

REPUBLIC OF SOUTH AFRICA

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# HIGHER EDUCATION AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
Bill published in Government Gazette No. 31039 of 9 May 2008)  
(The English text is the official text of the Bill)*

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(MINISTER OF EDUCATION)

**[B 34—2008]**

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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.

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## **BILL**

**To amend the Higher Education Act, 1997, so as to make it consistent with the National Qualifications Framework Act, 2008; and to provide for matters connected therewith.**

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

**Amendment of section 1 of Act 101 of 1997, as amended by section 1 of Act 55 of 1999, section 1 of Act 54 of 2000 and section 1 of Act 63 of 2002**

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

(a) by the insertion after the definition of “grade 12” of the following definition: “**‘HEQF’** means the Higher Education Qualifications Framework;”;

(b) by the substitution for the definition of “higher education” of the following definition:

“**‘higher education’** means all learning programmes leading to **[qualifications higher than grade 12 or its equivalent in terms of the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), and includes tertiary education as contemplated in Schedule 4 of the Constitution]** a qualification that meets the requirements of the HEQF;”;

(c) by the insertion after the definition of “higher education institution” of the following definition:

“**‘Higher Education Qualifications Framework’** means the policy on higher education—  
(a) determined and published by the Minister in terms of section 3; and  
(b) referred to in section 7(b) of the National Qualifications Framework Act as the sub-framework for higher education;”;

(d) by the insertion after the definition of “Minister” of the following definitions:

“**‘National Qualifications Framework’** means the National Qualifications Framework contemplated in the National Qualifications Framework Act;  
**‘National Qualifications Framework Act’** means the National Qualifications Framework Act, 2008;”;

- (e) by the insertion after the definition of “public higher education institution” of the following definition:  
     “**‘quality council’** has the meaning assigned to it in section 1 of the National Qualifications Framework Act, 2008;” and
- (f) by the substitution for paragraph (a) of the definition of “to provide higher education” of the following paragraph: 5  
     “(a) the registering of students for[—  
         (i) **complete qualifications at or above level 5 of the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); or** 10  
         (ii) **such part of a qualification which meets the requirements of a unit standard as recognised by the South African Qualifications Authority at or above the level referred to in sub-paragraph (i)] higher education;” 15**

**Amendment of section 5 of Act 101 of 1997, as amended by section 1 of Act 38 of 2003**

2. Section 5 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1)(f) for subparagraph (i) of the following subparagraph: 20  
     “(i) conferred on or assigned to it in terms of this Act or the National Qualifications Framework Act;” and
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:  
     “(a) qualifications, quality promotion and quality assurance;” 25

**Substitution of section 7 of Act 101 of 1997, as amended by section 1 of Act 23 of 2001**

3. (1) The following section is hereby substituted for section 7 of the principal Act:

**“Qualifications, quality promotion and quality assurance**

- 7. (1) The CHE performs its functions in relation to qualifications, quality assurance and quality promotion—** 30  
     (a) in terms of this Act; and  
     (b) in its capacity as the quality council for higher education, in terms of the National Qualifications Framework Act.
- (2) The CHE is responsible for the implementation of the HEQF. 35  
     (3) The CHE must establish the Higher Education Quality Committee as a permanent committee to perform the quality assurance and quality promotion functions of the CHE in terms of this Act and the National Qualifications Framework Act.
- (4) The Higher Education Quality Committee may, with the concurrence of the CHE, establish committees to assist it in the performance of its functions. 40  
     (5) The CHE may charge fees for any service rendered by the Higher Education Quality Committee to any person, institution or organ of state.” 45
- (2) Despite the substitution of section 7 of the principal Act by subsection (1), the Higher Education Quality Committee that existed immediately prior to the commencement of this section continues to exist—  
     (a) as if it were established in terms of section 7(3) of the principal Act; and  
     (b) until a Higher Education Quality Committee is established in terms of section 7(3) of the principal Act. 50

**Amendment of section 8 of Act 101 of 1997, as amended by section 2 of Act 23 of 2001 and section 2 of Act 63 of 2002**

4. Section 8 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) The Minister must appoint [**six**] eight non-voting members of the CHE nominated [**respectively**] by the Director-General, the Provincial Heads of Education, the Director-General of the Department of [**Arts, Culture,**] Science and Technology, the Director-General of the Department of Labour, the National Research Foundation established in terms of the National Research Foundation Act, 1998 (Act No. 23 of 1998), and the chief executive officers of SAQA and the other quality councils, in their official capacities.”. 5

**Amendment of section 53 of Act 101 of 1997, as amended by section 8 of Act 55 of 1999, section 7 of Act 54 of 2000 and section 16 of Act 23 of 2001**

5. Section 53 of the principal Act is hereby amended by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagraph: 10

“(ii) will comply with the requirements of the [**appropriate quality assurance body accredited by SAQA in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995)**] Higher Education Quality Committee; and”. 15

**Amendment of section 69 of Act 101 of 1997**

6. Section 69 of the principal Act is hereby amended by the deletion at the end of paragraph (d) of the word “and” and by the insertion of the following paragraphs:

“(dA) the composition, procedures and duration of any committee of the CHE;  
 (dB) the circumstances and manner in which fees for services contemplated in section 7 must be paid; and”. 20

**Short title**

7. This Act is called the Higher Education Amendment Act, 2008.

## **MEMORANDUM ON THE OBJECTS OF THE HIGHER EDUCATION AMENDMENT BILL, 2008**

### **1. OBJECTS**

This Bill seeks to effect amendments to the Higher Education Act, 1997 (Act No. 101 of 1997). These amendments are consequential to the provisions of the envisaged National Qualifications Framework Act. The National Qualifications Framework Bill, this Bill and the General and Further Education and Training Quality Assurance Amendment Bill are tabled simultaneously and must be read in conjunction with one another. The reasons and objects of these Bills are dealt with in the Memorandum on the Objects of the National Qualifications Framework Bill.

### **2. OTHER DEPARTMENTS OR BODIES CONSULTED**

The National Qualifications Framework Bill, this Bill and the General and Further Education and Training Quality Assurance Amendment Bill were published for comments in the *Gazette*. The Bills were also referred to the Departments of Labour, Agriculture, Water Affairs and Forestry, the National Treasury and the South African Police Service.

Approximately 30 comments were received from various stakeholders and members of the public. All comments were evaluated by a committee, which included a deputy director-general, chief directors and directors. Those comments were presented to the Minister with a recommendation, before the Bill was finalised and submitted to Cabinet for approval.

### **3. FINANCIAL IMPLICATIONS FOR STATE**

The Bill merely provides for amendments to existing legislation, and therefore no additional costs are foreseen.

### **4. PARLIAMENTARY PROCEDURE**

4.1 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 established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

4.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.