

**GENERAL AND FURTHER EDUCATION AND TRAINING AMENDMENT
BILL, 2008**

BILL

To amend the General and Further Education and Training Quality Assurance Act, 2001 (Act 58 of 2001) so as to bring it into conformity with the National Qualifications Framework Act, 2008 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 58 of 2001

1. Section 1 of the General and Further Education and Training Quality Assurance Act, 2001 is hereby amended –

(a) by the substitution for the definition of 'accreditation' of the following definition:

"'accreditation' means **[the certification of a person, a body or an institution as having the capacity to fulfill a particular function in the quality assurance system set up by the South African Qualifications Authority in terms of the South African Qualifications Authority Act, 1995 (Act 58 of 1995)] accreditation by the Council in terms of this Act;**";

(b) by the substitution for the definition of 'assessment body' of the following definition:

"'assessment body' means a department of education or **[any other body registered with] a body accredited by the Council as a body responsible for conducting external assessment;**";

(c) by the addition after the definition of 'Council' of the following definition:

"'Council on Higher Education' means the Council on Higher Education established by the Higher Education Act, 1997 (Act 101 of 1997);";

(d) by the deletion of the definition of 'Education and Training Quality Assurance Body' :

"**['Education and Training Quality Assurance Body' means an education and training quality assurance body accredited in terms of section 5 (1) (a) (ii) (bb) of the South African Qualifications Authority Act, 1995 (Act 58 of 1995)];**";

(e) by the addition after the definition of 'Education and Training Quality Assurance Body' of the following definition:

"education institution' means an education institution contemplated in section 2;"

(f) by the substitution for the definition of 'further education and training' of the following definition:

"further education and training' means all [learning] education and training programmes leading to qualifications [from] on levels [2 to 4] 2, 3 and 4 of the general and further education and training sub-framework of the National Qualifications Framework[, **which levels are above general education and training but below higher education];"**

(g) by the substitution for the definition of 'general education and training' of the following definition:

"general education and training' means all [learning] education and training programmes leading to a qualification on level 1 of the general and further education and training sub-framework of the National Qualifications Framework[, **which level is below further education and training];"**

(h) by the substitution for the definition of 'National Qualifications Framework' of the following definition:

"National Qualifications Framework' means the National Qualifications Framework contemplated in the [South African Qualifications Authority Act, 1995 (Act 58 of 1995)] National Qualifications Framework Act;"

(i) by the addition after the definition of 'National Qualifications Framework' of the following definitions:

"National Qualifications Framework Act' means the National Qualifications Framework Act, 2008 (Act ... of 2008);

'NQF' means National Qualifications Framework;

'part qualification' means an assessed unit of learning that may be registered as part of a qualification;

'private education institution' means an education institution contemplated in section 2 that is an independent school, a private college or a private centre;

(j) by the deletion of the definition of 'provider':

"['provider' means any body which-

(a) delivers learning programmes which culminate in a specified National Qualifications Framework standard or qualification; and

(b) manages the assessment of such learning programmes, but, in respect of public schools, public further education and

training institutions and public adult learning centres, 'provider' means the department responsible for education in the relevant province]";

(k) by the addition after the definition of 'provider' of the following definition:

"QC' means quality council;";

(l) by the substitution for the definition of 'qualification' of the following definition:

"qualification' means [the formal recognition of the achievement of the required number and range of credits and such other requirements at specific levels of the National Qualifications Framework as may be determined by the relevant bodies registered for such purpose] a qualification registered by the South African Qualifications Authority, and includes a part qualification;";

(m) by the addition after the definition of 'qualification' of the following definition:

"quality council' means a quality council as contemplated in the National Qualifications Framework Act;";

(n) by the addition after the definition of 'quality council' of the following definition:

"Quality Council for Trades and Occupations' means the Quality Council for Trades and Occupations established by the Skills Development Act, 1998 (Act 97 of 1998;";

(o) by the addition after the definition of 'raw marks' of the following definitions:

"registrar' means the registrar of private colleges in terms of the Further Education and Training Colleges Act, 2006 (Act 16 of 2006);

