



THE INDEPENDENT INSTITUTE OF EDUCATION

submission to call for comment on the

NATIONAL QUALIFICATIONS FRAMEWORK AMENDMENT BILL [B 20 – 2018]

28 August 2018

Attention:

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1 Introduction

The Independent Institute of Education (The IIE) welcomes the opportunity to submit its comment on the National Qualifications Framework Amendment Bill (“the Bill”) published on 17 August 2018 by the Portfolio Committee on Higher Education and Training (Portfolio Committee).

The IIE has a legitimate interest in the proposed amendment to the National Qualifications Framework Act, 2008¹ in its capacity as a registered private provider of higher education under the Higher Education Act, 1997² and it is in this context that it submits its comment to the Portfolio Committee. The IIE trusts that the Portfolio Committee shall give due consideration to this submission.

2 Overview

The IIE commends the Portfolio Committee on its effort in formulating the Bill that seeks to respond to prevailing issues affecting the nation. The IIE welcomes certain provisions of the Bill in particular those relating to the:

- (a) verification of all qualifications or part-qualifications by the SAQA.
- (b) formulation of criteria for evaluating foreign qualifications.
- (c) separate register for professional designations.
- (d) referral of qualifications and part-qualifications to SAQA for verification and evaluation.
- (e) offences and penalties which have a bearing on fraudulent qualifications.

The IIE does not support the establishment of register of misrepresented qualification. The reasons for this position are discussed later. We are of the opinion that the proposed register of misrepresented qualifications will be confused with the register of fraudulent qualifications or part qualifications.

In this submission, The IIE highlights inadequacies it has identified and discusses key issues that need further attention for the strengthening of the Bill. In general, The IIE is concerned about the following:

- (a) ambiguity and vagueness in certain provisions such as in the definitions.
- (b) Lack of clarity on how the Bill proposes the fraudulent foreign qualifications should be dealt with.
- (c) Lack of clarity in dealing with the qualifications in the period prior to the implementation of the NQF Act, 2008.
- (d) Lack of clarity if the registers will be published, confidentiality of such information, access to it and removal from the register.
- (e) The Bill is not clear about the reporting to the SAPS.

¹ Act No. 67 of 2008

² Act No. 101 of 1997

- (f) The Bill is not necessary consistent with the Higher Education Act, 1997 on the approach to the issue of fraudulent qualifications or part qualifications and this may cause a confusion to higher education institutions (see particularly section 65BA of the Higher Education Act compared to section 7 of the Bill at 32 A.)

In this submission, words which we have underlined suggest insertion and words in bold within brackets propose deletions in the Bill.

3 Comments on specific provisions of the Bill

(1) Section 1 Definition

The definition of 'authenticity' 'authentic', 'fraudulent qualification and part qualification', and **misrepresented qualifications or part qualifications**³ are vague, inadequate, open ended and confusing. These definitions need to be reworked so as to provide clarity on the concepts which they seek to define in the Bill.

(2) Section 3 Amendment of Section 3 of of the Act

- (a) We propose the amendment of section 3 (b) of the Bill in respect of **Registration of Private Education Institution** as follows:

- (3) Every private education institution or skills development provider offering education and training programme or any component thereof towards a qualification or part qualification must be registered by the relevant Department [**as a private education institution or skills development provider**] in terms of applicable law and accredited by the relevant QC to offer such qualification on part qualification.

- (b) The word Department is not defined in the principal Act and the Bill. Also whilst the Minister is defined in the principal Act as Minister of Higher Education and Training, the word Department cannot be taken in the context in which it is used above to mean Department of Higher Education and Training. The provision is broad such as to include independent schools which fall under the Department of Basic Education but which are registered by the Provincial Education Departments (PEDs).

- (c) The insertion of the word relevant prior to Department in the above section of the Bill remedies the lacuna which we have identified.

- (d) Further, the private education institutions are registered in terms of their applicable law so it is necessary to include this part in the above proposed provision of the Bill. For instance, the

³³ The IIE does not support the establishment of a Register of Misrepresented qualifications.

independent schools are registered in terms of the South African Schools Act, 1996 and the private higher education institutions are registered in terms of the Higher Education Act, 1997.

- (e) We propose the insertion under 1(a) of the definition of private education institution should the above section be inserted. This would be necessary to strengthen the interpretation of the Act.

(3) Section 4 Amendment of section 13 of the Act.

- (a) We welcome the insertion of (IA) (i) requiring the SAQA to maintain a separate register of professional designations and m (iii) requiring the SAQA to formulate and publish criteria for evaluating foreign qualifications.

- (b) **Section 4 (e) (insertion of section 1A)** gives factors that SAQA should consider when evaluating a qualification in terms of this Act. We think that this section is unnecessary as it is too elaborate and also contentious in parts as it is directing SAQA to verify based on (general) assumptions.

- i. For instance, *(b) little or no attendance to classes and (c) little coursework, if any, and few or no assignments*, does not necessarily have much to do with the authenticity of a qualification. What matters is whether the qualification or part qualification is offered in accordance with the relevant or applicable law.
- ii. We believe that section (4) (e) amounts to overstating the law and is excessive in respect of directing SAQA in this regard. **We propose that section (4) (e) of the Bill be deleted.** However, should the above provision be maintained then the following correction would be necessary in section 4 (e) (h):

- (h) a qualification is obtained within a very short period, in less than the prescribed **[national]** notional hours on an average qualification.

