

ADULT EDUCATION AND TRAINING ACT

ADULT EDUCATION AND TRAINING ACT 52 OF 2000

[Previous title: "Adult Basic Education and Training Act" substituted by s. 7 of Act 25/2010]

[Assented To: 5 December 2000]

[Commencement Date: 13 December 2000]

as amended by:

Education Laws Amendment Act 50 of 2002

Education Laws Amendment Act 31 of 2007

[with effect from 31 December 2007]

Higher Education and Training Laws Amendment Act 25 of 2010

[with effect from 7 December 2010]

NOTE:

The Act has been amended by s. 8 of Act 25/2010 by

- (a) the substitution for the expression "NABAET", wherever it occurs, of the expression "NABAET";
- (b) the substitution for the expression "adult basic education and training", wherever it occurs, of the expression "adult education and training"; and
- (c) the substitution for the expression "provincial department of education", wherever it occurs, of the expression "provincial education department".

ACT

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

PREAMBLE

WHEREAS IT IS DESIRABLE TO -

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

RESTRUCTURE AND TRANSFORM programmes and centres 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 adult education and training and the workplace by persons who have been marginalised in the past, such as women, the disabled and the disadvantaged;

PROVIDE optimal opportunities for adult learning and literacy, the creation of knowledge and development of 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 adult education and training sector;

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

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

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

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

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows: -

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CHAPTER 1

DEFINITIONS AND APPLICATION OF ACT

1. Definitions

In this Act, unless the context indicates otherwise -

“adult” means a person who is sixteen years or older;

“adult education and training” means all learning and training programmes for adults on level 1 registered on the national qualifications framework contemplated in the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);
[Definition of “adult basic education and training” substituted by
“Adult education and training” in s. 1 of Act 25/2010]

“auditor”

[Definition of “auditor” deleted by s. 22 of Act 31/2007]

“centre” means a public or private centre;

“centre manager” means the head of a public centre appointed by the Head of Department in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998);

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“Council of Education Ministers” means the Council established by section 41H of the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006);

[Definition of “Council of Education Ministers” substituted by s. 1 of Act 25/2010]

“Department” means the Department of Higher Education and Training;

[Definition of “Department” substituted by s. 1 of Act 25/2010]

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

“educator” means any person who teaches, educates or trains another person, or provides professional educational services, including professional therapy and education psychological services, at any public centre and who is appointed in a post on any educator establishment contemplated in section 20F;

[Definition of “educator” substituted by s. 1 of Act 25/2010]

“employer”, in relation to any provision of Chapter 4, 5 or 7 of the Employment of Educators Act, 1998 (Act No. 76 of 1998), which applies to, or is connected with, an educator in the service of-

- (a) the Department of Higher Education and Training, means the Director-General; and
- (b) a provincial education department, means the Head of Department;

[Definition of “employer” inserted by s. 1 of Act 25/2010]

“Employment Educators Act” means the Employment Educators Act, 1998 (Act No. 76 of 1998);

“governing body” means a governing body contemplated in section 8;

“grade” means a grade as defined in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996);

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

“Labour Relations Act” means the Labour Relations Act, 1995 (Act No. 66 of 1995);

[Definition of “Labour Relations Act” inserted by s. 1 of Act 25/2010]

“learner” means any person receiving education in terms of this Act;

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

“Minister” means the Minister of Higher Education and Training;

[Definition of “Minister” substituted by s. 1 of Act 25/2010]

“NABAET” means the National Advisory Board for Adult Education and Training, established by regulation in terms of section 11 of the National Education Policy Act, 1996 (Act No. 27 of 1996);

[Definition of “NABAET” substituted by “NABAET” in s. 1 of Act 25/2010]

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

“policy” means policy determined by the -

- (a) Minister in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996); or
- (b) Member of the Executive Council in terms of a provincial law;

“prescribed” means prescribed by regulation made in terms of section 41;

[Definition of “prescribed” substituted by s. 1 of Act 25/2010]

“private centre” means a private centre registered in terms of section 27 which offers adult education and training;

“provincial legislature” means a provincial legislature contemplated in section 104 of the Constitution;

“public centre” means a public centre established in terms of section 3 which offers adult education and training;

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

2. Application of Act

- (1) This Act applies to any adult education and training offered at any centre in the Republic of South Africa.
- (2) A Member of the Executive Council and Head of Department must exercise any power conferred upon them by or under this Act, after taking full account of the applicable policy determined in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996).

CHAPTER 2

PUBLIC CENTRES

3. Establishment of public centre

- (1) A Member of the Executive Council may, by notice in the *Provincial Gazette* and from money appropriated for that

purpose by the provincial legislature in question, establish a public centre.

- (2) Every public centre contemplated in subsection (1) must be a juristic person.
- (3) A public centre which occupies immovable property owned by the State, has the right, for the duration of the centre's existence, to occupy and use the immovable property to the benefit of the centre for educational purposes.
- (4) In this section, immovable property owned by the State includes immovable property held in trust on behalf of a tribe by a trust created by statute.
- (5) The right referred to in subsection (3) may be restricted by the Head of Department if the immovable property is not used by the centre for educational purposes.
- (6) The Head of Department may not act under subsection (5) unless he or she has -
 - (a) informed the governing body of the centre of his or her intention and the reasons therefor;
 - (b) granted the governing body of the centre a reasonable opportunity to make representations to him or her in relation to such action; and
 - (c) duly considered any such representations received.

4. Provision of facilities

- (1) The Head of Department must provide facilities for use by

the public centre to perform its functions in terms of this Act.

- (2) If no facilities are available to be used by the public centre, the Head of Department must in terms of section 20(1)(k) of the South African Schools Act, 1996 (Act No. 84 of 1996), request the governing body of a public school to allow reasonable use of the facilities of the school by the public centre.
- (3) After the request contemplated in subsection (2) has been made, the Head of Department and the school governing body must enter into an agreement providing among other things for the -
 - (a) amount of time, and the time of day or night that the school facilities may be used by the public centre;
 - (b) manner in which resources and the costs must be shared between the school and the public centre;
 - (c) responsible authority to be liable for payment of the costs referred to in paragraph (b);
 - (d) maintenance and improvement of the school facilities;
 - (e) access to school facilities by all interested persons;
 - (f) security of the facility; and
 - (g) relationship between the school governing body and the public centre governing body.