"SAQA' means "South African Qualifications Authority;";

'sector' means the general and further education and training sector;";

(p) by the substitution for the definition of 'South African Qualifications Authority' of the following definition:

"South African Qualifications Authority' means the South African Qualifications Authority established by [section 3 of the South African Qualifications Authority Act, 1995 (Act 58 of 1995)] the National Qualifications Framework Act;";

(q) by the deletion of the definition of 'standard':

"['standard' means registered statements of desired education and training outcomes and their associated assessment criteria]";

(r) by the addition after the definition of 'standard' of the following definition:

“sub-framework’ means the sub-framework for general and further education and training as contemplated in the National Qualifications Framework Act;”.

Amendment of section 2 of Act 58 of 2001

2. Section 2 of the General and Further Education and Training Quality Assurance Act, 2001 is hereby amended by the substitution for paragraph (b) of the following paragraph:
“(b) [Further Education and Training Act, 1998 (Act 98 of 1998); or Further Education and Training Colleges Act, 2006 (Act 16 of 2006); or”.

Amendment of section 3 of Act 58 of 2001

3. Section 3 of the General and Further Education and Training Quality Assurance Act, 2001 is hereby amended by the substitution for section 3 of the following section:
“3 Objects of Act

The objects of this Act are to-

(a) establish a quality assurance body to ensure that continuous enhancement of quality is achieved in the delivery and outcomes of the] general and further education and training [sector of the national education and training system;

(b) develop a quality assurance framework for the general and further education bands of the National Qualification Framework; and

(c) regulate the relationship between the national Department of Education, the South African Qualifications Authority, other Education and Training Quality Assurance Bodies, providers and the Council.]”

“3 Object of Act

The object of the Act is to enhance the quality of general and further education and training.”

Amendment of title of chapter 2 of Act 58 of 2001

4. The title of chapter 4 of the General and Further Education and Training Quality Assurance Act, 2001 is hereby amended by the substitution for the title of the following title:
“[ESTABLISHMENT AND ACCREDITATION] SUB-FRAMEWORK, ESTABLISHMENT AND FUNCTIONS OF COUNCIL”.

Addition of new section 4A of Act 58 of 2001

5. The following new section 4A is hereby added after section 4 of the General and Further Education Quality Assurance Act, 2001:

“4A The sub-framework

“(1) The Minister, after considering the advice of the Council and SAQA, must determine and publish in the Government Gazette the qualifications sub-framework for general and further education and training contemplated in the National Qualifications Framework Act.

(2) The sub-framework determined by the Minister applies to public and private education institutions.

(3) A policy framework determined by the Minister for the sub-framework in terms of this Act applies to public and private institutions unless expressly stated to the contrary.”

Amendment of section 5 of Act 58 of 2001

6. Section 5 of the General and Further Education Quality Assurance Act, 2001 is hereby deleted.

“[5 - Accreditation as Education and Training Quality Assurance Body

(1) The Council must be regarded as having been accredited by the South African Qualifications Authority in terms of section 5 (1) (a) (ii) (bb) of the South African Qualifications Authority Act, 1995 (Act 58 of 1995), as the body responsible for quality assurance in respect of general and further education and training at education institutions contemplated in section 2.

[Sub-s. (1) substituted by s. 31 of Act 50 of 2002.]

(2) If the Council fails to comply substantially with the accreditation requirements for an Education and Training Quality Assurance Body, the South African Qualifications Authority must-

(a) notify the Council in writing and set out the criterion which the Council failed to comply with; and

(b) specify in the notice a reasonable period within which the Council must comply with the criterion.

(3) (a) If the Council does not comply with the criterion within the period specified in the notice contemplated in subsection (2) (a), the South African Qualifications Authority must inform the Minister of the failure.

(b) The South African Qualifications Authority must submit a copy of the written notice contemplated in subsection (2) (a) to the Minister when it acts in terms of paragraph (a).

(4) Subject to the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), the Minister must request the Chairperson of the Council to give a detailed report on why the Council has not complied with the criterion.

