**THE INDEPENDENT INSTITUTE OF EDUCATION**

comments on the

**NATIONAL QUALIFICATIONS FRAMEWORK AMENDMENT BILL [ B 20 – 2018]**

16 February 2019

1. **Overview**

The IIE welcomes certain provisions of the Bill in particular those relating to the:

1. verification of all qualifications or part-qualifications by the SAQA.
2. formulation of criteria for evaluating foreign qualifications.
3. separate register for professional designations.
4. register of misrepresented qualifications and part qualificaitons.
5. register of fraudulent qualifications and part qualifications.
6. referral of qualifications and part-qualifications to SAQA for verification and evaluation.
7. offences and penalties which have a bearing on fraudulent 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:

1. definition of “authenticity”, “fraudulent qualification and part-qualification” and “misrepresented qualification and part qualification” which needs strenghtening.
2. Lack of clarity on how the Bill proposes the fraudulent foreign qualifications should be dealt with.
3. Lack of clarity in dealing with the qualifications in the period prior to the implementation of the NQF Act, 2008 and other forms of certification such Short Learning Programmes (SLPs) should be dealt with.
4. Lack of clarity if the registers will be published, confidentiality of such information, access to it and removal from the register.
5. The Bill is not clear about the reporting to the SAPS.

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

1. **Comments on specific provisions of the Bill**
2. **Section 1 - Definition**

The definition of **‘authenticity’** and **‘authentic’**,

The definition of “authenticity” and authentic is not clear and this is caused by the use of the word “include” which raises an anomaly as to what it is that is not mentined which is included. We suggest that this definition may be remedied in the following:

**“authenticity” –** means a qualification or part-qualification or other certification lawfully obtained and excludes a qualification or part-qualification or other certification erroneously awarded, misrepresented, forged or fraudulently obtained.

­The inclusion of other certification is important in that there are other historic qualifications prior

to the NQF Act or Short Learning Programmes (a form of other certification of great value in the market) that also need to be protected from misrepresentation and qualifications fraud.

(b) Thedefifinition of **‘fraudulent qualification and part qualification’,**

**“Fraudulent qualification and part qualification or other certification”**  is a qualification or part-qualification [**registered on the NQF or an evaluated foreign qualification or part-qualification,]** or other certification, which is inaunthetic, and has been declared as such by a court of law.

(c) Thedefifinition of **‘misrepresented qualification and part qualification’,**

**“Misrepresented qualification and part qualification or other certification”**  is a qualification or part-qualification or other certification, which is inaunthetic, and in the case of misrepresented qualification and part-qualification has been registered as such by SAQA in the relevant register.

(d) Insertion of the definition of **“private education institution”**

It is common course that the Bill has come out with a compound concept of “private education institution” to refer to “private higher education institutions registered under Higher education Act, 1997”, “independent schools registered under the South African Schools Act, 1996” and “private colleges registered under the Continuing Education and Training Act, 2006. We submit that it is thus important to define this all encompassing concept to avoid confusion and as the aid to the interpretation of the NQF Act in particular as the concept of “skills development provider” is defined in the Bill.

**“private education institution”** means an independent educational institution registered and accredited in terms of the relevant law.

1. **Section 4 - Amendment of section 13 of the Act.**
2. We support that SAQA should -
3. establish and maintain a register of misrepresented qualifications with respect of records of education and training; and
4. establish and maintain a register of fraudulent qualifications or part qualifications.

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

1. the register of misrepresented qualifications is supported subject to this register being subjected to Promotion of Administrative Justice Act, 2000.
2. The Bill does not deal clearly with how a “ misrepresented or fraudulent foreign qualification” should be dealt with after SAQA has found it to be misrepresented or if declared by the court as fraudulent. One has to assume that they will also appear in the two registers contemplated in the Bill . In other words the Bill has intention to deal with the misrepresented and fraudulent foreign qualifications but it deals with this aspect too cursory.
3. The Bill should deal with matters relating to the confidentiality of the register and clarify how the register may be accessed or disclosed.
4. 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. It really is not clear, as good as the idea seems to be, what the purpose or gain would be to the society of having the two registered contemplated in the Bill.
5. 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.
6. The Bill needs to provide clarity on the consequences of entry of a person or institution into the Register.
7. 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.

However, we believe that the above concerns may be address if the Bill should empower SAQA to develop a policy on misrepresentation and fraudulent qualifications which will address the above expressed in (b) – (g).

1. The Bill needs to make provision for the reporting of a matter relating to a fraudulent qualification or part qualification for criminal investigation. The process which is proposed under section (1B) in section 4 (e) of the Bill does not remedy the problem. It requires SAQA to inform the requester and the holder of the qualification and the professional body that the qualification is misrepresented or fraudulent. There are certain concequences that would arise from this for instance if the requester is a potential employer the holder of the qualification will not be employed. We believe that the SAQA, QCs and Professional Bodies have a role to play with regard to reporting qualifications to SAPS and education institutions should do so in respect of their own qualifications. Without cases being brought to court the offences and penalties under 32B will remain on paper.
2. 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 of the Bill 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.
3. **Contact details**

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