

**SECTION 4:
FURTHER EDUCATION AND TRAINING ACT
98 OF 1998**

Contents

	<i>Page</i>
Further Education and Training Act 98 of 1998.....	D – 2

FURTHER EDUCATION AND TRAINING ACT 98 of 1998

[ASSENTED TO 20 OCTOBER, 1998]

[ENGLISH TEXT SIGNED BY THE PRESIDENT]]

[DATE OF COMMENCEMENT: 2 NOVEMBER, 1998]

as amended by

Education Laws Amendment Act, No. 53 of 2000

Education Laws Amendment Act, No. 57 of 2001

Education Laws Amendment Act, No. 50 of 2002

ACT

To regulate further education and training; to provide for the establishment, governance and funding of public further education and training institutions; to provide for the registration of private further education and training institutions; to provide for quality assurance and quality promotion in further education and training; to provide for transitional arrangements and the repeal of laws; and to provide for matters connected therewith.

Preamble

WHEREAS it is desirable to –

ESTABLISH a national co-ordinated further education and training system which promotes co-operative governance and provides for programme-based further education and training;

RESTRUCTURE AND TRANSFORM programmes and institutions to respond better to the human resources, economic and development needs of the Republic;

REDRESS past discrimination and ensure representivity and equal access;

ENSURE access to further education and training in the work-place by persons who have been marginalised in the past, such as women, the disabled and the disadvantaged;

PROVIDE optimal opportunities for learning, the creation of knowledge and the development of intermediate to high level skills in keeping with international standards of academic and technical quality;

PROMOTE the values which underline an open and democratic society based on human dignity, equality and freedom;

ADVANCE strategic priorities determined by national policy objectives at all levels of governance and management within the further education and training sector;

RESPECT and encourage democracy and foster an institutional culture which promotes fundamental human rights and creates an appropriate environment for teaching and learning;

PURSUE excellence, promote the full realisation of the potential of every student and member of staff, tolerance of ideas and appreciation of diversity;

RESPOND to the needs of the Republic, the labour market and of the communities served by the institutions;

COMPLEMENT the Skills Development Strategy in co-operation with the Department of Labour;

AND WHEREAS IT IS DESIRABLE for further education and training institutions to perform specific functions within the context of public accountability and the national need for intermediate to high level skills and knowledge and to provide access to work and higher education;

ARRANGEMENT OF SECTIONS

Chapter 1
DEFINITIONS AND PURPOSE OF ACT

1. Definitions
2. Purpose of Act

Chapter 2
PUBLIC FURTHER EDUCATION AND TRAINING INSTITUTIONS

3. Establishment of public further education and training institutions
4. Declaration of institution as public further education and training institution
5. Consequences of declaration as public further education and training institution
6. Merger of public further education and training institutions
7. Closure of public further education and training institution

Chapter 3
GOVERNANCE OF PUBLIC FURTHER EDUCATION AND TRAINING INSTITUTIONS

8. Institutional governance structures
9. Council of public further education and training institution
10. Single council for two or more public further education and training institutions
11. Academic board of public further education and training institution
12. Committees of council and academic board
13. Principal of public further education and training institution
14. Staff at public further education and training institutions
15. Student representative council
16. Disciplinary measures
- 16A. Prohibition of corporal punishment and initiation practices
17. Admission to public further education and training institutions

Chapter 4
FUNDING OF PUBLIC FURTHER EDUCATION AND TRAINING

18. Responsibility of State
19. Norms and standards for funding of public further education and training
20. Funds of public further education and training institutions
21. Financial records and statements of public further education and training institutions
22. Action on failure of council to comply with Act or certain conditions

Chapter 5
PRIVATE FURTHER EDUCATION AND TRAINING INSTITUTIONS

23. Designation of registrar
24. Registration of private further education and training institution
25. Application for registration
26. Requirements for registration
27. Determination of application for registration
28. Certificate of registration
29. Access to information
30. Records and audits
31. Amendment of registration
32. Requirements for amendment of registration and determination of application
33. Conditions for registration
34. Amendment or cancellation of conditions
35. Cancellation of registration
36. Steps before amendment or cancellation
37. Appeal to Minister

Chapter 6
QUALITY ASSURANCE AND PROMOTION

38. Quality assurance and promotion in further education and training
39. Advice by NBFET
40. Report on quality assurance

**Chapter 7
GENERAL**

- 41. Duty of institutions to provide information
- 42. Investigation at public further education and training institution
- 43. Name change of public further education and training institution
- 44. Offences
- 45. Limitation of liability
- 46. Delegation of powers
- 47. Regulations
- 48. Conflict with other laws

**Chapter 8
TRANSITIONAL AND OTHER ARRANGEMENTS**

- 49. Existing institutions, structures and bodies
- 50. Abolition of Correspondence College Council Fidelity Guarantee Fund and Committee of Technical College Principals
- 51. Exemption of existing private institutions
- 52. Repeal of laws
- 53. Short title

**Chapter 1
DEFINITIONS AND APPLICATION**

Definitions

1. In this Act, unless the context shows that another meaning is intended –

“**academic board**” means the body contemplated in section 11;

“**applicant**” means any person who makes an application contemplated in section 25;

“**auditor**” means any person registered in terms of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991);

“**council**” means the governing body of a public further education and training institution;

“**Department**” means the Government department responsible for education at national level;

“**Director-General**” means the Director-General of the Department;

“**educator**” means an educator as defined in the Employment of Educators Act, 1998, and for purposes of sections 9 and 11, includes an educator employed in terms of section 14(2);

“**financial year**” in respect of a public further education and training institution means a year commencing on the first day of January and ending on the 31st day of December of the same year;

“**foreign juristic person**” means a person –

- (i) registered or established as a juristic person in terms of a law of a foreign country; and
- (ii) recognised or registered as an external company in terms of the Companies Act, 1973 (Act No. 61 of 1973);

[Definition “foreign juristic person” inserted by s. 14(a) of Act No. 50 of 2002.]