(5) After consideration of all the relevant factors, the Minister must direct the South African Qualifications Authority and the Council as to what reasonable steps each must take to solve the problem.]

Amendment of section 6 of Act 58 of 2001

7. Section 6 of the General and Further Education Quality Assurance Act, 2001 is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) In addition to the members contemplated in subsection (1), the [Chief Executive Officer] chief executive officers of the Council, the Council on Higher Education, the Quality Council for Trades and Occupations, and SAQA [is a member by virtue of his or her office] are members by virtue of their offices.”

Amendment of section 16 of Act 58 of 2001

8. Section 16 of the General and Further Education Quality Assurance Act, 2001 is hereby deleted and the following section substituted:

“16 Functions of Council

[(1) The Council must perform its functions subject to-

(a) the South African Qualifications Authority Act, 1995 (Act 58 of 1995);

(b) the National Education Policy Act, 1996 (Act 27 of 1996); and

(c) any directive prescribed to it by the Minister.

(2) The Council must meet the criteria for accreditation and perform the functions of an Education and Training Quality Assurance Body for the general and further education and training bands of the National Qualifications Framework.

(3) The Council may, with the approval of the Minister and the South African Qualifications Authority, assume its functions progressively depending on its capacity.

(4) Subject to subsection (3), the Council must-

- (a) accredit providers as contemplated in Chapter 3;**
- (b) monitor the suitability and adequacy of standards and qualifications;**
- (c) ensure that providers adopt quality management systems for learner achievement;**
- (d) assure the quality of learner assessment at exit points;**
- (e) issue certificates of learner achievement in terms of standards or qualifications registered on the National Qualifications Framework;**
- (f) maintain an acceptable data bank and follow acknowledged recording and reporting procedures;**
- (g) promote quality improvement among providers; and**
- (h) monitor and report to the Minister on the performance of departments of education as providers, and recommend steps to rectify any deficiencies.**

(5) Subject to policy determined in terms of section 3 (4) of the National Education Policy Act, 1996 (Act 27 of 1996), the Council, with regard to external assessment-

- (a) must perform the external moderation of assessment of all providers and assessment bodies;**
- (b) must, in concurrence with the Director-General and the relevant provider, approve the publication of the results of learners if the Council is satisfied that the provider or assessment body has-**
 - (i) conducted the assessment free from any irregularity that may jeopardize the integrity of the assessment or its outcomes;**
 - (ii) complied with the requirements prescribed by the Council for conducting assessments;**
 - (iii) applied the norms and standards prescribed by the Council and the South African Qualifications Authority, which a learner is required to comply with in those assessments in order to obtain a certificate; and**

(iv) complied with every other condition determined by the Council; and

(c) may adjust raw marks during the standardisation process.

(6) The Council may accredit an assessment body in accordance with the criteria determined by the South African Qualifications Authority and approved by the Minister.

(7) Subject to section 74 of the Higher Education Act, 1997 (Act 101 of 1997), the Council may endorse a certificate of a learner who has complied with the minimum requirements for admission to study at a higher education institution with the approval of the South African Universities Vice-Chancellors' Association, the Committee for Technikon Principals or any other similar body recognised by the Minister, as the case may be.]

"(1) The Council is the Quality Council for General and Further Education and Training in terms of the National Qualifications Framework Act.

(2) The Council must perform its functions subject to –

(a) the National Qualifications Framework Act;

(b) the National Education Policy Act, 1996 (Act 27 of 1996);

(c) any policy determined by the Minister;

(d) any directive prescribed to it by the Minister.

(3) The Council, with the approval of the Minister, may assume its functions progressively depending on its capacity.

(4) The Council must undertake its functions –

(a) in a co-operative, consultative, open and transparent manner;

(b) in collaboration with SAQA and the other QCs; and

(c) with due regard for the statutory rights, powers and functions of departments of education, other QCs, education institutions, professional bodies recognised by SAQA in terms of the National Qualifications Framework Act, and training providers accredited in terms of the Skills Development Act, 1998 (Act 97 of 1998).

