

DRAFT HIGHER EDUCATION AMENDMENT BILL, 2015

**AMENDMENTS PROPOSED TO
B36-2015
BY
THE DEPARTMENT OF HIGHER EDUCATION AND TRAINING
FOR CONSIDERATION
BY
THE PORTFOLIO COMMITTEE**

CLAUSE 1

1. On page 3, in line 29, to substitute “higher education college” for the following definition:

" **'higher education college'** means a higher education institution providing higher education, but with a limited scope and range of operations, and which meets the criteria for recognition as a higher education college as prescribed by the Minister in accordance with-
(a) section 3(3)(a); and
(b) section 20(1) for a public higher education college; or
(c) section 54(7)(b) for a private higher education college."

2. On page 3, in line 43, to insert a substitution for the definition of “local juristic person” of the following definition:

" **'local juristic person'** means a person established as a juristic person in South Africa in terms of the Companies Act, 2008 (Act 71 of 2008."

3. On page 3, in line 51, to omit the definition of “PFMA”;
4. On page 4, in line 14, to substitute the definition of “spouse” for the following definition:

" **'spouse'** means a person's partner in a marriage—
(a) recognised as such in terms of the laws of the Republic or a foreign country; or
(b) concluded in terms of Islamic or other religious rites;"
(c) in a same sex or heterosexual union which is intended to be permanent;"

5. On page 4, in line 21, to substitute the definition of “university” for the following definition:

" **'university'** means **[any university]** a higher education institution providing higher education and with a scope and range of operations including undergraduate and postgraduate higher education programmes, research and community engagement, which meets the criteria for recognition as a university prescribed by the Minister in accordance with-

(a) section 3(3)(a); and

(b) section 20(1) for a public higher education college; or

(c) section 54(7)(b) for a private higher education college.”; and

6. On page 4, in line 29, to substitute the definition of “university college” for the following definition:

" **'university college'** means a higher education institution providing higher education, but with a limited scope and range of operations and which meets the criteria for recognition as a university college as prescribed by the Minister in accordance with-

(a) section 3(3)(a); and

(b) section 20(1) for a public higher education college; or

(c) section 54(7)(b) for a private higher education college.”.

CLAUSE 3

1. On page 4, in line 46, to substitute section 3 for the following section:
 - “(1) The Minister must determine policy on higher education after consulting the CHE and such policy includes, but is not limited to:
 - (a) transformation goals and oversight mechanisms for such goals;
 - (b) articulation and recognition of prior learning across the education system.
 - (2) The Minister must-
 - (a) publish such policy by notice in the *Gazette*; and
 - (b) table such policy in Parliament.
 - (3) The Minister may, in terms of the policy contemplated in subsection (1) and in the interest of the higher education system as a whole, determine the scope and range of operations of—
 - (a) public higher education institutions;
 - (b) private higher education institutions; and
 - (c) individual public or private higher education institutions.”.

CLAUSE 31

1. On page 20, in line 45, to omit the word “private” from the heading.
2. On page 20, in line 46, to substitute section 51 for the following section:
 - (1) No local juristic person or foreign juristic 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 recognized as a juristic person in terms of the Companies Act, [1973] 2008 (Act [61]71 of [1973]2008), before such person is registered or conditionally registered 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-frameworks for higher education and trades and occupation on the National Qualifications Framework contemplated in section 7(b) and (c), read with section 13(1)(h) of the National Qualifications Framework Act.”.

CLAUSE 33

1. On page 21, in line 35, to omit “institutions” and to insert “colleges”.

CLAUSE 35

1. On page 21, in line 48, to substitute section 65AB for the following section:

“(1) The Minister may after consultation with the CHE and at the request of the council of the institution concerned, by notice in the Gazette, change the type of a higher education institution concerned or amend or remove any restrictions on the scope and operations of a public higher education institution contemplated in sections 3(3) and 20(5B).

(2) The Minister must, before acting under subsection (1), comply with the provisions of section 23(2), with the changes required by the context."

(3) The provisions of subsections (1) and (2) shall apply to registered private higher education institutions, subject to the necessary changes required by the context."

CLAUSE 35A

Amendment of section 65B of Act 101 of 1997 as substituted by section 24 of Act 23 of 2001, by the insertion of a new subsection (3)

1. On page 22, in line 3, to substitute section 65B for the following section:

"(1) A public higher education institution may, subject to its institutional statute and this Act, award diplomas and certificates and confer degrees.

(2) Save as is provided in section 65C, no diploma or certificate may be awarded and no degree may be conferred by a public higher education institution upon any person who has not-

(a) been registered as a student of such public higher education institution for the period prescribed by the senate of such institution;
and

(b) completed the work and attained the standard of proficiency determined through assessment as required by the senate of the public higher education institution, subject to section 7.

(3) The provisions of subsections (1) and (2) shall apply to registered private higher education institutions, subject to the necessary changes required by the context."

CLAUSE 36

1. On page 22, in line 32, to substitute section 65BA for the following section:

(1) Subject to the provisions of subsection (2), the council of a public higher education institution may, in consultation with the senate, withdraw and revoke any degree, diploma, certificate or other qualification that was awarded—

(a) on the basis of a material error on the part of the public higher education institution concerned: Provided that such withdrawal and revocation may only take place within a period not exceeding two years after the conferment concerned; or

(b) as a result of a fraudulent or dishonest act in connection with the obtaining of such degree, diploma, certificate or other qualification.

(2) Prior to the council of a public higher education institution withdrawing and revoking the conferment of a degree, diploma, certificate or other qualification-

(a) the council must—

(i) notify the recipient of the qualification concerned that a revocation and withdrawal is being considered;

(ii) provide the recipient with relevant information justifying the intended action;

- (iii) provide the recipient with an opportunity to obtain assistance and to present his or her case; and
- (iv) consider the submissions and representations of the recipient.
- (b) In the event that the withdrawal and revocation relates to circumstances contemplated in subsection (1)(b), the higher education institution must report the matter for criminal investigation as contemplated in section 66 (2)."
- (3) The provisions of subsections (1) and (2) shall apply to registered private higher education institutions, subject to the necessary changes required by the context.
- (4) In the event that any degree, diploma, certificate or other qualification that was awarded, is withdrawn or revoked, the relevant Quality Council responsible for the qualification or part-qualification and SAQA must be informed so as to amend the National Learner Record Database, if necessary.

CLAUSE 37

1. On page 22, in line 33, to amend section 65D(1) by substituting the word "HEQF" for "HEQSF".

CLAUSE 45

1. On page 24, in line 51, to substitute clause 45 for the following clause:
45. (1) This Act is called the Higher Education Amendment Act, 2015, and comes into operation on a date **[fixed by the President by proclamation]** to be determined by the Minister by notice in the Gazette.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