“**further education and training**” means all learning and training programmes leading to qualifications from levels 2 to 4 of the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), which levels are above general education but below higher education;

“**further education and training institution**” means any institution that provides further education and training on a full-time, part-time or distance basis and which is –

- (a) established or regarded as having been established as a public further education and training institution under this Act;
- (b) declared as a public further education and training institution under this Act; or
- (c) registered or provisionally registered as a private further education and training institution under this Act;

[Para. (c) substituted by s. 14(b) of Act No. 50 of 2002.]

“**general education**” means the compulsory school attendance phase as referred to in section 3 of the South African Schools Act;

“**grade**” means a grade as defined in section 1 of the South African Schools Act;

“grade 10” means one grade higher than the highest grade in general education;

“grade 12” means the highest grade in which education is provided by a school;

“Head of Department” means the head of a provincial department of education;

“higher education” means higher education as defined in the Higher Education Act, 1997 (Act No. 101 of 1997);

“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);

[Definition “local juristic person” inserted by s. 14(c) of Act No. 50 of 2002.]

“Member of the Executive Council” means the Member of the Executive Council of a province who is responsible for education in that province;

“Minister” means the Minister of Education;

“NBFET” means the National Board for Further Education and Training, established by regulations in terms of section 11 of the National Education Policy Act, 1996 (Act No. 27 of 1996);

“organ of State” means an organ of State as defined in section 239 of the Constitution;

“policy” means –

(a) policy determined by the Minister in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996); or

(b) policy determined by the Member of the Executive Council in terms of a provincial law;

“prescribed” means prescribed by regulation;

“principal” means the chief executive and accounting officer of a public further education and training institution and includes a rector;

“private further education and training institution” means any institution registered or conditionally registered as a private further education and training institution in terms of Chapter 5;

“public further education and training institution” means any further education and training institution that is established, deemed to be established or declared as a public further education and training institution under this Act;

“registrar” means the registrar referred to in section 23(1);

[Definition “registrar” substituted by s. 14(d) of Act No. 50 of 2002.]

“SAQA” means the South African Qualifications Authority, established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

“school” means a school as defined in the South African Schools Act;

“South African Schools Act” means the South African Schools Act, 1996 (Act No. 84 of 1996);

“staff” means persons employed at a public further education and training institution;

“student” means any person registered as a student at a further education and training institution;

“this Act” includes the regulations made under this Act;

“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.

[Definition “to provide further education and training” inserted by s. 14(e) of Act No. 50 of 2002.]

“vice-principal” includes a vice-rector.

Purpose of Act

2. The purpose of this Act is to establish a national co-ordinated further education and training system which promotes co-operative governance and provides for programme-based further education and training.

Chapter 2
PUBLIC FURTHER EDUCATION AND TRAINING INSTITUTIONS

Establishment of public further education and training institutions

3. (1) The Member of the Executive Council may, by notice in the *Provincial Gazette* and from money appropriated for this purpose by the provincial legislature, establish a public further education and training institution.
- (2) Every public further education and training institution is a juristic person.
- (3) Notwithstanding subsection (2), a public further education and training institution may not, without the concurrence of the Member of the Executive Council, dispose of or alienate in any manner, any immovable property acquired with the financial assistance of the State or grant to any person any real right therein or servitude thereon.

Declaration of institution as public further education and training institution

4. (1) The Member of the Executive Council may, subject to national policy by notice in the *Provincial Gazette*, declare any institution providing further education and training as a public further education and training institution.
- (2) The notice contemplated in subsection (1) must determine –
- (a) the date on which the institution becomes a public further education and training institution;
- (b) the name of the public further education and training institution; and
- (c) the physical location and the official address of the public further education and training institution.
- (3) The Member of the Executive Council may act under subsection (1) only –
- (a) after consulting the governing body of the institution, if it is a public institution; or
- (b) with the concurrence of the responsible Minister, Member of the Executive Council or authority of the institution, if the institution is administered, controlled or funded by an organ of State other than the provincial department of education;
- (c) after having –
- (i) published a notice in one or more newspapers circulating in the area in which the institution provides further education and training, containing the reasons for the declaration referred to in subsection (1), in all the official languages determined in terms of section 9(2)(b);
- (ii) given any interested person an opportunity to make representations; and
- (iii) considered such representations; and
- (d) if it is a private institution, with the concurrence of the owner of the institution and the Member of the Executive Council responsible for finance.
- (4) No public school which offers further education and training programmes may be declared a further education and training institution in terms of subsection (1) until after a date determined by the Minister by notice in the *Gazette*, after consultation with the Council of Education Ministers and the NBFET.

Consequences of declaration as public further education and training institution

5. (1) From the date determined in terms of section 4(2)(a) –
- (a) the institution is regarded as being a public further education and training institution established under this Act;
- (b) the assets, liabilities, rights and obligations of the institution vest in the public further education and training institution; and
- (c) any agreement lawfully entered into by or on behalf of the institution is regarded as having been concluded by the public further education and training institution.
- (2) Immovable property vesting in the public further education and training institution in terms of subsection (1)(b) must, subject to the concurrence of the Minister of Finance, be transferred into its name without payment by it of transfer duty, stamp duty or any other duty or costs due to the State, but subject to any existing right, encumbrance or trust on or over that property.
- (3) The officer in charge of a deeds office or other office where the immovable property contemplated in subsection (2) is registered must, on submission of the title deed and on application by the public further education and training institution, make such endorsements on that title deed and such entries in the registers as may be required to register the transfer in question.
- (4) The declaration of an institution as a public further education and training institution under section 4(1) does not affect anything lawfully done by the institution prior to the declaration.
- (5) All funds which, immediately prior to the date determined in terms of section 4(2)(a), were vested in the institution by virtue of a trust, donation or bequest must be applied by the public further education and training institution in accordance with the trust, donation or bequest, as the case may be.