(5) The Council must advise the Minister on matters related to the sub-framework.

(6) The Council must –

- (a) develop and manage the sub-framework contemplated in section 4A in accordance with a multi-year rolling strategic plan, budget and implementation framework which must –
- (i) take into account the Minister's remit to SAQA contemplated in the National Qualifications Framework Act;
 - (ii) be prepared after appropriate consultation within the sector;
 - (iii) be co-ordinated with the annual state budget process; and
 - (iv) be submitted to the Minister for approval;
- (b) with respect to levels for the sub-framework –
- (i) propose level descriptors to SAQA for consideration and recommendation to the Minister; and
 - (ii) keep level descriptors under review in order to ensure that they remain current and appropriate;
- (c) with respect to qualifications within the sub-framework-
- (i) propose a policy framework to SAQA for consideration and recommendation to the Minister for the development, registration and publication of qualifications, after consultations within the sector;
 - (ii) ensure the development of such qualifications as are necessary for the sector, which may include appropriate measures for the assessment of learning achievement; and
 - (iii) recommend qualifications to SAQA for registration;
- (d) with respect to assessment within the sub-framework –
- (i) propose one or more policy frameworks to SAQA for consideration and recommendation to the Minister for –
 - (aa) assessment;
 - (bb) recognition of prior learning; and
 - (cc) credit accumulation and transfer;
 - (ii) accredit assessment bodies in terms of this Act;
 - (iii) perform moderation of external assessment in terms of this Act;

- (iv) issue directives for internal assessment in terms of this Act;
- (e) with respect to quality assurance within the sub-framework –

 - (i) propose a policy framework to SAQA for quality assurance, after consultations within the sector;
 - (ii) ensure the integrity and credibility of quality assurance;
 - (iii) ensure that such quality assurance as is necessary is undertaken, including the quality assurance of learner achievement at exit points and the accreditation of private education institutions in terms of this Act;
 - (iv) issue certificates of learner achievement with respect to qualifications on the sub-framework;
 - (v) publish reports on the outcomes of quality assurance processes; and
 - (vi) promote quality improvement within the sector;
- (f) with respect to information matters –

 - (i) maintain a database of learner achievements and related matters for purposes of this Act; and
 - (ii) submit such data in a format determined in consultation with SAQA for recording on the national learners' records database contemplated in the National Qualifications Framework Act;
- (g) with respect to other matters –

 - (i) conduct or commission and publish research on issues of importance to the development and implementation of the sub-framework;
 - (ii) inform the public about the sub-framework;
 - (iii) perform any other function required by this Act; and
 - (iv) perform any function consistent with this Act that the Minister may determine.”.

Addition of new chapter of Act 58 of 2001

9. The General and Further Education Quality Assurance Act, 2001 is hereby amended by the addition after section 16 of the following new chapter number and title:

“CHAPTER 3A

ASSESSMENT (ss. 17A-21)”

Amendment of Act 58 of 2001 by the addition of a new section 17A

10. The following new section 17A is hereby added after section 16 of the General and Further Education Quality Assurance Act, 2001:

“17A External assessment

(1) The Council, with respect to external assessment –

(a) must accredit an assessment body other than a department of education in accordance with the policy framework determined by the Minister if it complies with the requirements for accreditation;

(b) must perform the external moderation of assessment of all assessment bodies and education institutions;

(b) must, with the consent of the Director-General and after consultation with the relevant assessment body or education institution, approve the publication of the results of learners if the Council is satisfied that the assessment body or education institution has –

(i) conducted the assessment free from any irregularity that may jeopardize the integrity of the assessment or its outcomes;

(ii) complied with the requirements prescribed by the Council for conducting assessments;

(iii) applied the standards prescribed by the Council which a learner is required to comply with in such assessments in order to obtain a certificate; and

(iv) complied with every other condition determined by the Council; and

(d) may adjust raw marks during the standardisation process.