- (4) The Head of Department must consult with the governing body of the public centre in question before entering into the agreement contemplated in subsection (3).
- (5) The Minister may, after consultation with the Council of Education Ministers, make regulations regarding the minimum requirements for an agreement contemplated in subsection (3).

5. Merger of public centres

- (1) Subject to subsection (2), the Member of the Executive Council may, by notice in the *Provincial Gazette*, merge two or more public centres into a single centre.
- (2) Before merging two or more public centres, the Member of the Executive Council must -
 - (a) give written notice to the centres in question of the intention to merge them;
 - (b) publish a notice giving reasons for the proposed merger in one or more newspapers circulating in the area in which the centres are situated;
 - (c) give the governing bodies of the centres in question and any other interested persons an opportunity to make representations within 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 centres in question have complied with their obligations in terms of the applicable labour law.

- (3) The assets, liabilities, rights and obligations of the centres that are merged vest in the single centre contemplated in subsection (1).
- (4) The governing bodies of the centres referred to in subsection (1) must have a meeting before the merger to constitute a single interim governing body.
- (5) The interim governing body must decide on the budget and differences in the code of conduct and fees, as well as any issue that is relevant to the merger or which is prescribed, until a new governing body is constituted in terms of section 8.
- (6) The governing body of any public centre to be merged under subsection (1), may appeal to the Minister against the merger.

6. Closure of public centre

- (1) The Member of the Executive Council may, by notice in the *Provincial Gazette*, close a public centre.
- (2) Before closing a public centre, the Member of the Executive Council must -
 - (a) inform the governing body of the centre of his or her intention and his or her reasons therefor;
 - (b) grant the governing body of the centre a reasonable opportunity to make representations to him or her in relation to such actions;

- (c) conduct a public hearing after 90 days from the date of the notice referred in subsection (1) to enable the community to make representations to him or her in relation to such actions; and
 - (d) give due consideration to any such representations received.
- (3) If a public centre is closed down in terms of subsection (1), all assets and liabilities of such centre must be dealt with in accordance with the law by the Member of the Executive Council in consultation with the governing body, and any assets remaining after payment of all liabilities vest in the State.

CHAPTER 3

GOVERNANCE OF PUBLIC CENTRES

7. Governance and management of public centre

- (1) A public centre is governed by a governing body.
- (2) The governing body must stand in a position of trust towards the centre.
- (3) The management of a public centre must be undertaken by the centre manager under the authority of the Head of Department.

8. Governing body of public centre

- (1) Every public centre, except a public centre contemplated in section 21(1)(d) of the South African Schools Act, 1996 (Act

No. 84 of 1996), must establish a governing body.

[Subs. (1) substituted by s. 23 of Act 31/2007]

- (2) The governing body of a public centre must consist of -
 - (a) elected members;
 - (b) the centre manager, in his or her official capacity;
 - (c) co-opted members;
 - (d) any representative of any sponsoring body;
 - (e) any representative of an organisation for disabled persons, where applicable; and
 - (f) any expert in the field of adult education and training, where applicable.
- (3) The members of a governing body contemplated in subsection (2)(a) must be elected from -
 - (a) educators at the centre;
 - (b) members of staff who are not educators; and
 - (c) learners at the centre;
- (4) A member contemplated in -
 - (a) subsection (3)(a) must be elected by the educators at the centre;

(b) subsection (3)(b) must be elected by members of the staff who are not educators at the centre; and

(c) subsection (3)(c) must be elected by the learners at the centre.

(5) The members contemplated in subsections (2)(a), (b), (d), (e) and (f) must co-opt members contemplated in subsection (2)(c) from the community which the centre serves and such co-opted members may vote at any meeting of the governing body.

(6) (a) The governing body contemplated in subsection (2) must co-opt as member of the governing body -

(i) the chairperson of the governing body or any member designated by him or her; or

(ii) the principal or any educator designated by him or her, of the public school from which the centre operates.

(b) The member contemplated in paragraph (a) may not vote at a meeting of the governing body.

(7) The governing body of a public centre functions in terms of a constitution which must comply with minimum requirements determined by the Member of the Executive Council by notice in the *Provincial Gazette*.

(8) A constitution contemplated in subsection (7) must provide for -

- (a) a meeting of the governing body at least four times a year and the procedures to be followed at such meetings;
 - (b) recording and keeping minutes of governing body meetings; and
 - (c) the making available of such minutes for inspection by the Head of Department.
- (9) The governing body must submit a copy of its constitution to the Head of Department within 90 days of its election.
- (10) If a public centre is established in terms of section 3, the governance of that centre vests in the Head of Department until a governing body has been established in terms of this Act.

9. Election of members to governing body

The Member of the Executive Council must, by notice in the *Provincial Gazette*, determine -

- (a) the term of office of members and office-bearers of a governing body;
- (b) which officer must conduct the process for the nomination and election of members of the governing body;
- (c) the procedure for the disqualification or removal of a member of the governing body or the dissolution of a governing body, for sufficient reason in each case;

- (d) the procedure for the filling of a vacancy in the governing body;
- (e) guidelines for the achievement of representivity of members of the governing body;
- (f) a formula for the calculation of the number of members of the governing body in each of the categories referred to in section 8(3), and such formula must provide reasonable representation for each category and must be capable of application to the different sizes and circumstances of public centres; and
- (g) any other matters necessary for the election, appointment or assumption of office of members of the governing body.

10. Single governing body for two or more public centres

- (1) The Member of the Executive Council may determine that the governance of two or more public centres must vest in a single governing body if -
 - (a) it is in the best interest of education and the centres;
 - (b) it is in the public interest; or
 - (c) he or she was so requested by the governing bodies of such centres, if such governing bodies exist.
- (2) Before making a determination under subsection (1), the Member of the Executive Council must -
 - (a) give notice in the *Provincial Gazette* of his or her intention so to act;

(b) give interested parties an opportunity to make written submissions within a period of not less than 30 days; and

(c) consider all such submissions.