- (6) Notwithstanding subsection (2), any fees charged by the Registrar of Deeds resulting from such transfer must be paid in full or in part from funds appropriated by the provincial legislature for that purpose.

Merger of public further education and training institutions

6. (1) Subject to subsection (2), the Member of the Executive Council may, by notice in the *Provincial Gazette*, merge two or more public further education and training institutions into a single institution.
- (2) Before merging two or more public further education and training institutions the Member of the Executive Council must –
- (a) give written notice to the institutions in question of the intention to merge them;
 - (b) publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area in which the institutions in question are situated;
 - (c) give the councils of the institutions in question and any other interested persons an opportunity to make representations within at least 90 days from the date of the notice referred to in paragraph (b);
 - (d) consider such representations; and
 - (e) be satisfied that the employers of staff at the public further education and training institutions in question have complied with their obligations in terms of the applicable labour law.
- (3) The single institution contemplated in subsection (1) is regarded as a public further education and training institution established under this Act.
- (4) Paragraph (b) of section 5(1) and subsections (2) to (6) of section 5 apply with the necessary changes required by the context, to a merger referred to in subsection (1).

Closure of public further education and training institution

7. (1) The Member of the Executive Council may, by notice in the *Provincial Gazette*, close a public further education and training institution.
- (2) If a public further education and training institution is closed under subsection (1), all assets and liabilities of such institution must, after such closure, be dealt with according to law by the Member of the Executive Council and any assets remaining after payment of all liabilities vest in the Member of Executive Council.
- (3) Subsections (2) to (6) of section 5 and section 6(2) apply with the necessary changes required by the context, to a closure referred to in subsection (1).

Chapter 3 GOVERNANCE OF PUBLIC FURTHER EDUCATION AND TRAINING INSTITUTIONS

Institutional governance structures

8. (1) Every public further education and training institution must establish a council, an academic board, a student representative council and such other structures as may be determined by the council subject to the approval of the Member of the Executive Council.
- (2) A structure referred to in subsection (1) must elect a chairperson, vice-chairperson and other office bearers from among its members in the manner determined by the Member of the Executive Council by notice in the *Provincial Gazette* or in terms of a provincial law.
- (3) The chairperson, vice-chairperson or other office bearers of the council may not be students or members of the staff of the institution, but the secretary may be a member of staff.
- (4) The Member of the Executive Council must, by notice in the *Provincial Gazette* or in terms of a provincial law, determine in respect of members in any of the structures referred to in subsection (1) –
- (a) the terms of office;
 - (b) procedures for the disqualification or removal;
 - (c) procedures for the filling of vacancies; and
 - (d) any other matter necessary for the election, appointment or assumption of office.
- (5)

[Sub-s. (5) deleted by s. 12 of Act No. 57 of 2001.]

Council of public further education and training institution

9. (1) The council of a public further education and training institution must perform all the functions, including the provision of public adult learning centres, which are necessary to govern the public further education and training institution, subject to this Act and any applicable national or provincial law.

[Sub-s. (1) substituted by s. 18 of Act No. 53 of 2000.]

- (2) Subject to policy, the council must, with the concurrence of the academic board –
 - (a) develop a strategic plan for the institution which must –
 - (i) incorporate the mission, vision, goals and planning for funding of the institution;
 - (ii) address past imbalances and gender and disability matters; and
 - (iii) be approved by the Member of the Executive Council;
 - (b) determine the language policy of a public further education and training institution and must publish it and make it available on request; and
 - (c) ensure that the further education and training institution is accredited to provide learning against standards and qualifications as registered on the National Qualifications Framework.
- (3) The council, after consultation with the student representative council, must provide for a suitable structure to advise on the policy for student support services within the public further education and training institution.
- (4) The council of a public further education and training institution must consist of –
 - (a) the principal;
 - (b) the vice-principal or vice-principals;
 - (c) not more than five persons appointed by the Member of the Executive Council;
 - (d) members of the academic board elected by the academic board;
 - (e) members of the educator staff of the public further education and training institution, elected by such staff;
 - (f) students of the public further education and training institution, elected by its student representative council;
 - (g) staff other than educator staff, elected by such staff of the public further education and training institution; and
 - (h) such additional persons as may be determined by the council in consultation with the Member of the Executive Council.
- (5) The number of persons contemplated in subsection (4)(b) and (d) to (h) and the manner in which they are elected, where applicable, must be determined by the Member of the Executive Council by notice in the *Provincial Gazette* or in terms of a provincial law.
- (6) At least 60 per cent of the members of a council must be persons who are not employed by or who are not students of the public further education and training institution in question.
- (7) The members of a council –
 - (a) must be persons with knowledge and experience relevant to the objects and governance of the public further education and training institution in question; and
 - (b) must participate in the deliberations of the council in the best interest of the public further education and training institution in question.
- (8) The selection of the members contemplated in subsection (4)(c) and (h) must be undertaken in such a manner as to ensure, in so far as it is practically possible, that –
 - (a) the functions of the council are performed according to the highest professional standards;
 - (b) the council is broadly representative of the further education and training system and related interests;
 - (c) the members have a thorough knowledge and understanding of the further education and training sector;
 - (d) such members appreciate the role of further education and training in reconstruction and development; and
 - (e) the council is broadly representative of the community served by the institution in respect of race, gender and disability.
- (9) The Member of the Executive Council must, by notice in the *Provincial Gazette*, and by any other reasonably practicable means, invite nominations for the members contemplated in subsection (4)(c) and (h) from –
 - (a) the public;
 - (b) organised business; and
 - (c) organised labour.
- (10) The Member of the Executive Council must consider the nominations received and from the persons so nominated must appoint the number of members as determined in terms of subsection (5).

