



HIGHER EDUCATION LAWS AMENDMENT ACT

Higher Education Laws Amendment Act 26 of 2010

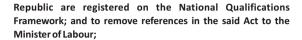
ACT

To amend-

• the Higher Education Act, 1997, so as to amend certain definitions; to ensure that all higher education programmes offered in South Africa by a foreign juristic person are registered on the National Qualifications Framework; and to ensure that higher education institutions may offer a degree, diploma or certificate only if it is registered on the National Qualifications Framework; the Skills Development Act, 1998, so as to amend certain definitions; to provide for the appointment of the chief executive officer of the QCTO and for the transfer to and appointment of staff to the QCTO; and to further regulate the composition of the QCTO; the National Student Financial Aid Scheme Act, 1999, so as to amend certain definitions; and the National Qualifications Framework Act, 2008, so as to amend a definition and delete another: to amend the application of the Act in order to require that all qualifications offered in the







and to provide for matters connected therewith.

Amendment of section 1 of Act 101 of 1997, as amended by section 1 of Act 55 of 1999, section 1 of Act 54 of 2000, section 1 of Act 63 of 2002 and section 1 of Act 38 of 2008

- Section 1 of the Higher Education Act, 1997, is hereby amended by-
 - (a) the substitution for the definition of "Department of Education" of the following definition:
 - " 'Department of Education' means the [Government department responsible for education at national level]
 Department of Higher Education and Training;";
 - (b) the substitution for the definition of "Director-General" of the following definition:
 - " 'Director-General' means the Director-General of the Department of <u>Higher</u> Education <u>and Training</u>;"; and
 - (c) the substitution for the definition of "Minister" of the following definition:
 - " 'Minister' means the Minister of <u>Higher</u> Education <u>and</u> <u>Training</u>;".









 The following section is hereby substituted for section 51 of the Higher Education Act, 1997:

"Registration of private higher education institutions

- 51. (1) No person other than a public higher education institution or an organ of state may provide higher education unless that person is-
 - (a) in the prescribed manner, registered or conditionally registered as a private higher education institution in terms of this Act; and
 - (b) registered or recognised as a juristic person in terms of the Companies Act, 1973 (Act No. 61 of 1973), before such person is registered or conditionally registered [as contemplated in] in accordance with paragraph (a),
 - (2) If the person contemplated in subsection (1) is a foreign juristic person, that person must ensure that any qualification or part-qualification offered within the Republic is registered on the sub-framework for higher education on the National Qualifications Framework contemplated in section 7(b) read with section 13(1)(h) of the National Qualifications Framework Act.".







The following section is hereby inserted in the Higher Education Act, 1997, after section 65C:

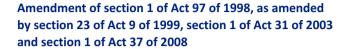
"Qualifications registered on National Qualifications Framework

- 65D.(1) No person may offer, award or confer a degree, or a higher education diploma or a higher education certificate, provided for on the HEQF unless such degree, diploma or certificate is registered on the subframework for higher education on the National Qualifications Framework contemplated in section 7(b) read with section 13(1)(h) of the National Qualifications Framework Act.
 - (2) Notwithstanding subsection (1), a public higher education institution intending to offer any education programme or trade and occupational learning programme that leads to a qualification or part-qualification on the sub-framework for trade and occupation contemplated in section 7(c) of the National Qualifications Framework Act may offer the qualification or part-qualification subject to-
 - (a) the approval of the Minister; and
 - (b) compliance with any condition set by the Minister.".





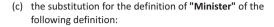




- 4. Section 1 of the Skills Development Act, 1998, is hereby amended by-
 - (a) the substitution for the definition of "Department" of the following definition:
 - "'Department' means the Department of [Labour] Higher Education and Training, except in-
 - (a) sections 2(1)(g) and (h), 2(2)(a)(v), (vi) and (xii), 5(4) (only with respect to Productivity South Africa established by section 26K), 22(1), 23(1)(a) and (d), (2) and (3), 24, 25, 26, 26K, 26L, 26M, 26N, 32(2), 36(o), (p) and (g), item 7 of Schedule 2A and Schedule 4; and
 - (b) sections 32(1), 33 and 36(a) and (s) and any other provision to the extent that these provisions apply to 'employment services' defined in section 1 or to Productivity South Africa established by section 26K, but excluding section 23(1)(b) and (c),

where it means the Department of Labour;";

- (b) the substitution for the definition of "Director-General" of the following definition:
 - " 'Director-General' means the Director-General of [Labour] Higher Education and Training;"; and



- " 'Minister' means the Minister of [Labour] Higher Education and Training, except in-
- (a) sections 2(1)(g) and (h), 2(2)(a)(v), (vi) and (xii), 5(4) (only with respect to Productivity South Africa established by section 26K), 22(1), 23(1)(a) and (d), (2) and (3), 24, 25, 26, 26K, 26L, 26M, 26N, 32(2), 36(o), (p) and (q), item 7 of Schedule 2A and Schedule 4; and
- (b) sections 32(1), 33 and 36(a) and (s) and any other provision to the extent that these provisions apply to 'employment services' defined in section 1 or to Productivity South Africa established by section 26K, but excluding section 23(1)(b) and (c).

where it means the Minister of Labour:".