(3) The Member of the Executive Council must, by notice in the *Provincial Gazette*, determine the composition of the single governing body in a manner that ensures that each centre is equitably represented.

(4) Any governing body which is the subject of a notice in terms of subsection (2) continues to exist until the first meeting of the governing body constituted in terms of this section.

11. Functions of governing body

(1) The governing body of a public centre must -

(a) promote the best interest of the public centre and strive to ensure its development through the provision of quality education for all learners at the public centre;

(b) develop a business plan for the public centre;

(c) provide any information pertaining to the public centre and its activities at the request of the Head of Department;

(d) be responsible for the budgeting and financial management systems of the public centre;

(e) promote the activities and the programmes of the public centre;

- (f) supplement the procurement of the learning support material for the public centre;
- (g) ensure that a conducive learning environment exists for learners;
- (h) elicit public support for the public centre;
- (i) keep proper records of all governing body meetings;
- (j) develop the vision and mission statement of the public centre;
- (k) subject to policy, determine the language policy of the public centre;
- (l) recommend the appointment of educators of the public centre in terms of the Employment of Educators Act;
- (m) establish and administer a public centre fund from voluntary contributions;
- (n) adopt a constitution;
- (o) adopt a code of conduct for learners at the public centre;
- (p) discharge all other functions imposed upon a governing body by or under this Act; and
- (q) discharge all other functions consistent with the Act as determined by the Minister by notice in the *Government Gazette*, or by the Member of the Executive Council by notice in the *Provincial Gazette*.

(2) A public centre may establish posts for -

(a) educators and employ educators additional to the establishment determined by the Member of the Executive Council in terms of Chapter 3A; and

[Para. (a) substituted by s. 2 of Act 25/2010]

(b) non-educators and employ non-educator staff additional to the establishment determined in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(3) A public centre may only employ an educator in a post referred to in subsection (2)(a) if such educator is registered as an educator with the South African Council for Educators.

(4) The staff contemplated in subsection (2) must be employed in compliance with the basic values and principles referred to in section 195 of the Constitution, and the factors to be taken into account when making appointments must at least include the -

(a) ability of the candidate;

(b) principle of equity;

(c) need to redress past injustices; and

(d) need for representivity.

(5) When presenting the annual budget contemplated in section 24 the governing body of a public centre must provide sufficient details of any posts envisaged in terms of subsection (2), including the estimated costs relating to the

employment of staff in such posts and the manner in which it is proposed that such costs will be met.

- (6) The State is not liable for any act or omission by the public centre relating to its contractual responsibility as the employer in respect of staff employed in terms of subsection (2).
- (7) The Minister may, by notice in the *Government Gazette*, determine norms and standards regarding the funds used for the employment of staff referred to in subsection (2), but such norms and standards may not be interpreted as making the State a joint employer of such staff.

[Subs. (7) substituted by s. 2 of Act 25/2010]

12.

[S. 12 repealed by s. 3 of Act 25/2010]

13. Enhancement of capacity of governing bodies

- (1) Out of funds appropriated for this purpose by the provincial legislature, the Head of Department must establish a programme to provide -
 - (a) introductory training for newly elected governing bodies to enable them to perform their functions; and
 - (b) continuing training to governing bodies to promote the effective performance of their functions or to enable them to assume additional functions.
- (2) The Head of Department must ensure that the centre manager and other officers of the education department

render all necessary assistance to governing bodies in the performance of their functions in terms of this Act.

14. Failure by governing body to perform functions

- (1) If a governing body has ceased or failed to perform its functions, the Head of Department must dissolve the governing body and appoint one or more persons to perform those functions for a period not exceeding three months.
- (2) The Head of Department may extend the period referred to in subsection (1) for further periods not exceeding three months at a time, but the total period may not exceed one year.
- (3) The Head of Department must ensure that a governing body is elected in terms of this Act within a year after the appointment of the person or persons contemplated in subsection (1).

15. Recusal by members of governing body

A member of a governing body must withdraw from a meeting of the governing body for the duration of the discussion and decision-making on any issue in which the member has a personal interest.

16. Reimbursement of members of governing body

- (1) Necessary expenses incurred by a member of a governing body in the performance of his or her functions may be reimbursed by the governing body.

- (2) No member of a governing body may be remunerated in any way for the performance of his or her functions.

17. Committees of governing body

- (1) A governing body may -
- (a) establish committees, including an executive committee; and
 - (b) appoint persons who are not members of the governing body to such committees on grounds of expertise, but a member of the governing body must chair each committee.
- (2) A governing body of a public centre which provides education to learners with special education needs must establish a committee on special education needs.

18. Admission to public centre

- (1) A public centre must admit learners and serve their educational requirements without unfairly discriminating in any way.
- (2) An application for admission to a public centre must be made to the Head of Department in a manner determined by him or her.
- (3) If an application referred to in subsection (2) is refused, the Head of Department must inform the learner in writing of such refusal and the reasons therefor.

- (4) Any learner who has been refused admission to a public centre may appeal against the decision of the Head of Department to the Member of the Executive Council.

18A. Curriculum and assessment

- (1) The Minister must, by notice in the *Government Gazette*, determine-
- (a) a national curriculum statement indicating the minimum outcomes or standards;
 - (b) a national process and procedures for the assessment of learner achievement.
- (2) The curriculum and process for the assessment contemplated in subsection (1) must be applicable to public and private centres.

[S. 18A inserted by s. 27 of Act 50/2002]

19. Representative council of learners

- (1) A representative council of learners must be established at every public centre.
- (2) The Member of the Executive Council may, by notice in the *Provincial Gazette*, determine guidelines for the establishment, election and functions of representative councils of learners.

20. Disciplinary measures

- (1) Every learner at a public centre is subject to such code of conduct, disciplinary measures and procedures as may be

determined by the governing body subject to provincial policy.