Single council for two or more public further education and training institutions

10. (1) The Member of the Executive Council may determine that the governance of two or more public further education and training institutions must vest in a single council if –

- (a) it is in the best interests of education and the institutions;
 - (b) it is in the public interest; or
 - (c) he or she was so requested by the councils of such institutions, if such councils exist.
- (2) The Member of the Executive Council may not act in terms of subsection (1) unless he or she has –
- (a) given notice in the *Provincial Gazette* of his or her intention so to act;
 - (b) given interested parties an opportunity to make written submissions within a period of not less than 30 days; and
 - (c) considered all such submissions.
- (3) The Member of the Executive Council must, by notice in the *Provincial Gazette*, determine the composition of the single council in a manner that ensures that –
- (a) each public further education and training institution is equitably represented; and
 - (b) it complies with section 9(5), (6) and (8).
- (4) Any council which is the subject of a notice in terms of subsection (2) continues to exist until the first meeting of the council constituted in terms of this section.

Academic board of public further education and training institution

11. (1) The academic board of a public further education and training institution is accountable to the council for –
- (a) the academic functions of the public further education and training institution and the promotion of the participation of women and the disabled in the learning programmes;
 - (b) establishing internal academic monitoring and quality assurance procedures;
 - (c) ensuring that the requirements of accreditation to provide learning against standards and qualifications registered on the National Qualifications Framework are met; and
 - (d) performing such other functions as may be delegated or assigned to it by the council.
- (2) Subject to the approval of the council and to policy, the academic board must determine the learning programmes provided by the public further education and training institution.
- (3) The academic board of a public further education and training institution must consist of –
- (a) the principal;
 - (b) the vice-principal or vice-principals;
 - (c) members of the educator staff of the institution;
 - (d) members of the council;
 - (e) members of the student representative council; and
 - (f) such additional persons as may be determined by the council.
- (4) The number of persons contemplated in subsection (3)(c), (d), (e) and (f) and the manner in which they are appointed or elected, as the case may be, must be determined by the council.
- (5) The majority of members of the academic board must be members of the educator staff of the public further education and training institution in question.

Committees of council and academic board

12. (1) The council and the academic board of a public further education and training institution may each establish committees to perform any of their functions and may appoint persons who are not members of the council or the academic board, as the case may be, as members of such committees.
- (2) The chairperson of a committee must be a member of the council or academic board, as the case may be.
- (3) The council and the academic board are not divested of responsibility for the performance of any function delegated or assigned to a committee.
- (4) The council and the academic board of a public further education and training institution may jointly establish committees to perform functions which are common to the council and the academic board.
- (5) The composition, functions, procedure at meetings and dissolution of a committee and a joint committee are determined by the council or the academic board, or both the council and the academic board, as the case may be.

Principal of public further education and training institution

13. The principal of a public further education and training institution is responsible for the management and administration of the institution.

Staff at public further education and training institutions

14. (1) (a) The educator establishment of a public further education and training institution is determined by the allocation of posts by the Head of Department from the provincial educator post establishment created

- by the Member of the Executive Council in terms of section 5 of the Employment of Educators Act, 1998 and educators appointed in such posts are employed in terms of that Act.
- (b) The non-educator establishment of a public further education and training institution is determined in terms of the Public Service Act, 1994 (Proclamation 103 of 1994).
- (2) Subject to this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a public further education and training institution may establish posts for educators and employ educators additional to the establishment referred to in subsection (1)(a).
- (3) Subject to this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a public further education and training institution may establish posts for non-educators and employ non-educator staff additional to the establishment referred to in subsection (1)(b).
- (4) (a) The Council must determine the functions, conditions of service and privileges of the staff contemplated in subsections (2) and (3), subject to the applicable labour law and paragraph (b).
- (b) The salary payable to an educator contemplated in subsection (2) shall not be less than the salary paid to an educator –
- (i) contemplated in subsection (1)(a); and
 - (ii) who performs the same or equivalent work as such educator,
- unless collectively agreed to in a bargaining council established in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995).
- (c) If a dispute arises about the salary of an educator as contemplated in paragraph (b) any party to the dispute may refer the dispute in writing to –
- (i) a bargaining council established in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), if the employer or employee parties to the dispute fall within the registered scope of a bargaining council; or
 - (ii) the Commission for Conciliation, Mediation and Arbitration as established by section 12 of the Labour Relations Act, 1995 (Act No. 66 of 1995), if no bargaining council has jurisdiction.
- (d) The party referring the dispute must satisfy the bargaining council or the Commission for Conciliation, Mediation and Arbitration that a copy of the referral has been served on the other party.
- (e) The bargaining council or the Commission for Conciliation, Mediation and Arbitration must attempt to resolve the dispute through conciliation.
- (f) If the bargaining council or the Commission for Conciliation, Mediation and Arbitration is satisfied that the dispute remains unresolved, a party may refer the dispute to the Labour Court as established in terms of section 151 of the Labour Relations Act, 1995 (Act No. 66 of 1995) for adjudication.
- (5) When presenting the annual budget contemplated in section 18(4) the Council must provide sufficient details of any posts envisaged in terms of subsections (2) and (3), including the estimated cost relating to the employment of staff in such posts and the manner in which it is proposed that such cost will be met.
- (6) The staff contemplated in subsections (2) and (3) must be employed in compliance with the basic values and principles referred to in section 195 of the Constitution, and factors to be taken into account when making appointments include but are not limited to –
- (a) the ability of the candidates;
 - (b) the principle of equity;
 - (c) the need to redress past injustices; and
 - (d) the need for representivity.

