**3. Report of the Portfolio Committee on Higher Education and Training on the National Qualifications Framework Amendment Bill [B 20 – 2018] (National Assembly – sec 75), dated 15 November 2018**

The Portfolio Committee on Higher Education and Training, having considered the ***National Qualifications Framework Amendment Bill [B 20 – 2018]*** (National Assembly – sec 75), referred to it and classified by the Joint Tagging Mechanism as a section 75 Bill, reports in terms of National Assembly Rule 288 that it has agreed to the Bill as amended, namely the **National Qualifications Framework Amendment Bill [B 20A - 2018].**

**1. Purpose of the Bill**

The National Qualifications Framework Amendment Bill [B20 – 2018] seeks to amend the National Qualifications Framework Act, 2008 (Act No. 67 of 2008) in order to strengthen the principal Act in various aspects by rectifying inconsistencies and closing gaps currently in the principal Act.

The Bill also seeks to create an enabling mechanism for the South African Qualifications Authority (SAQA) and the three Quality Councils (QCs) to have legislative competence to address challenges with regard to fraudulent or misrepresented qualifications or part-qualifications. In this regard, a provision is made for the referral of all qualifications or part-qualifications presented for study, employment or appointment to the SAQA for verification or evaluation. Furthermore, a provision is also made for the referral of fraudulent qualifications or part-qualifications to the relevant professional body. A provision has also been made for offences in respect of fraudulent qualifications or part-qualifications.

The Bill empowers the SAQA to establish and maintain separate registers for professional designations, misrepresented qualifications and part-qualifications, and fraudulent qualifications and part-qualifications. The SAQA is also empowered to evaluate foreign qualifications or part-qualifications and to formulate and publish criteria for evaluating foreign qualifications or part-qualifications.

A provision has also been made to allow the SAQA, as the body with overall responsibility for the National Qualification Framework (“NQF”) and for the coordination of the sub-frameworks, to be consulted when the QCs advise the Minister on matters relating to their sub-frameworks. The rationale for this amendment is to mitigate the current situation where QCs do not consult with the SAQA about issues pertaining to the development and management of their sub-frameworks, and other matters related to their quality assurance role. This situation creates a risk for the enduring public credibility of the NQF and the quality assurance regime.

**2. Process followed by the Committee**

The National Qualifications Framework Amendment Bill [B 20 – 2018] was referred to the Portfolio Committee on Higher Education and Training on 12 June 2018. The Bill was classified as a section 75 Bill as per Joint Rule 160(6).

On 01 August 2018, the Committee received an introductory briefing on the Bill by the Department of Higher Education and Training, which outlined the key features of the Bill and explained why it was necessary.

Subsequent to this meeting, on 12 August 2018, the Committee published the advert calling for interested people and stakeholders to submit written comments on the Bill, in terms of section 59 (1) (a) of the Constitution. In addition, the Committee issued press statements, conducted radio interviews, sent emails to the identified stakeholders (all public TVET Colleges and universities, the Sector Education and Training Authorities, Community Colleges, quality councils, the South African Qualifications Authority, Universities South Africa, South African College Principals Organisation, labour union federations, Business Unity South Africa, Higher Education Network, Catholic Institute of Education and professional bodies, the Association for Skills Development in South Africa, etc.). In addition to the invitation for public comments, the Committee forwarded the advert to all Parliamentary committees should there be any interest in participating in the process. The same advert was published on the Parliamentary website and on different social media platforms to enable electronic access.

The Committee received altogether 16 submissions from different stakeholders. Public hearings were held on 05 September 2018 where seven out of the sixteen stakeholders who made written submissions, made oral presentations to the Committee.

On 12 September and 11 October 2018, the Committee had meetings to deliberate on the Department’s response with regard to the stakeholders’ written and oral submissions. Furthermore, the Committee considered the input of the Parliamentary legal adviser on these submissions. The Committee adopted the motion of desirability so as to proceed to the clause by clause deliberations on the Bill.

At the meeting on 17 October 2018, the Committee resolved to undertake a special oversight visit to the South African Qualifications Authority (SAQA). The Committee conducted its visit to the SAQA on 23 October 2018. The objectives of the visit were: to obtain insight into the entity’s process and operations relating to the verification of qualifications and part-qualifications; to assess the readiness of the SAQA to implement the new functions/responsibilities that are introduced by the Bill; to assess the current and future capacity needs of the SAQA with respect to the registration, verification and evaluation functions and to undertake a site visit to the different units within the SAQA responsible for verification of qualifications. During this oversight visit, the Committee was presented with an oral submission from Dr R Blom: Dean of Research at the Da Vinci Institute about her written submission on the NQF Amendment Bill.