- (2) The policy contemplated in subsection (1) must in particular deal with measures to curb racism, sexual violence and sexual harassment.
- (3) A code of conduct must contain provisions of due process safeguarding the interest of the learner in disciplinary procedures.

20A. Prohibition of corporal punishment and initiation practices

- (1) A person may not administer corporal punishment to a learner at any adult education and training centre.
- (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 centres.
- (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.

[S. 20A inserted by s. 28 of Act 50/2002]

CHAPTER 3A

20B. Application of Chapter

This Chapter applies to the employment of educators at public centres in the Republic.

20C. Employers of educators and other persons

- (1) Save as is otherwise provided in this section, the Head of Department shall be the employer of educators in the service of the provincial education department in posts on the educator establishment of public centres for all purposes of employment.
- (2) For the purposes of determining the salaries and other conditions of service of educators, the Minister shall be the employer of all educators contemplated in subsection (1).
- (3) For the purposes of creating posts on the educator establishment of public centres in a provincial education department, the Member of the Executive Council shall be the employer of educators in the service of that department.

20D. Salaries and other conditions of service of educators

- (1) Notwithstanding anything to the contrary contained in any law but subject to the provisions of this section, the Labour Relations Act or any collective agreement concluded by the Education Labour Relations Council, the Minister shall determine the salaries and other conditions of service of educators.

- (2) Different salaries and conditions of service contemplated in subsection (1) may be determined in respect of different ranks and grades of educators.
- (3) A determination by the Minister under this section involving expenditure from the National Revenue Fund may only be made with the concurrence of the Minister of Finance.

20E. Educator establishment

- (1) Notwithstanding anything to the contrary contained in any law but subject to the norms prescribed for the provisioning of posts, the educator establishment of a provincial education department shall consist of the posts created by the Member of the Executive Council.
- (2) The educator establishment of any public centre under the control of a provincial education department shall, subject to the norms prescribed for the provisioning of posts, consist of the posts allocated to the said public centre or office by the Head of Department from the educator establishment of that department.
- (3) For the purposes of this Chapter-
 - (a) the power to create a post under this section shall include the power to grade, to regrade, to designate, to re-designate, to convert or to abolish the post; and
 - (b) the power to allocate a post under this section shall include the power to re-allocate the post.

- (4) The non-educator establishment of a public centre is determined in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

20F. Powers of employers

- (1) Subject to the provisions of this section, the appointment of any person, or the promotion or transfer of any educator, in the service of a provincial education department shall be made, or effected, by the Head of Department.
- (2) Subject to the provisions of this Chapter, the Labour Relations Act or any collective agreement concluded by the Education Labour Relations Council, appointments in, and promotions or transfers to, posts on any educator establishment under this Act shall be made in accordance with such procedure and such requirements as the Minister may determine.

20G. Appointments and filling of posts

- (1) In the making of any appointment or the filling of any post on any educator establishment under this Act, due regard shall be had to equality, equity and the other democratic values and principles which are contemplated in section 195(1) of the Constitution of the Republic of South Africa, 1996, and which include-
- (a) the ability of the candidate; and
- (b) the need to redress the imbalances of the past in order to achieve broad representation.
- (2) A person may be appointed under this Chapter-

- (a) in a permanent capacity, whether on probation or not;
- (b) in a temporary capacity for a fixed period, whether in a full-time, in a part-time or in a shared capacity; or
- (c) on special contract for a fixed period or for a particular assignment, whether in a full-time or in a part-time capacity.

20H. Transfer of educators

- (1) Subject to the provisions of this Chapter, the Head of Department may transfer any educator in the service of-
 - (a) the relevant department to any post or position in any other department of state with the prior approval of the person in that other department of state having the power to appoint or to transfer and with the consent of that educator; and
 - (b) the provincial education department to any other post in that department.
- (2) The salary and other conditions of service of an educator may not be adversely affected by a transfer under this section without the written consent of that educator.

20I. Secondment of educators

- (1) Any educator in the service of any provincial education department may, with the written consent of that educator, be placed at the disposal of-
 - (a) another department of education;

- (b) another government; or
 - (c) any other body or person, for a particular service or for a stated period on such conditions, in addition to the conditions prescribed by or under any law, as may be determined by the Head of Department.
- (2) While so placed at such disposal, the educator shall remain subject to the provisions of this Act.

20J. Retirement

- (1) Subject to the provisions of this section-
- (a) an educator shall have the right to retire, and shall be so retired, on the day on which the educator attains the age of 65 years; and
 - (b) an educator who attains the said age after the first day of a month shall be deemed to have attained that age on the first day of the following month.
- (2) Notwithstanding the provisions of subsection (1), an educator who was in employment immediately before 2 September 1994 in terms of a law repealed by the Educators' Employment Act, 1994 (promulgated under Proclamation No. 138 of 1994), shall have the right to retire on or after attaining the retirement age applicable to the educator immediately before the said date.
- (3) Notwithstanding-
- (a) the provisions of subsections (1) and (2), an educator

shall have the right to retire on or after attaining the age of 55 years; and

- (b) the absence of any reason for discharge in terms of section 20K, the employer may, at the request of an educator, allow the educator to retire before attaining the age of 55 years, if the employer is of the opinion-
 - (i) that a sufficient reason exists therefor; and
 - (ii) that the retirement will be to the advantage of the State.
- (4) Notwithstanding the provisions of this section, an educator-
 - (a) who was in employment immediately before 1 May 1996;
 - (b) who, without interruption of service, has completed a period of 10 years' continuous pensionable service in terms of the pension law applicable to the educator; and
 - (c) who has attained the age of 50 years,shall have the right to retire.