Student representative council

15. The establishment, composition, manner of election, term of office, functions and privileges of the student representative council of a public further education and training institution must be determined by the council after consultation with the students and educators of that institution, subject to provincial policy.

Disciplinary measures

16. (1) Every student at a public further education and training institution is subject to a code of conduct, disciplinary measures and procedures as may be determined by the council subject to provincial policy but the code of conduct, disciplinary measures and procedures may only be made after consultation with the academic board and the student representative council of the institution concerned.
- (2) The policy contemplated in subsection (1) must in particular deal with measures to curb racism, sexual violence and sexual harassment.

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.
- (6) 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 further education and training institution, a group, intramural or extramural activities, inter-institution sports teams, 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.
- (7) In considering whether the conduct or participation of a person in any initiation practices falls within the definition of subsection (6), the relevant disciplinary authority referred to in subsection (4) must take into account the right of the student not to be subjected to such practices.

[S. 16A inserted by s. 15 of Act No. 50 of 2002.]

Admission to public further education and training institutions

17. (1) Subject to policy the council of a public further education and training institution determines the admission policy of the institution after consulting the academic board of the institution.
- (2) The council must publish the admission policy and make it available on request.
- (3) The admission policy of a public further education and training institution may not unfairly discriminate in any way and must provide appropriate measures for the redress of past inequalities.
- (4) The council may, subject to provincial policy and after consultation with the academic board –
 - (a) determine admission requirements in respect of particular further education and training programmes;
 - (b) determine the number of students who may be admitted for a particular further education and training programme and the manner of their selection;
 - (c) determine the minimum requirements for re-admission to study at the public further education and training institution concerned; and
 - (d) refuse re-admission of a student who fails to satisfy such minimum requirements for re-admission.
- (5) The council of a public further education and training institution must ensure that the institution is accessible to disabled students where reasonably practicable.

Chapter 4 FUNDING OF PUBLIC FURTHER EDUCATION AND TRAINING

Responsibility of State

18. (1) The Member of the Executive Council must from money appropriated for this purpose by the provincial legislature fund public further education and training on a fair, equitable and transparent basis, apart from further education and training offered in a school which is governed and funded in terms of the South African Schools Act.
- (2) The Member of the Executive Council may, subject to the norms and standards determined in terms of section 19, impose –
 - (a) any reasonable condition in respect of an allocation of funding contemplated in subsection (1); and
 - (b) different conditions in respect of different public further education and training institutions, different further education and training programmes or different allocations, if there is a reasonable basis for such differentiation.
- (3) The Member of the Executive Council must, after consultation with the appropriate advisory body in a province, determine appropriate measures for the redress of past inequalities.

- (4) The Member of the Executive Council must, on an annual basis, provide sufficient information to public further education and training institutions regarding the funding referred to in subsection (1) to enable the institutions to prepare their budgets for the next financial year.

Norms and standards for funding of public further education and training

19. Subject to the Constitution and this Act, the Minister must, in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996), determine norms and standards for the funding of public further education and training, after consultation with the Council of Education Ministers, the Financial and Fiscal Commission, the Minister of Finance and the NBFET.

Funds of public further education and training institutions

20. (1) The funds of a public further education and training institution consist of –
- (a) funds allocated by the State;
 - (b) any donations or contributions received by the institution;
 - (c) money raised by the institution;
 - (d) money raised by means of loans subject to the approval of the Member of the Executive Council;
 - (e) income derived from investments;
 - (f) money received for services rendered to any other institution or person;
 - (g) money payable by students for further education and training programmes provided by the institution;
 - (h) money received from students or employees of the institution for accommodation or other services provided by the institution; and
 - (i) other funds from any other source.
- (2) If a person lends money or grants an overdraft to a public further education and training institution without the approval of the Member of the Executive Council, the State and the institution is not bound by the contract of lending money or an overdraft agreement.
- [S. 20 amended by s. 13 of Act No. 57 of 2001. Sub-s. (2) substituted by s. 13 of Act No. 57 of 2001.]

Financial records and statements of public further education and training institutions

21. (1) The council of a public further education and training institution must, in the manner determined by the Member of the Executive Council –
- (a) keep records of all its proceedings; and
 - (b) keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions of the public further education and training institution as a whole, of its substructures and of other bodies operating under its auspices.
- (2) The council of a public further education and training institution must appoint an auditor to audit the records and financial statements referred to in this section.
- (3) The council of a public further education and training institution must, in respect of the preceding financial year and by a date or dates and in the manner determined by the Member of the Executive Council provide the Member of the Executive Council with –
- (a) a report on the overall governance of the institution;
 - (b) a duly audited statement of income and expenditure; and
 - (c) a balance sheet and cash flow statement.
- (4) The council of a public further education and training institution must provide the Member of the Executive Council with such additional information as the Member of the Executive Council may reasonably require.