- (c) We support the **insertion of (1B) read with (IA) (iii)** requiring the SAQA to establish and maintain a register of fraudulent qualifications or part qualifications.

We further submit the following in relation to the above section:

- (d) The content in the Bill as relating to fraudulent qualifications and part qualifications may be best dealt with if organised in a separate chapter. For instance, **CHAPTER 7** and name it **FRAUDULENT QUALIFICATIONS AND PART QUALIFICATION** and then organise all relevant provision in the Bill under this Chapter. This means that the current Chapter 7 would become Chapter 8.

- (e) The Bill needs to deal clearly with the following in respect of the contemplated register:

- i. The register needs to consist of Part A (National Qualifications) and Part B (Foreign Qualifications). In this regard the Bill needs to define “Foreign Qualification”
- ii. The Bill should deal with matters relating to the confidentiality of the register and clarify how the register may be accessed or disclosed.
- iii. The Bill should clarify what the purpose of the register is i.e. what will be achieved by setting up such a database at the SAQA of fraudulent qualifications or part qualifications.
- iv. The Bill deals with the content of the Register in (1B).
 - o However, the Bill needs to define what is meant by the “*certificate mill*” in section 4 (e) (1B) (f).
 - o It also needs to clarify the details that are vague e.g. *Does the “holder of the qualification or part qualification” refer to the institution or the person that would have defrauded the document.*
 - o What does the Bill envisage by (b) *description of the document concerned?* This is too broad such as to be vague and thus difficult for SAQA to implement or to be consistent in ensuring the implementation of this section as a result of the vagueness.
- v. The Bill should make provision for inquiries to be made to the SAQA on the register for any person to establish whether her or his name appears on the Register and provision for a process if erroneous entry is found.
- vi. The Bill needs to provide clarity on the consequences of entry of a person or institution into the Register.
- vii. The Bill needs to provide for the Removal of the entry from the register i.e. expungements of the record. For instance, a provision may be made in the Bill for any person to apply to SAQA after a certain period e.g. 3 years for the removal of their name or particulars from the register and provide for circumstances in which a person may not be removed from the Register.

(f) **We do not support insertion of (1B) read with (IA) (ii) in respect of the Register of Misrepresented Qualifications.** We submit that section (IA) (ii) requiring the SAQA to establish a registrar of misrepresented qualifications and related provision under (1B) be deleted for the following submissions:

- i. the definition itself in section 1 (a) says that the qualification was erroneously issued by a registered and accredited or recognised education institution.
- ii. It is not clear how then creating a register and entering the above information remedies the situation.

- iii. The contemplated SAQA process in relation to misrepresented qualifications or part qualifications is arbitrary. It does not consider the audi alteram partem principle of natural justice. The process is not in line with requirements of a just administrative action embedded in South African law which includes procedural fairness.
- iv. Once SAQA has determined that a particular qualification is misrepresented in terms of its own process, it should not proceed to record the details in the register without providing a right to reply to the other party, to present their case and to challenge the SAQA decision.
- v. The IIE believes that the establishment of the the register of misrepresented qualifications and part qualification will have adverse consequences if the above issues are not addressed in the Bill. Individuals and education institutions will end up in the register(s) without a recourse to be removed from it or remedy if entered erroneously in the register(s) or an opportunity for a review of the SAQA decision or to challenge such a decision.
- vi. We support the remedy provided in section 65BA of the Higher Education Act as being the most appropriate remedy to deal with an erroneous award of a qualification or part qualification.

65BA Withdrawal and revocation of degree, diploma, certificate or other qualification

(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

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

(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.

- vii. the above process, which is equally applicable to private higher education institutions, is procedurally and substantively fair as a remedy to the problem whilst the Bill lacks in respect of the “right to be heard” and “procedural fairness”.

viii. We note that the other statutes (e.g. GENFEQTA) do not necessarily have enabling provision for the withdrawal and/or revocation of the qualification to the extent provided for in the Higher education Act and we suggest that that lacuna may be remedied generally in the NQF Act by adopting a similar approach to withdrawal and make it applicable to other institutions or relevant bodies e.g. Umalusi that award qualifications.

(g) We would have supported the insertion of (1C) but we do not in this regard as we have already submitted that the section on which it relies which relate to misrepresentation of qualifications should be deleted. Despite our position, we have noted that the Bill has erred in suggesting that section 13 (1) (h) refers to verification and evaluation processes. It does not. If we are correct then section 4 (e) at (1C) needs to be attended to if it is determined that this section should be retained in the Bill.

(4) Section 7 Insertion of section 32 A

(a) The Bill needs to make provision for the reporting of a matter relating to a fraudulent qualification or part qualification for criminal investigation. We believe that the SAQA, QCs and Professional Bodies have a role to play in this regard generally and Education Institutions specifically in respect of their own qualifications.

(b) SAQA should incur the obligation to open cases with SAPS against the (alleged) holder of the fraudulent qualification or invalid qualification following a verification or evaluation process contemplated in section 7 at 32 A. Alternatively, the QC or the Professional Body may be required to open a case against such (alleged) holder of the fraudulent qualification or part qualification.

4 Contact details

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