20K. Discharge of educators

- (1) The employer may, having due regard to the applicable provisions of the Labour Relations Act, discharge an educator from service-
 - (a) on account of continuous ill-health;
 - (b) on account of the abolition of the educator's post or any

reduction in, or reorganisation or re-adjustment of, the post establishments of departments or public centres;

- (c) if, for reasons other than the educator's own unfitness or incapacity, the educator's discharge will promote efficiency or economy in the department or public centre in which the educator is employed, or will otherwise be in the interest of the State;
 - (d) on account of unfitness for the duties attached to the educator's post or incapacity to carry out those duties efficiently;
 - (e) on account of misconduct;
 - (f) if the educator was appointed in the post in question on the grounds of a misrepresentation made by the educator relating to any condition of appointment; and
 - (g) if, in the case of an educator appointed on probation, the educator's appointment is not confirmed.
- (2) If an educator is discharged from service in terms of subsection (1)(f), that educator shall be deemed to have been discharged on account of misconduct.

20L. Discharge on account of ill-health

An educator may be discharged on account of ill-health in the circumstances referred to in Schedule 1 to the Employment of Educators Act.

20M. Discharge of educators appointed on probation

- (1) If it is not desirable to confirm the appointment, transfer or promotion of an educator on probation, the employer may, notwithstanding anything to the contrary contained in this Act but subject to this section-
 - (a) extend the period of probation of the educator; or
 - (b) after reasonable notice to the educator, discharge the educator from service upon the expiry of the period of probation or any extension thereof.
- (2) No appointment, transfer or promotion on probation may be extended, and no educator who is serving on probation may be discharged from service, if-
 - (a) the educator has been diligent;
 - (b) the educator's conduct has been uniformly satisfactory;
 - (c) the educator is in all respects suitable for the post which the educator holds; and
 - (d) the educator has complied with all the conditions applicable to the educator's appointment, transfer or promotion.
- (3) An educator whose transfer or promotion on probation is not confirmed and who immediately before such transfer or promotion was an educator, other than an educator on probation, shall be transferred to the post formerly held by that educator, or to a post of equivalent grading.

20N. Resignation

- (1) An educator may resign by giving 90 days' notice in writing or such shorter notice as the employer may approve at the request of the educator.
- (2) If the name of an educator is struck off the register of educators kept by the South African Council for Educators, the educator shall, notwithstanding anything to the contrary contained in this Act, be deemed to have resigned with effect from the day following immediately after the day on which the educator's name was so struck off.

20O. Incapacity and misconduct

The incapacity and misconduct of educators are dealt with in accordance with the procedure contemplated in Chapter 5 read with Schedules 1 and 2 to the Employment of Educators Act.

20P. Performance of other work by educators

- (1) Unless an educator's conditions of service provide otherwise-
 - (a) an educator shall place such time as the Minister may determine at the disposal of the employer;
 - (b) no educator shall without permission of the employer perform or undertake to perform remunerative work outside the educator's official duty or work; and
 - (c) no educator may claim additional remuneration in respect of any official duty or work which the educator-

- (i) performs voluntarily; or
- (ii) has been ordered to perform by a competent authority.

- (2) The employer may order an educator to perform, on a temporary basis, duties other than those ordinarily assigned to the educator, if such temporary duties are appropriate to the grade, designation or classification of the educator's post.

20Q. Transitional arrangements in respect of public centres

- (1) For the purposes of this Chapter and with regard to employment and related matters, an educator employed at a public centre under the Employment of Educators Act prior to 31 December 2010, will continue to be employed on the post establishment of that public centre, and the post occupied by that educator shall be deemed to be a post created by the Member of the Executive Council in terms of this Chapter.
- (2) The post establishment of the public centre existing immediately before 31 December 2010 shall be deemed to be the educator establishment of that public centre for the purposes of section 20E.
- (3) The employment and related matters contemplated in subsection (1), such as salary and other conditions of service applicable to an educator, shall continue to be applicable to that educator for the purposes of this Act and shall be deemed to have been determined by the Minister in terms of section 20D.

[Chapter 3A inserted by s. 4 of Act 25/2010]

CHAPTER 4

FUNDING OF PUBLIC CENTRES

21. Responsibility of State

- (1) The Member of the Executive Council must from money appropriated for this purpose by the provincial legislature fund public adult education and training on a fair equitable and transparent basis.
- (2) The Member of the Executive Council may, subject to the norms and standards determined in terms of section 22, impose -
 - (a) any reasonable condition in respect of an allocation of funding contemplated in subsection (1); and
 - (b) different conditions in respect of different centres and different adult education and training programmes, if there is a reasonable basis for such differentiation.
- (3) The Member of the Executive Council must, on an annual basis, provide sufficient information to public centres regarding the funding referred to in subsection (1) to enable the public centre to prepare its budget for the next financial year.

22. Norms and standards for funding public centre

The Minister must, in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996), determine norms and standards for funding of public centres, after consultation with the Council of Education Ministers, the Minister of Finance and NABAET.

23. Funds of public centre

The funds of a public centre consist of -

- (a) funds allocated by the State;
- (b) any donations or contributions received by the centre;
- (c) money raised by the centre;
- (d) money payable by learners for adult education and training provided by the centre; and
- (e) other funds from any other source.

24. Financial records and statements of public centre

- (1) The governing body of a public centre, in the manner determined by the Member of the Executive Council -
 - (a) must keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions of the public centre as a whole, of its substructures and of other bodies operating under its authority;
 - (b) must in each financial year, at such time and in such manner as the Member of the Executive Council may determine, submit a statement of its estimated income and expenditure for the ensuing financial year to the Member of the Executive Council for his or her approval granted with the concurrence of the Member of the Executive Council responsible for finance in that province;

(c) must in any financial year, submit adjusted statements of its estimated income and expenditure to the Member of the Executive Council for his or her approval, granted with the concurrence of the Member of the Executive Council responsible for Finance in that province; and

(d) may not incur any expenditure which exceeds the total amount approved in terms of paragraphs (b) and (c).

(2) If the Member of the Executive Council does not approve the governing body's statement of its estimated income and expenditure, the Member of the Executive Council must require the governing body to provide a revised statement to him or her within a specified period.

(3) The governing body of a public centre 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

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(a) report on the overall governance of the centre;

(b) duly audited or examined statement of income and expenditure; and

(c) balance sheet and cash flow statement.