On 24 and 30 October 2018, the Committee deliberated on the detail of the Bill, clause by clause, and considered proposals for redrafting of specific clauses of the Bill made by stakeholders, the parliamentary legal adviser, the state law adviser and the Department.

On 7 and 8 November 2018, the Committee considered the proposed redrafted amendments to the Bill and resolved that the A-list and B-Bill be drafted.

On 14 November 2018 the Committee considered the NQF Amendment Bill [B 20A – 2018] and the [B 20B – 2018], and adopted the NQF Amendment Bill [B 20B – 2018] with amendments.

Whilst the Bill, as amended by the Committee, enjoyed the support of the majority of Committee members, the DA members expressed concerns regarding the inclusion of Clause 7 32A (1). Furthermore, the DA reserved their right to support the Bill, stating that the Bill is superfluous, onerous upon employers and educational institutions and that it relies on a database that may not be able to meet the demands put upon it.

The Committee, having considered the **National Qualifications Framework Amendment Bill [B 20 - 2018]**, reports on the Bill with the following amendments and recommends that the House adopts the **National Qualifications Framework Amendment Bill [B 20A - 2018].**

**3. Amendments**

**LONG TITLE**

1. On page 2, in line 5, after “qualifications” to insert “or part-qualifications”.

2. On page 2, in line 7, after “to” to insert “the”.

**CLAUSE 1**

**Amendment of section 1 of Act 67 of 2008, as amended by section 8 of Act 26 of 2010**

1. On page 2, in line 11, after “registered" to insert “, established, declared or merged”.

2. On page 2, in line 14, to omit “legally” and to substitute “lawfully”.

3. On page 2, in line 16, after “is” to insert “lawfully”.

4. On page 3, in line 5, to omit “ranking” and to substitute “placement”.

5. On page 3, from line 7, to omit the definition of ‘foreign institution’ and substitute “‘foreign institution’ means a foreign juristic person offering or issuing an authentic qualification of part-qualification,”.

6. On page 3, from line 9, to omit the definition of “fraudulent qualification or part-qualification” and to substitute:

" **'fraudulent qualification or part-qualification'** is a verified qualification or part-qualification registered on the NQF or an evaluated foreign qualification or part-qualification, which is found to be forged, fraudulently obtained or awarded in contravention of this Act, and has been declared as such by a court of law;".

7. On page 3, after line 14, to insert the following:

“(e) by the insertion after the definition of “learning” of the following definition:

'**learner achievements'** means a qualification or part-qualification contemplated by this Act;".

8. On page 3, from line 16, to omit the definition of “misrepresented qualification or part-qualification” and to substitute:

" '**misrepresented qualification or part-qualification'** is a qualification or part-qualification—

*(a)* which is not authentic; or

*(b)* where the certificate of award or the SAQA Certificate of Evaluation was erroneously issued or altered in any way;".

9. On page 3, in line 30, to omit "that facilitates the management of the NQF,".

10. On page 3, after line 31, to insert the following:

“(f) by the insertion after the definition of “SAQA Act” of the following definition:

" '**SAQA Certificate of Evaluation**' means a certificate issued by the SAQA indicating the authenticity of the foreign qualification and its placement within the NQF;".

11. On page 3, in line 35, to omit "Higher Education Act or".

**CLAUSE 3**

**Amendment of section 3 of Act 67 of 2008, as amended by section 9 of Act 26 of 2010**

1. On page 3, in line 57, after “the” to insert “relevant”.

**CLAUSE 4**

**Amendment of section 13 of Act 67 of 2008, as amended by section 12 of Act 26 of 2010 and section 12 of Act 23 of 2012**

1. On page 4, in line 18, after “institution” to insert “or QC”.

2. On page 4, from line 45, to omit subsections (1A) and (1B) and to substitute:

“(1A) When verifying or evaluating a qualification or part-qualification in terms of this Act, the SAQA must, amongst other things, consider whether the education institution, skills development provider or foreign institution is registered by law and whether the qualification or part-qualification is authentic and complies with the policy and criteria contemplated in section 13(1)*(h).*

(1B) If after verification or evaluation, a qualification or part-qualification is found to be inauthentic or is found to be a misrepresented qualification or part-qualification or is declared by a court of law to be a fraudulent qualification or part qualification, the SAQA must refer such a finding or information to the relevant professional body, as may be prescribed, and subject to subsection (1C):

*(a)* must inform the requester and the holder of the qualification or part-qualification of the finding;

*(b)* must record such findingin the register of misrepresented qualifications and part-qualifications or fraudulent qualifications and part-qualifications; and

*(c)* the requester must provide the SAQA with all particulars of the holder to enable the SAQA before recording such finding in the relevant register, to give notice and comply with section (1C).”.

