However, this does not imply that the compulsory school-going age, in terms of section 3 of the Act, is affected by this adjustment. It remains the same, seven to fifteen years or after completing grade 9. During the first year of the implementation of the Act, two categories of children will be admitted to Grades R and 1, respectively, as follows:

- In Grade R, those who are five and turning six, and those who are four turning five by 30 June in the year of admission.
- In Grade 1, those who are six and turning seven, and those who are five turning six by 30 June in the year of admission.

Section 45A is inserted in the Act for similar reasons with regard to independent schools.

One national process for assessment of learner achievement

Section 6A is inserted in the Act pursuant to a Cabinet decision (20 June 2001) to the effect that there should be a national curriculum and assessment of learner achievement. This implies that there will be one common national process for the assessment of learner achievement in the Republic as opposed to various provincial processes for the assessment of learner achievement. For similar reasons, section 18A has been inserted in the Adult Basic Education and Training Act regarding private and public institutions.

Appointment of an intermediary in disciplinary hearings

Section 8 of the Act is amended to authorise the appointment of an intermediary in disciplinary hearings. An intermediary is a competent person who is appointed to assist a minor learner in giving evidence as a witness during a disciplinary hearing. This approach is designed to increase the rate of successful prosecutions in disciplinary hearings and it is in line with section 170A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977). Similarly, subitem (10A) is inserted into item 7 of Schedule 2 to the Employment of Educators Act.

Prohibition of initiation practices in schools

Section 10A is inserted in the Act pursuant to a recommendation by the Human Rights Commission to the effect that initiation practices at schools can only be abolished by means of regulations. This recommendation was based on extensive research conducted by the Commission on initiation practices at schools. In the research was found that such practices are rife at schools. Accordingly, section 10A is inserted to authorise the prohibition of such initiation practices at schools.

A code of conduct for members of school governing bodies

Section 18A is inserted in the Act so as to introduce a code of conduct for members of governing bodies. In the absence of such a code of conduct, it is difficult to deal with misconduct by members of the governing body of a school. A breach of the code of conduct by members of the governing body may result either in suspension or termination of membership of such a member by the Head of Department after a fair procedure has been followed.

Extended power to make regulations

Section 61 of the Act, section 47 of the Further Education and Training Act and section 41 of the Basic Education and Training Act are amended as a result of a Constitutional Court case, namely, *Minister of Education v Harris*, 2001 (11) BCLR 1157 (CC). In this case, the Court found that policy determined in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996), creates no obligations of law that bind provinces, or for that matter parents or independent schools. The effect of the judgment is that third parties may only be bound by legislation or subordinate legislation in the form of regulations in terms of an Act of Parliament. These amendments are made with the aim to incorporate in the aforesaid Acts provisions which authorise the making of such regulations.

2.2 Employment of Educators Act, 1998

Appointment of new recruits or applicants after one or more years' break in service without recommendation by governing bodies

Section 6A is inserted into the Act to enable a provincial department to appoint new recruits or applicants after one or more years' break in service without the recommendation of a governing body. The reason for this is that the province will be in a better position to distribute these educators, especially to schools which are in rural areas. These schools find it difficult to recruit educators since most educators prefer to teach in urban areas or, as a last resort, in areas which are adjacent to urban areas. This process will ensure a fair distribution of well-qualified educators. It will also assist in the placement, in suitable employment, of students who have been awarded bursaries or loans to study by either the employer or the State.

Performance standards to evaluate educators

Item 2(2) of Schedule 1 to the Act is amended to enable the Minister to prescribe performance standards by regulation because no collective agreement in this regard is foreseeable for the immediate future. The reason for this is that negotiations on these standards have been suspended due to the dispute between the South African Democratic Teachers Union (SADTU) and the employer regarding the implementation of the whole school evaluation policy.

Transcript of electronic recordings

Item 7 of Schedule 2 to the Act is amended to cover expenses of providing an educator with a transcript of electronic recordings in cases of disciplinary hearings. Educators who demand such transcripts will have to foot the bill for such transcripts. This is in accordance with section 22 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

2.3 Further Education and Training Act, 1998, and Adult Basic Education and Training Act, 2000

Technical adjustments

Section 1 of the Further Education and Training Act is amended so as to define certain concepts for interpretation purposes.

Prohibition of corporal punishment

Section 16A is inserted in the Act to ban corporal punishment in any further education and training institutions and to make it a criminal offence to administer corporal punishment to a student. Similarly, section 20A is inserted in the Adult Basic Education and Training Act to prohibit corporal punishment in any adult basic education and training centre.

Section 23 of the Further Education and Training Act is amended so as to designate the Director-General as the registrar of FET institutions and to vest the Minister with the power to designate any employee of the Department to assist the registrar.

Textual corrections

Sections 24, 26, 28, 31, 32, 33 and 35 of the Act are amended so as to effect textual corrections. The term “provisional” is substituted for the term “conditional” so as to ensure clarity and certainty. The term “provisional” is the most appropriate term under the circumstances because it means that a private FET institution is registered temporarily for a certain period. This is aimed at allowing the institution to comply with conditions which may be laid down by the registrar.

One of the conventions in drafting legislation is that the language used in one Act should fit with the language used in other Acts dealing with the same matter. Hence, section 27 of the Act is amended so as to ensure that the language used in this section fits with language used in the Higher Education Act.

2.4 General and Further Education and Training Quality Assurance Act, 2001

Textual corrections

Section 5 of the Act is amended to effect textual corrections. The citation of section 5(1)(b)(i) was inadvertently included in the provision. The correct citation is section 5(1)(a)(ii)(bb).

3. OTHER DEPARTMENTS/BODIES CONSULTED

This Bill was referred to the National Treasury and the Department of Labour for comment. It was also published to obtain comments from other role-players. Comments on the Bill have been made by 98 role-players.

4. FINANCIAL IMPLICATIONS FOR STATE

It is foreseen that the admittance of the categories of learners contemplated in item 2.1 of this memorandum during the first year of implementation will result in the employment of more educators, the erection of more classrooms and the supply of more learning materials.

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Education are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within a functional area listed in Schedule 4 of the Constitution, namely “Education at all levels, excluding tertiary education”.