(4) The governing body of a public centre must provide the Member of the Executive Council with such additional information as the Member of the Executive Council may reasonably require.

- (5) The governing body of a public centre must appoint a person registered as an auditor in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005), to audit the records and financial statements referred to in subsection (1).

[Subs. (5) substituted by s. 24 of Act 31/2007]

- (6) If the audit referred to in subsection (5) is not reasonably practicable, the governing body of a public centre must appoint a person to examine and report on the records and financial statements referred to in subsection (1) who -
- (a) is qualified to perform the duties of an accounting officer in terms of section 60 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
 - (b) is approved by the Member of the Executive Council for this purpose.
- (7) No person who has a financial interest in the affairs of the public centre may be appointed under this section.
- (8) If the Member of the Executive Council deems it necessary, he or she may request the Auditor-General to undertake an audit of the records and financial statements of a public centre.

25. Failure of governing body to comply with Act

- (1) If the governing body of a centre fails to comply with any provision of this Act under which allocation from money appropriated by the provincial legislature is paid to the public centre, or with any condition subject to which any allocation is paid to the public centre, the Member of the

Executive Council may call upon the governing body to comply with the provision or condition within a specified period.

- (2) If the governing body 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 centre in question.
- (3) Before taking action under subsection (2), the Member of the Executive Council must -
 - (a) give notice to the governing body of the public centre in question of the intention so to act;
 - (b) give such governing body 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 or as soon as reasonably practical after the action.

CHAPTER 4A

25A. Objectives of Chapter

The objectives of this Chapter are to provide for-

- (a) the determination of national education policy by the Minister in accordance with certain principles;

- (b) the consultations to be undertaken prior to the determination of policy, and the establishment of certain bodies for the purposes of consultation;
- (c) the publication and implementation of national education policy; and
- (d) the monitoring and evaluation of adult education and training.

25B. Determination of national education policy for centres

- (1) The Minister shall determine national education policy in accordance with the provisions of the Constitution and this Act.
- (2) In determining national policy for adult education and training at centres, the Minister shall take into account the competence of the provincial legislatures in terms of section 146 of the Constitution, and the relevant provisions of any provincial law relating to adult education and training.
- (3) Subject to the Constitution, national policy shall prevail over the whole or a part of any provincial policy on adult education and training if there is a conflict between the national and provincial policies.
- (4) Subject to the provisions of subsections (1) to (3), the Minister shall determine national policy for the planning, provision, financing, coordination, management, governance, programmes, monitoring, evaluation and well-being of the adult education and training system and, without derogating from the generality of this section, may determine national policy for-

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- (a) adult education and training management information systems, including the provision of data in accordance with the international obligations of the government;
 - (b) the organisation, management and governance of the national adult education and training system;
 - (c) facilities, finance and development plans for adult education and training, including advice to the Financial and Fiscal Commission;
 - (d) innovation, research and development in adult education and training;
 - (e) the organisation, management, governance, funding, establishment and registration of centres;
 - (f) curriculum frameworks, core syllabuses and adult education and training programmes, learning standards, examinations and the certification of qualifications, subject to the provisions of any law establishing a national qualifications framework or a certifying or accrediting body;
 - (g) co-operation between the Department and-
 - (i) other state departments;
 - (ii) provincial education departments;
 - (iii) local government; and
 - (iv) non-government organisations,

with a view to advancing the national education policy contemplated in this section and the Reconstruction and Development Programme;

- (h) international relations in the field of adult education and training; and
- (i) executive functions required to implement national education policy determined in terms of this Chapter, including the implementation of measures to address past discriminatory practices.

25C. Directive principles of national education policy

The policy contemplated in section 25B shall be directed toward-

- (a) the advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter 2 of the Constitution and in terms of international conventions approved by Parliament, in particular the right-
 - (i) of every person to be protected against unfair discrimination within or by the Department or centres on any ground whatsoever;
 - (ii) of every person to receive adult education and training and to have equal access to public centres;
 - (iii) of every person to gain access to adult education and training;
 - (iv) of every learner to be instructed in the language of his or her choice where this is reasonably practicable;

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- (v) of every person to the freedoms of conscience, religion, thought, belief, opinion, expression and association at centres;
 - (vi) of every person to establish, where practicable, centres based on a common language, culture or religion, as long as there is no discrimination on the ground of race; and
 - (vii) of every person to use the language and participate in the cultural life of his or her choice at centres;
- (b) enabling the adult education and training system to contribute to the full personal development of each learner, and to the moral, social, cultural, political and economic development of the nation at large, including the advancement of democracy, human rights and the peaceful resolution of disputes;
 - (c) achieving equitable education opportunities and the redress of past inequality in adult education and training provision, including the promotion of gender equality and the advancement of the status of women;
 - (d) endeavouring to ensure that no person, as a result of physical disability, is denied the opportunity to receive adult education and training to the maximum of his or her ability;
 - (e) providing opportunities for and encouraging lifelong learning;
 - (f) achieving an integrated approach to adult education and training within a national qualifications framework;

- (g) cultivating skills, disciplines and capacities necessary for reconstruction and development;
- (h) recognising the aptitudes, abilities, interests, prior knowledge and experience of learners;
- (i) encouraging independent and critical thought;
- (j) promoting a culture of respect for teaching and learning at centres;
- (k) promoting enquiry, research and the advancement of knowledge;
- (l) enhancing the quality of adult education and training and educational innovation-
 - (i) through systematic research and development in respect of adult education and training;
 - (ii) through monitoring and evaluation of adult education and training provision and performance; and
 - (iii) through the training of educators and adult education and training managers;
- (m) ensuring broad public participation in the development of adult education and training policy and the representation of stakeholders in the governance of all aspects of the adult education and training system;
- (n) achieving the cost-effective use of adult education and training resources and sustainable implementation of adult education and training services;

- (o) achieving close co-operation between the national and provincial governments on matters relating to adult education and training, including the development of capacity in the Department and the effective management of the national adult education and training system.