3. On page 5, from line 23 to omit “and” and to substitute “.”.

4. On page 5, from line 24 to omit paragraph *(f)*.

**CLAUSE 5**

**Amendment of section 27 of Act 67 of 2008, as amended by section 14 of Act 26 of 2010**

1. On page 5, in line 35, to omit “providers” and to substitute “provider”.

2. On page 5, in line 40, to omit “cost” and to substitute “charge”.

3. On page 5, in line 40, after “SAQA” to insert “and within 30 days after complying with all the requirements applicable to quality assurance relating to the qualification or part-qualification”.

**CLAUSE 7**

**Insertion of sections 32A and 32B in Act 67 of 2008**

Clause rejected.

**NEW CLAUSE**

1. That the following be a new clause:

**Referral of a qualification or part-qualification to the SAQA for verification and evaluation**

“**32A.** (1) *(a)* All organs of state, employers, education institutions, skills development providers and QCs must authenticate, prior to appointment or registration, if the qualification or part-qualification which is presented to them for the purposes of appointment, study or for any other related purpose, is registered on the national learners’ records database.

(*b*) If not registered on the national learners’ records database, such qualification or part-qualification must be referred to the SAQA for verification and evaluation.

*(c)* The Minister may in consultation with the SAQA exempt any category of persons, or entity contemplated in paragraph *(a)* from the provisions of this section by notice in the *Gazette*.

(2) If after verification or evaluation of the qualification or part-qualification—

*(a)* the SAQA establishes that the qualification or part-qualification is an authentic qualification or part-qualification, but is not on the national learners’ records database, the SAQA must record such a qualification or part-qualification on the national learners’ records database; or

*(b)* the SAQA must comply with section 13 (1B)*(a)* and *(b)* and shall refer such a finding or information to the relevant body.

(3) The SAQA must perform its functions in terms of subsection (1) and (2) within 30 days so as to not prejudice the holder of the qualification or part-qualification.

**Offences and penalties**

**32B.** (1) A person is guilty of an offence if the person—

*(a)* makes or causes to be made a false entry in the national learners’ records database or the misrepresented or fraudulent register;

(b) is a party to the falsification and dissemination or publication of a qualification or part-qualification of any person or the records of the national learners’ records database or the misrepresented or fraudulent register; or

*(c)* with a fraudulent purpose, knowingly provided false or misleading information in any circumstances in which this Act requires the person to provide information or give notice to another person.

(2) A person, an education institution or skills development provider is guilty of an offence if a person, the education institution or skills development provider claims to be offering a qualification or part-qualification registered on the NQF whereas that qualification or part-qualification is not so registered.

(3) A person is guilty of an offence, if such a person falsely or fraudulently claims to be holding a qualification or part-qualification registered on the NQF or awarded by an education institution, skills development provider, QC or obtained from a lawfully recognised foreign institution.

(4) Any person, education institution, skills development provider, foreign institution is guilty of an offence if it falsely claims to be registered and accredited as an education institution, skills development provider or foreign institution in terms of the laws of the Republic or foreign law.

(5) If a person, education institution its directors or board, a foreign institution its agents or directors or board, or a skills development provider is convicted of any offence under this Act, the court that imposes the sentence shall consider as an aggravating factor the fact that the offence was—

*(a)* committed with the intent to gain financially, or to receive any favour, benefit, reward, compensation or any other advantage; or

*(b)* gained financially, or received any favour, benefit, reward, compensation or any other advantage.

(6) Any person convicted of an offence in terms of this Act, is liable, in the case of a contravention of sections 32(B)(1), 32(B)(2), 32B(3) or 32(B)(4) to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

(7) Any person, education institution, director or a board member of an education institution, foreign institution or its agents, or skills development provider in contravention of section 32(B)(4) may be ordered to close its business and declared unfit to apply and register any education institution, skills development provider or become an agent of any foreign institution in the Republic offering a qualification or part-qualification on the NQF or foreign qualification or part-qualification for a period not exceeding 10 years.

**CLAUSE 8**

**Substitution of the Long Title of Act 67 of 2008**

1. On page 7, in line 14, to omit “its” and to substitute “their”.

**CLAUSE 9**

**Short title and commencement**

1. On page 7, in line 20, to omit “9” and to substitute “9(1)”.

2. On page 7, after line 22, to insert the following:

"(2) Different dates of commencement may be so determined for different sections of the Act.”.

Report to be considered.