(2) Subject to section 74 of the Higher Education Act, 1997 (Act 101 of 1997), the Council may endorse a certificate of a learner who has complied with the minimum requirements for admission to study at a higher education institution with the approval of the South African

Universities Vice-Chancellors' Association, the Committee for Technikon Principals or any other similar body recognised by the Minister, as the case may be."

Amendment of section 18 of Act 58 of 2001

10. Section 18 of the General and Further Education Quality Assurance Act, 2001 is hereby deleted to the extent indicated and the following substituted:

"[18 Functions of provider or assessment body with regard to external assessment

In respect of an external assessment and subject to policy determined in terms of section 3 (4) of the National Education Policy Act, 1996 (Act 27 of 1996), an assessment body-]

18 Functions of assessment body with regard to external assessment

In respect of an external assessment and subject to the Minister's policy determined in terms of this Act, an assessment body -]"

Amendment of title of chapter 3 of Act 58 of 2001

11. The title of chapter 3 of Act 59 of 2001 is amended by the substitution for the title of the following title:

"[ACCREDITATION OF PROVIDERS] PRIVATE EDUCATION INSTITUTIONS"

Amendment of Part 1 of Chapter 3 of Act 58 of 2001

12. Part 1 of chapter 3 of the General and Further Education Quality Assurance Act, 2001 is hereby amended by the deletion of the title and section 22:

**"[Part I
Public providers (s 22)**

22. Accreditation of provincial education departments

(1) Every department responsible for education in a province must be regarded as having been accredited as a public provider by the Council.

(2) The Council must develop criteria for accreditation to which a department responsible for education in a province must adhere and submit them to the Minister for approval.

(3) The Minister must determine policy in respect of such criteria in terms of the National Education Policy Act, 1996 (Act 27 of 1996).

- (4) The policy contemplated in subsection (3) is binding on any department responsible for education in a province and on public education institutions established in terms of legislation referred to in section 2.
- (5) The Council must monitor compliance with the policy contemplated in subsection (3).
- (6) If a department responsible for education in a province fails to comply substantially with the policy contemplated in subsection (3), the Council must-
- (a) notify such department in writing of its failure and set out the policy which the department failed to comply with; and
 - (b) specify in the notice a reasonable period within which the department must comply with the policy.
- (7) (a) If the department does not comply with the policy within the period specified in the notice contemplated in subsection (6), the Council must inform the Minister of the failure.
- (b) The Council must submit a copy of the written notice contemplated in subsection (6) (a) to the Minister when it acts in terms of paragraph (a).
- (8) Subject to the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), and section 8 of the National Education Policy Act, 1996 (Act 27 of 1996), the Minister must request the member of the executive council responsible for education in the province in question to give a detailed report on why the provincial education department has not complied with the policy.
- (9) After consideration of all the relevant factors, the Minister must direct the Council and the provincial education department as to what reasonable steps each must take to solve the problem.]”

Amendment of Part 2 of Chapter 3 of Act 58 of 2001

13. Part 2 of Chapter 3 of the General and Further Education Quality Assurance Act, 2001 is hereby amended by the deletion of the title.
**“[Part 2
 Private providers]”**

Amendment of section 23 of Act 58 of 2001

14. Section 23 of the General and Further Education Quality Assurance Act, 2001 is hereby amended by the substitution for section 23 of the following section:
- “(1) The Council must develop **[criteria]** a policy framework for accreditation of private providers and submit **[them]** it to SAQA for consideration and recommendation to the Minister.
- (2) The Minister must determine **[policy in respect of such criteria in terms of the National Education Policy Act, 1996 (Act 27 of 1996)]** regulations in respect of such policy.

(3) The **[policy]** regulations contemplated in subsection (2) **[is]** are binding on all private **[providers]** education institutions.

(4) Any person who is required to register as –

(a) an independent school in terms of the South African Schools Act, 1996 (Act 84 of 1996);

(b) a private further education and training **[institution]** college in terms of the Further Education and Training **[Act, 1998 (Act 98 of 1998)]** Colleges Act (Act 16 of 2006); or

(c) a private centre in terms of the Adult Basic Education and Training Act, 2000 (Act 52 of 2000),

must apply to the Council **[for accreditation in the manner determined by the Council]** in terms of the regulations.”.