25D. Consultation on national education policy

- (1) Policy contemplated in section 25B shall be determined by the Minister after consultation with the Council of Education Ministers.
- (2) The policy contemplated in section 25B shall be determined by the Minister with the concurrence of the Minister of Finance in so far as it involves expenditure from the State Revenue Fund.
- (3) Nothing in this section shall limit the discretion of the Minister to consult whomsoever he or she wishes for advice on the determination of national education policy.

25E. Consultation on legislation

Legislation on a matter contemplated in section 25B shall be introduced in Parliament or, in the case of regulations, be published in the *Gazette* only after consultation between the Minister and-

- (a) the Council of Education Ministers, in respect of adult education and training at centres; and
- (b) all the parties in the Education Labour Relations Council established by section 40 of the Labour Relations Act, in

respect of any matter falling within the objectives of that Act.

25F. Publication of national education policy

The Minister shall within 21 days after determining policy in terms of section 25B-

- (a) give notice of such determination in the *Gazette* and indicate in such notice where the policy instrument with regard to which the notice was issued may be obtained; and
- (b) table the policy instrument contemplated in paragraph (a) in Parliament within 21 days after the notice has appeared in the *Gazette*, if Parliament is then in session, or, if Parliament is in recess, within 21 days after the commencement of the first ensuing session of Parliament.

25G. Monitoring and evaluation of adult education and training

- (1) The Minister shall direct that the standards of adult education and training provision, delivery and performance throughout the Republic be monitored and evaluated by the Department annually or at other specified intervals, with the object of assessing progress in complying with the provisions of the Constitution and with national adult education and training policy, particularly as determined in terms of section 25B.
- (2) Each directive issued in terms of subsection (1) shall comply with the provisions of any law establishing a national qualifications framework, and shall be formulated after consultation with the Council of Education Ministers.

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- (3) The Department shall undertake the monitoring and evaluation contemplated in subsection (1) by analysis of data gathered by means of adult education and training management information systems, or by other suitable means, in co-operation with provincial departments of education.
 - (4) The Department shall fulfil its responsibilities in terms of subsections (1) to (3) in a reasonable manner, with a view to enhancing professional capacities in monitoring and evaluation throughout the national education system, and assisting the competent authorities by all practical means within the limits of available public resources to raise the standards of adult education and training provision and performance.
 - (5) The Department shall prepare and publish a report on the results of each investigation undertaken in terms of subsection (3) after providing an opportunity for the relevant provincial education department to comment, which comment shall be published with the report.
 - (6) If a report prepared in terms of subsection (5) indicates that the standards of adult education and training provision, delivery and performance in a province do not comply with the Constitution or with the policy determined in terms of section 25B, the Minister shall inform the provincial political head of education concerned and require the submission, within 90 days, of a plan to remedy the situation.
 - (7) A plan required by the Minister in terms of subsection (6) shall be prepared by the provincial education department concerned, in consultation with the Department, and the Minister shall table the plan in Parliament with his or her

comments within 21 days of receipt, if Parliament is then in session, or, if Parliament is in recess, within 21 days after the commencement of the first ensuing session of Parliament.

25H. Functions of Council of Education Ministers in respect of adult education and training

The Council of Education Ministers must-

- (a) promote a national adult education and training policy which takes full account of the policies of the government;
- (b) share information and views on all aspects of adult education and training in the Republic; and
- (c) co-ordinate action on matters of mutual interest to the national and provincial governments.

25I. Functions of Heads of Education Departments Committee in respect of adult education and training

The Heads of Education Departments Committee established by section 41I of the Further Education and Training Act, 2006 (Act No. 16 of 2006), must-

- (a) facilitate the development of a national adult education and training system in accordance with the objectives and principles provided for in this Act;
- (b) share information and views on national adult education and training;

- (c) co-ordinate administrative action on matters of mutual interest to the Department and the provincial education departments; and
- (d) advise the Department on any matter contemplated in sections 25B to 25G and 25J in respect of adult education and training or on any other matter relating to the proper functioning of the national adult education and training system.

25J. Transitional arrangements regarding policy

Any policy determined in terms of the National Education Framework Act, 1996 (Act No. 27 of 1996), up to 31 December 2010 and applicable to Adult education and training Centres remains in force and effect until amended or repealed by the Minister in terms of this Act.

[Chapter 4A inserted by s. 5 of Act 25/2010]

CHAPTER 5

PRIVATE CENTRES

26. Establishment of private centre

Subject to section 27, any person may, at his or her own cost, establish and maintain a private centre.

27. Registration of private centre

- (1) No person may establish or maintain a private centre unless it is registered by the Head of Department.
- (2) The Member of the Executive Council must, by notice in the

Provincial Gazette, determine the grounds on which the registration of a private centre may be granted or withdrawn by the Head of Department.

- (3) The Head of Department must register a private centre if he or she is satisfied that the -
 - (a) standards to be maintained by such a private centre will not be inferior to the standard maintained in comparable public centres;
 - (b) admission policy of the private centre does not discriminate on the grounds of race; and
 - (c) private centre complies with the grounds for registration contemplated in subsection (2).

28. Withdrawal of registration of private centre

- (1) No withdrawal of the registration of private centre is valid unless -
 - (a) the owner of such a private centre has been furnished by the Head of Department with a notice of the intention to withdraw the registration, stating the reasons why such withdrawal is contemplated;
 - (b) the owner of such centre has been granted an opportunity to make written representation to the Head of Department as to why the registration of the private centre should not be withdrawn; and
 - (c) any such representations received have been duly considered.

- (2) The owner of the private centre may appeal to the Member of the Executive Council against the withdrawal of the registration of such a private centre.

29. Subsidies to registered private centre

- (1) The Minister may, by notice in the *Government Gazette*, determine norms and standards or conditions for the granting of subsidies to private centres after consultation with the Council of Education Ministers and with the concurrence of the Minister of Finance.
- (2) The Member of the Executive Council may, out of funds appropriated by the provincial legislature for that purpose, grant a subsidy to a private centre subject to subsection (1).
- (3) If conditions contemplated in subsection (1) under which a subsidy was granted have not been complied with, the Head of Department may terminate or reduce the subsidy from a date determined by him or her.
- (4) The Head of Department may not terminate or reduce a subsidy under subsection (3) unless -
 - (a) the owner of such private centre has been furnished with a notice of the intention to terminate or reduce the subsidy and the reasons therefor;
 - (b) such owner has been granted an opportunity to make written representations as to why the subsidy should not be terminated or reduced; and
 - (c) any such representations received have been duly considered.