Action on failure of council to comply with Act or certain conditions

22. (1) If the council of a public further education and training institution fails to comply with any provision of this Act under which an allocation from money appropriated by the provincial legislature is paid to the institution, or with any condition subject to which any allocation is paid to the institution, the Member of the Executive Council may call upon the council to comply with the provision or condition within a specified period.
- (2) If the council thereafter fails to comply with the provision or condition timeously, the Member of the Executive Council may withhold payment of any portion of any allocation appropriated by the provincial legislature in respect of the public further education and training institution concerned.
- (3) Before taking action under subsection (2), the Member of the Executive Council must –
- (a) give notice to the council of the public further education and training institution concerned of the intention so to act;
 - (b) give such council a reasonable opportunity to make representations; and
 - (c) consider such representations.

- (4) If the Member of the Executive Council acts under subsection (2), a report regarding the action must be tabled in the provincial legislature by the Member of the Executive Council as soon as reasonably practical after the action.

Chapter 5 PRIVATE FURTHER EDUCATION AND TRAINING INSTITUTIONS

Designation of registrar

- 23.** (1) The Director-General is the registrar of private further education and training institutions.
[Sub-s. (1) substituted by s. 16 of Act No. 50 of 2002.]
- (2) The 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.
[Sub-s. (2) substituted by s. 16 of Act No. 50 of 2002.]
- (3) The registrar may delegate any of his or her functions in terms of this Act to any employee contemplated in subsection (2).

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.
- [S. 24 substituted by s. 17 of Act No. 50 of 2002.]

Application for registration

- 25.** An application for registration as a private further education and training institution must be made to the registrar in the manner determined by the registrar and must be accompanied by the prescribed fee.

Requirements for registration

- 26.** (1) The registrar must register an applicant as a private further education and training institution if the registrar has reason to believe that the applicant –
- (a) is financially capable of satisfying its obligations to prospective students;
- (b) with regard to all its further education and training programmes –
- (i) will maintain acceptable standards that are not inferior to standards at comparable public further education and training institutions;
- (ii) will comply with the requirements of the General and Further Education and Training Quality Assurance Council; and
[Sub-para. (ii) substituted by s. 18 of Act No. 50 of 2002.]
- (iii) complies with any other reasonable requirement prescribed by the Minister; and
[Sub-para. (iii) substituted by s. 18 of Act No. 50 of 2002.]
- (c) will not unfairly discriminate against any person on the grounds of race, gender or disability.
- (2) The registrar may require further information, particulars and documents in support of any application for registration.

Determination of application for registration

- 27.** (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;
- (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
- (c) may register the applicant as a private further education and training institution if the requirements for registration contemplated in section 26 are fulfilled.
[Sub-s. (1) substituted by s. 19(a) of Act No. 50 of 2002.]

- (2) (a) If the registrar decides to grant the application, the registrar must –
- (i) enter the applicant's name in the appropriate register of private further education and training institutions;
 - (ii) issue a certificate of registration, stating the terms of such registration;
 - (iii) furnish the certificate to the applicant; and
 - (iv) as soon as practicable after the decision, publish the certificate of registration in the *Gazette*.
- (b) The registrar must notify the relevant Head of Department of the registration of a private further education and training institution in that province.
- (c) If the registrar decides not to grant the application, the registrar must advise the applicant in writing of the decision and furnish the applicant with written reasons for the decision.
- (3) Notwithstanding subsection (1), the registrar may 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.

[Sub-s. (3) substituted by s. 19(b) of Act No. 50 of 2002.]

- (4) If the registrar provisionally registers an applicant under subsection (3), the registrar must –
- (a) determine the period within which the applicant must satisfy the requirements for registration;
 - (b) enter the applicant's name in the appropriate register of private further education and training institutions;
 - (c) issue a certificate of provisional registration, stating the terms and the duration of such registration;
 - (d) provide the certificate of provisional registration to the applicant; and
 - (e) as soon as practicable after the decision, publish the certificate of provisional registration in the *Gazette*.

[Sub-s. (4) substituted by s. 19(b) of Act No. 50 of 2002.]

- (5) The registrar may, on good cause shown, extend the period referred to in subsection (4)(a).
- (6) (a) If, on the expiry of the period referred to in subsection (4)(a) or any extension thereof, the applicant satisfies the requirements for registration specified by the registrar, the registrar must register the applicant in accordance with subsection (2)(a).
- (b) If, by the expiry of the period, the applicant fails to satisfy the requirements for registration specified by the registrar, the applicant's provisional registration lapses.

[Para. (b) substituted by s. 19(c) of Act No. 50 of 2002.]

Certificate of registration

28. (1) A private further education and training institution must conspicuously display –
- (a) its certificate of registration or provisional registration or a certified copy thereof on its premises; and
 - (b) its registration number and an indication that it is registered or provisionally registered on all its official documents.

[Sub-s. (1) substituted by s. 20 of Act No. 50 of 2002.]

- (2) If the registrar has cancelled the registration or 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 provisional registration to the registrar within 14 days of such cancellation.

[Sub-s. (2) substituted by s. 20 of Act No. 50 of 2002.]

Access to information

29. (1) Any person may inspect the register of private further education and training institutions and the auditor's report contemplated in section 30.
- (2) The registrar must furnish a certified copy of, or extract from, any of the documents referred to in subsection (1) to any person who has paid the prescribed fee.

Records and audits

30. (1) Every private further education and training institution must, in accordance with generally accepted accounting practice, principles and procedures –
- (a) keep books and records of income, expenditure, assets and liabilities; and
 - (b) prepare financial statements within three months after the end of its financial year including at least –
 - (i) a statement of income and expenditure for the previous year;
 - (ii) a balance sheet as at the end of the previous year; and
 - (iii) such other information as the registrar may reasonably require.