Amendment of section 26 of Act 97 of 1998, as inserted by section 11 of Act 37 of 2008

- Section 26G of the Skills Development Act, 1998, is hereby amended by the substitution for subsection (5) of the following subsection:
 - "(5) (a) The Minister must appoint the <u>chief</u> executive officer of the QCTO <u>on the recommendation of the members of</u> the OCTO.
 - (b) If the Minister does not agree with the recommendation of the members of the QCTO, they must make another









- (c) The QCTO must appoint such number of employees to assist the QCTO in the performance of its functions as it may deem necessary.
- (d) Despite paragraph (a), the QCTO is the employer of the executive officer and employees and must determine their remuneration, allowances. subsidies and other conditions of service.
- (e) Staff identified in posts on the establishment of the

 Department who immediately before the
 commencement of the Higher Education Laws

 Amendment Act, 2010, performs functions relating to
 the administrative management of the QCTO may,
 subject to section 197 of the Labour Relations Act, 1995
 (Act No. 66 of 1995), be appointed or transferred to the
 QCTO.".

Amendment of Schedule 3 to Act 97 of 1998, as added by section 16 of Act 37 of 2008

- Schedule 3 to the Skills Development Act, 1998, is hereby amended by-
 - (a) the substitution in item 1(1) for paragraph (b) of the following paragraph:
 - "(b) the chief executive officer of the SAQA;"; and
 - (b) the substitution in item 1(1) for paragraphs (d) and (e) of the following paragraphs, respectively:





(e) the <u>chief</u> executive [director] <u>officer</u> of the [Higher Education Quality Committee] <u>Council on Higher Education</u> established in terms of section [7] <u>4</u> of the Higher Education Act, 1997 (Act No. 101 of 1997);".

Amendment of section 1 of Act 56 of 1999, as amended by section 13 of Act 31 of 2007

- Section 1 of the National Student Financial Aid Scheme Act, 1999, is hereby amended by-
 - (a) the substitution for the definition of "Department" of the following definition:
 - " 'Department' means the [government department responsible for education at national level] Department of Higher Education and Training;"; and
 - (b) the substitution for the definition of "Minister" of the following definition:
 - " 'Minister' means the Minister of <u>Higher</u> Education <u>and</u> Training;".

Amendment of section 1 of Act 67 of 2008

- Section 1 of the National Qualifications Framework Act, 2008, is hereby amended-
 - (a) by the substitution for the definition of "Minister" of the following definition:







- "'Minister' means the Minister of Higher Education and Training;"; and
- (b) by the repeal of the definition of "relevant Minister".

Substitution of section 3 of Act 67 of 2008

 The following section is hereby substituted for section 3 of the National Qualifications Framework Act, 2008:

"Application of Act

- 3. (1) This Act applies to-
 - (a) education programmes or learning programmes
 that lead to qualifications or part-qualifications
 offered within the Republic by-
 - (i) education institutions; and
 - (ii) skills development providers; and
 - (b) professional designations,
 - subject to the limitations prescribed in this Act.
 - (2) Every qualification or part-qualification contemplated in subsection (1) must be registered on the National Qualifications Framework in accordance with this Act."

Amendment of section 8 of Act 67 of 2008

10. Section 8 of the National Qualifications Framework Act, 2008, is



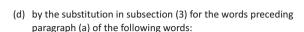


- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
 - "(c) QC for General and Further Education and Training,
 [and] the QC for Higher Education and the QC for Trades
 and Occupations contemplated in Chapter 5.";
- (b) by the substitution in subsection (2) for paragraphs (b) and(c) of the following paragraphs, respectively:
 - "(b) determine policy on NQF matters in terms of this Act [, after consultation with the Minister of Labour,] and publish the policy in the Gazette;
 - (c) [after consultation with the Minister of Labour,] publish guidelines which set out the government's strategy and priorities for the NQF, and which may be updated annually;";
- (c) by the substitution in subsection (2) for paragraphs (e) and(f) of the following paragraphs, respectively:
 - "(e) [determine,] after considering advice from the SAQA
 [and after consultation with the Minister of Labour],
 determine the sub-frameworks contemplated in section
 7 [(a) and (b), respectively,] and publish them in the
 Gazette; and
 - (f) determine, by regulation in the Gazette, [after consultation with the Minister of Labour,] the process by which a dispute involving the SAQA or a QC must be resolved, and any matter relating thereto."; and









"The Minister I. after consultation with the Minister of Labour, must-".

Repeal of section 9 of Act 67 of 2008

11 Section 9 of the National Qualifications Framework Act, 2008, is hereby repealed.

Amendment of section 13 of Act 67 of 2008

- 12. Section 13 of the National Qualifications Framework Act, 2008, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 - "(b) advise the Minister [and the Minister of Labour] on NQF matters in terms of this Act.".

Amendment of section 14 of Act 67 of 2008

- 13. Section 14 of the National Qualifications Framework Act, 2008, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:
 - "(a) 12 members appointed in their personal capacities by the Minister [after consultation with the Minister of Labour];".

Amendment of section 27 of Act 67 of 2008

14. Section 27 of the National Qualifications Framework Act, 2008, is hereby amended-









- "(e) develop and manage its sub-framework, and make recommendations thereon to the [relevant] Minister;
- (f) advise the [relevant] Minister on matters relating to its sub-framework:": and
- (b) by the substitution in paragraph (k) for subparagraph (iv) of the following subparagraph:

"(iv) perform any function consistent with this Act that the [relevant] Minister may determine.".

Substitution of long title of Act 67 of 2008

 The following long title is hereby substituted for the long title of the National Qualifications Framework Act, 2008:

"To provide for the National Qualifications Framework; to provide for the responsibilities of the Minister of <u>Higher</u> Education and [the Minister of Labour] <u>Training</u>; to provide for the South African Qualifications Authority; to provide for Quality Councils; to provide for transitional arrangements; to repeal the South African Qualifications Authority Act, 1995; and to provide for matters connected therewith."

Short title

16. This Act is the Higher Education Laws Amendment Act, 2010.