- (5) The owner of a private centre may appeal to the Member of the Executive Council against the termination or reduction of a subsidy to such centre.

30. Declaration of private centre as public centre

- (1) The Member of the Executive Council may, with the concurrence of the Member of the Executive Council responsible for Finance in that province, enter into an agreement with the owner of a private centre in terms whereof such a centre is declared to be a public centre.
- (2) Notice of the change of status contemplated in subsection (1) must be published in the *Provincial Gazette*.

31. Functions of Member of Executive Council relating to private centre

- (1) The Member of the Executive Council may, by notice in the *Provincial Gazette*, determine requirements for -
- (a) the admission of learners of a private centre to examinations conducted by or under the supervision of the education department;
 - (b) the keeping of registers and other documents by such a private centre;
 - (c) criteria of eligibility, conditions and manner of payment of any subsidy to such a centre; and
 - (d) any other matter relating to such a centre which must or may be prescribed in terms of this Act.

- (2) Different requirements may be made under subsection (1) in respect of different centres.
- (3) The Member of the Executive Council must allow the affected parties a reasonable period to comment on any requirement he or she intends determining under subsection (1).

CHAPTER 6

QUALITY ASSURANCE AND PROMOTION

32. Quality assurance of public and private centres

- (1) Umalusi must, in accordance with the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001), read with the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), perform the functions relating to a Quality Council in respect of all qualifications offered by a public or private centre.
- (2) For the purposes of this section, “Umalusi” means the council established by section 4 of the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001).

[S. 32 substituted by s. 29 of Act 50/2002 and s. 6 of Act 11/2010]

33. Advice by NABAET

- (1) NABAET must advise the Minister on quality promotion and assurance.
- (2) The Minister must -

- (a) consider any advice given by NABAET; and
- (b) provide reasons in writing to NABAET if the Minister does not accept the advice.

(3) The Minister may act without the advice of NABAET if -

- (a) the matter is urgent; or
- (b) NABAET has failed to provide the advice within 14 days after such a request was made.

(4) If the Minister acts as contemplated in subsection (3) he or she must -

- (a) notify NABAET of such action; and
- (b) provide reasons in writing to NABAET for such action.

34. Report on quality assurance

An annual report on the quality of adult education and training must be made to the Minister within 90 days after the end of the academic year by -

- (a) NABAET in respect of the country as a whole; and
- (b) the Member of the Executive Council in respect of the relevant province.

CHAPTER 7

GENERAL

35. Duty of centres to provide information

- (1) A centre 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 centre must provide such information about the centre 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 and any centre which offers adult education and training must provide such information about the centre or quality of adult education and training as is reasonably required by NABAET.

36. Investigation at public centre

- (1) The Member of the Executive Council may appoint a person to conduct an investigation at a public centre if -
 - (a) the governing body of the public centre requests the appointment of such a person;
 - (b) circumstances arise at the public centre that -
 - (i) involve financial or other maladministration of a serious nature; or

- (ii) seriously undermine the effective functioning of the public centre;
 - (c) the governing body of the public centre has failed to resolve circumstances contemplated in paragraph (b); or
 - (d) the appointment is in the interest of adult education and training in an open 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 centre 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 governing body in question.

37. Name change of public centre

The governing body of a public centre may, with the approval of the Member of the Executive Council and by notice in the *Provincial Gazette*, change the name of the public centre.

38. Offences

- (1) Any person other than an organ of state, who without the authority of a public or private adult centre -

- (a) offers or pretends to offer any adult education and training programme or part thereof;
 - (b) confers a qualification which purports to have been granted by a centre, or in collaboration with a centre; or
 - (c) purports to perform an act on behalf of a centre,
- 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 centre 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 27(1), 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.

39. Limitation of liability

Neither the State, the NABAET 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.

40. Delegation of powers

- (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) NABAET;
 - (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, except the power to make regulations under section 41, and the performance of his or her duties in terms of this Act to any -
- (a) employee in a provincial department responsible for education and training; or
 - (b) 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 Head of Department 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 provincial education department.

- (5) A delegation in terms of this Act does not prevent the Minister, Member of the Executive Council, the Director-General or the Head of Department, as the case may be, from exercising such powers or performing such duties.

41. Regulations

The Minister or the Member of the Executive Council, as the case may be, may make regulations consistent with this Act on -

- (a) any matter which the Minister or the Member of the Executive Council are empowered or required to prescribe by regulation in terms of this Act;
- (b) any matter in respect of which regulations are necessary or expedient in order to achieve the purpose of this Act;
- (c) safety measures at public and private centres;
- (d) a national curriculum statement applicable to public and private centres;
- (e) a national process and procedures for the assessment of learner achievement for public and private centres;
- (f) a national process for the assessment, monitoring and evaluation of education in public and private centres;
- (g) initiation practices at public and private centres; or
- (h) norms and minimum standards for funding.

[S. 41 substituted by s. 30 of Act 50/2002]

CHAPTER 8

TRANSITIONAL AND OTHER ARRANGEMENTS

42. Existing centres, structures and bodies

- (1) Any public adult education and training centre which existed immediately before the commencement of this Act must be regarded as having been established in terms of this Act.
- (2) Any structure or body which existed at a public centre prior to the commencement of this Act continues to exist until it is replaced by a structure contemplated in this Act.

43. Exemption of existing private centre

Section 38(3) does not apply to a person who was providing adult education and training programmes at a private centre immediately prior to the date of commencement of this Act until a date determined by the Member of the Executive Council by notice in the *Provincial Gazette*.

44. Short title

This Act is called the Adult Education and Training Act, 2000.

[S. 44 substituted by s. 7 of Act 25/2010]