- (2) Every private further education and training institution must, within the period determined by the registrar –
 - (a) ensure that an annual audit of its books, records of account and financial statements is carried out by an auditor, who must conduct the audit in accordance with generally accepted auditing standards;
 - (b) furnish the registrar with a certified copy of the auditor's report in respect of the financial statements referred to in subsection (1); and
 - (c) furnish the registrar with any additional information, particulars or documents in the manner determined by the registrar.

Amendment of registration

31. A private further education and training institution may apply to the registrar to amend its registration or provisional registration –
 - (a) in the manner determined by the registrar; and
 - (b) by paying the prescribed fee.

[S. 31 amended by s. 21 of Act No. 50 of 2002.]

Requirements for amendment of registration and determination of application

32. (1) The registrar may not amend the registration of a private further education and training institution unless he or she is satisfied that such amendment is in the interests of further education and training and is compatible with the provisions of this Act.
- (2) The registrar may require further information, particulars or documents in support of any application for such amendment.
- (3) (a) If the registrar decides to grant the application, he or she must –
 - (i) amend the certificate of registration or provisional registration accordingly;
[Sub-para. (i) substituted by s. 22 of Act No. 50 of 2002.]
 - (ii) furnish a copy of the amended certificate to the applicant; and
 - (iii) as soon as reasonably practicable after the decision, publish the amended certificate in the *Gazette*.
- (b) If the registrar decides not to grant the application, he or she must advise the applicant in writing of the decision and furnish the applicant with written reasons for the decision.

Conditions for registration

33. (1) The registrar may impose any reasonable condition on a private further education and training institution in respect of –
 - (a) its registration;
 - (b) its provisional registration; or
[Para. (b) substituted by s. 23 of Act No. 50 of 2002.]
 - (c) any amendment of its registration or provisional registration.
[Para. (c) substituted by s. 23 of Act No. 50 of 2002.]
- (2) The registrar may impose different conditions under subsection (1) in respect of different institutions, if there is a reasonable basis for such differentiation.

Amendment or cancellation of conditions

34. Subject to section 36, the registrar may, on reasonable grounds, amend or cancel any condition imposed under section 33 or impose new conditions under that section.

Cancellation of registration

35. (1) Subject to section 36, the registrar may, on reasonable grounds, cancel any registration or provisional registration in terms of this Act.
[Sub-s. (1) substituted by s. 24 of Act No. 50 of 2002.]
- (2) If the accreditation of any further education and training programme offered by a private further education and training institution is withdrawn, the registrar must review such further education and training institution's registration.

Steps before amendment or cancellation

36. The registrar may not act under section 34 or 35 unless he or she –
 - (a) has informed the private further education and training institution of the intention so to act and the reasons therefor;

- (b) has granted the private further education and training institution and other interested persons an opportunity to make representations in relation to such action; and
- (c) has considered such representations.

Appeal to Minister

- 37.** (1) Any person having an interest may appeal to the Minister against any decision of the registrar in terms of this Chapter.
- (2) An appeal referred to in subsection (1) must be lodged with the Minister within 60 days of the date of the registrar's decision.
- (3) The Minister may, on good cause shown, extend the period within which an appeal may be noted against the decision of the registrar.
- (4)

[Sub-s. (4) deleted by s. 25 of Act No. 50 of 2002.]

Chapter 6 QUALITY ASSURANCE AND PROMOTION

Quality assurance and promotion in further education and training

- 38.** Subject to the norms and standards set by the Minister in terms of section 3 of the National Education Policy Act, 1996 (Act No. 27 of 1996), and by SAQA, the Director-General must –
- (a) promote quality assurance in further education and training; and
 - (b) assess and report on the quality of education and training provided at further education and training institutions.

Advice by NBFET

- 39.** (1) The NBFET must advise the Minister on quality promotion and assurance.
- (2) The Minister must –
- (a) consider any advice given by the NBFET; and
 - (b) provide reasons in writing to the NBFET if the Minister does not accept the advice.
- (3) The Minister may act without the advice of the NBFET if –
- (a) the matter is urgent; or
 - (b) the NBFET has failed to provide the advice within a reasonable time.
- (4) If the Minister acts as contemplated in subsection (3) the Minister must –
- (a) notify the NBFET of such action; and
 - (b) provide reasons in writing to the NBFET for such action.

Report on quality assurance

- 40.** An annual report on the quality of further education and training must be made within a reasonable time after the end of the academic year –
- (a) in respect of the country as a whole –
 - (i) by the Director-General; and
 - (ii) by NBFET; and
 - (b) in respect of a province, by the Head of Department.

Chapter 7 GENERAL

Duty of institutions to provide information

- 41.** (1) A further education and training institution must make information available for inspection by any person, in so far as such information is required for the exercise and protection of such person's rights.
- (2) Every further education and training institution must provide such information about the institution as is reasonably required by the Head of Department or the Director-General in consultation with the Head of Department.
- (3) The Head of Department, Director-General, any further education and training institution and any education institution which offers further education and training programmes must provide such information about the institution or quality of further education and training as is reasonably required by the NBFET.

Investigation at public further education and training institution

42. (1) The Member of the Executive Council may appoint a person to conduct an investigation at a public further education and training institution if –
- (a) the council of the institution requests the appointment of such a person; or
 - (b) circumstances arise at the institution that –
 - (i) involve financial or other maladministration of a serious nature; or
 - (ii) seriously undermine the effective functioning of the institution; and
 - (c) the council of the institution has failed to resolve such circumstances; and
 - (d) the appointment is in the interest of further education and training in an open and democratic society.
- (2) The person appointed in terms of subsection (1) must, within 30 days after appointment and on the terms of reference specified by the Member of the Executive Council –
- (a) conduct an investigation at the public further education and training institution concerned;
 - (b) report in writing to the Member of the Executive Council on the findings of his or her investigation; and
 - (c) suggest appropriate measures to resolve the matter.
- (3) The Member of the Executive Council must as soon as practicable furnish a copy of the report referred to in subsection (2) to the council concerned.