Amendment of section 24 of Act 58 of 2001

15. Section 24 of the General and Further Education and Training Quality Assurance Act, 2001 is hereby amended by the substitution for section 24 of the following section:

“24 Notification of accredited programmes

(1) The Council must within 14 days of accrediting **[the]** programmes in terms of the regulations **[as]** contemplated in section 23 –

(a) in the case of a **[provider]** private college contemplated in section 23 (4) (b), notify the registrar **[of further education and training institutions]**; and

(b) in the case of **[a provider]** an independent school or a private centre contemplated in section 23 (4) (a) or (c) respectively, the relevant head of department.

(2) The notification must indicate if any conditions are attached to the accreditation and the nature thereof.”.

Amendment of section 25 of Act 58 of 2001

16. Section 25 of the General and Further Education and Training Quality Assurance Act, 2001 is hereby amended by the substitution for section 25 of the following section:

“25 Failure to comply with policy

(1) The Council must monitor private **[providers]** education institutions to ensure compliance with the **[policy]** regulations contemplated in section 23(2).

(2) If a private provider fails to comply with the policy, the Council must –

(a) notify such private **[provider]** education institution in writing and set out the nature and extent of the failure; and

(b) determine a reasonable period within which the private **[provider]** education institution must comply with the policy.

(3) At the expiry of the period contemplated in subsection (2)(b), the Council –

(a) must evaluate the steps taken by the private **[provider]** education institution to comply with the policy and take into account any submissions made **[by the provider]** to it; and

(b) may affirm the accreditation of the private **[provider]** education institution or withdraw the accreditation as from a date specified by the Council.

(4) Before the Council withdraws an accreditation, it must notify the head of the department or registrar concerned, as the case may be, contemplated in section 24(1) of its intention to withdraw the accreditation and of the date of the intended withdrawal.”

Amendment of section 28 of Act 58 of 2001

17. Section 28 of the General and Further Education Quality Assurance Act, 2001 is hereby amended by the deletion of subsection (2) and the amendment of subsection (3) as follows:
“[(2) The Council may delegate any quality promotion and quality assurance which may be performed in terms of this Act to any appropriate Education and Training Quality Assurance Body.]

(3) A delegation or assignment under subsection (1) **[or (2)]** –“.

Amendment of section 29 of Act 58 of 2001

18. Section 29 of the General and Further Education Quality Assurance Act, 2001 is hereby amended by the addition after subsection (4) of a new subsection (5):
“(5) Any policy, policy framework or regulation determined by the Minister in respect of the functions of Umalusi or a related matter prior to the promulgation of the General and Further Education and Training Quality Assurance Amendment Act, 2008 (Act ... of 2008) remain in effect until replaced or repealed by the Minister by notice in the Government Gazette.”

**GENERAL AND FURTHER EDUCATION AND TRAINING QUALITY
ASSURANCE AMENDMENT BILL, 2008**

EXPLANATORY MEMORANDUM

1. This Bill reflects consequential amendments made to the Higher Education Act 101 of 1997 as a result of the introduction of the National Qualifications Framework Bill on the Legislative Programme of Parliament for 2008. This amendment Bill together with the NQF Bill and the General and Further Education and Training Quality Assurance Amendment Bill will be published as a package and must be read in conjunction with one another. The reasons and objects of this amendment Bill will be dealt with in the Explanatory Memorandum attached to the NQF Bill.

2. OTHER DEPARTMENTS OR BODIES CONSULTED

The Department of Labour was consulted. After publication for comment, the Bill will be referred to the National Treasury and the Department of Social Development. The Department will also supply stakeholders with copies of the Bill so that they may comment on it.

3. FINANCIAL IMPLICATIONS FOR THE 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's Legislative Services Section are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76 of the Constitution.
- 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 41 of 2003, seeing that it does not contain provisions pertaining to customary law or to the customs of traditional communities.