Name change of public further education and training institution

43. The council of a public further education and training institution may, with the approval of the Member of the Executive Council and by notice in the *Provincial Gazette*, change the name of such public further education and training institution.

Offences

44. (1) Any person other than a further education and training institution, organ of state or a school, who, without the authority of a further education and training institution –
- (a) offers or pretends to offer any further education and training programme or part thereof;
 - (b) confers a qualification which purports to have been granted by a further education and training institution, or in collaboration with a further education and training institution; or
 - (c) purports to perform an act on behalf of a further education and training institution,
- is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.
- (2) Any person who pretends that a qualification has been awarded to him or her by a further education and training institution, whereas in fact no such qualification has been so awarded, is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.
- (3) Any person who contravenes section 24 or 28(2), is guilty of an offence and is liable on conviction to a fine or imprisonment not exceeding five years or to both such fine and imprisonment.
- (4) Any private further education and training institution which does not comply with section 28(1) is guilty of an offence and is liable on conviction to a fine not exceeding R20 000.

Limitation of liability

45. Neither the State, the NBFET nor any person appointed in terms of this Act is liable for any loss or damage suffered by any person as a result of any act performed or omitted in good faith in the course of performing any function for which that person was appointed in terms of this Act.

Delegation of powers

46. (1) The Minister may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under this Act, except the power to make regulations, and the performance of any of his or her duties in terms of this Act to –
- (a) the NBFET;
 - (b) any employee of the Department; or
 - (c) any organ of State.
- (2) The Member of the Executive Council may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under this Act and the performance of any of his or her duties in terms of this Act, to –
- (a) any employee in a provincial department responsible for education and training; or
 - (b) any organ of State.
- (3) The Director-General may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under this Act and the performance of any of his or her duties in terms of this Act to any employee in the Department.

- (4) The council of a further public education and training institution may, on such conditions as it may determine, delegate the exercise of any of its powers under this Act and the performance of any of its duties in terms of this Act, to other internal structures, or members of staff of such institution.

Regulations

47. 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 process and procedures for the assessment of student achievement for public and private further education and training institutions;
 - (c) a national process for the assessment, monitoring and evaluation of education in public and private further education and training institutions;
 - (d) initiation practices at public and private further education and training institutions;
 - (e) any matter which the Minister is empowered or required to prescribe by regulation in terms of this Act; or
 - (f) any other matter in respect of which regulations are necessary or expedient in order to achieve the purpose of this Act.

[S. 47 substituted by s. 26 of Act No. 50 of 2002.]

Conflict with other laws

48. This Act prevails over the South African Certification Council Act, 1986 (Act No. 85 of 1986), if there is a conflict between any provisions dealing with further education and training.

Chapter 8 TRANSITIONAL AND OTHER ARRANGEMENTS

Existing institutions, structures and bodies

49. (1) An existing institution which provides further education and training programmes, continues to exist under the authority and governance by which it was established, or is regarded as having been established prior to the commencement of this Act until such institution is declared to be a further education and training institution under section 4.
- (2) Any structure or body which existed at an institution offering further education and training programmes prior to the commencement of this Act continues to exist until it is replaced by a structure contemplated in section 8.
- (3) Further education and training programmes provided in a school or a higher education institution, contemplated in the Higher Education Act, 1997 (Act No. 101 of 1997), are subject to the quality assurance and promotion as determined in Chapter 6 of this Act.
- (4) Institutions contemplated in subsection (1) may not raise money by means of loans or overdrafts without the approval of the Member of the Executive Council.

[Sub-s. (4) added by s. 14 of Act No. 57 of 2001.]

- (5) If a person lends money or grants an overdraft to an institution contemplated in subsection (1), without the approval of the Member of the Executive Council, the State and the institution is not bound by the contract of lending money or an overdraft agreement.

[Sub-s. (5) added by s. 14 of Act No. 57 of 2001.]

Abolition of Correspondence College Council Fidelity Guarantee Fund and Committee of Technical College Principals

50. (1) The Correspondence College Council established in terms of section 2 of the Correspondence Colleges Act, 1965 (Act No. 59 of 1965), and the Fidelity Guarantee Fund established by section 20 of that Act, continue to exist and to perform their functions as if that Act had not been repealed, until a date determined by the Minister by notice in the *Gazette*.
- (2) The manner of winding up the Correspondence College Council and Fidelity Guarantee Fund, and the manner in which existing claims against the Fund and any remaining balance in the Fund are to be dealt with, must be determined by the Minister by notice in the *Gazette*.
- (3) The Committee of Technical College Principals established in terms of section 36 of the Technical Colleges Act, 1981 (Act No. 104 of 1981), continues to exist and to perform its functions as if that section had not been repealed, until a date determined by the Minister by notice in the *Gazette*.

Exemption of existing private institutions

51. Sections 24 and 44(3) and (4) do not apply to a person who was providing further education and training programmes at a private institution immediately prior to the date determined by the Minister by notice in the *Gazette*.

[S. 51 substituted by s. 19 of Act No. 53 of 2000.]

Repeal of laws

52. The Correspondence Colleges Act, 1965 (Act No. 59 of 1965), and sections 1B and 36 of the Technical Colleges Act, 1981 (Act No. 104 of 1981), are hereby repealed.

Short title

53. This is the Further Education and Training Act, 1998.
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