**Department of Higher Education and Training response to comments and submissions made to the Select Committee on Education and Recreation on National Qualifications Framework Amendment Bill [B - 2018]**

| **Page #** | **Original Clause** |  | **Department’s response and reasons thereof** |
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| **UNIVERSITIES SOUTH AFRICA USAF PROPOSED AMENDMENTS** | | | |
| **3** | **Clause 1:**  **“authenticity –**   1. in relation to a qualification or part-qualification, includes a qualification or part-qualification that is – 2. registered on the NQF; 3. offered by a registered, established, declared or merged and accredited education institution or skills development provider in terms of this Act or any other applicable law; and 4. lawfully obtained; and 5. in relation to a foreign qualification, means a qualification or part-qualification that is lawfully obtained from a foreign country and is evaluated by the SAQA in terms of this Act”. | The recommendations of USAf:  Replace the following phrase in clause 1(b)  is lawfully obtained from a foreign country and is evaluated by the SAQA in terms of this Act”’  **with**  “was lawfully obtained in a foreign country and has been evaluated by the SAQA as a qualification or part-qualification that could be placed on the South African NQF” | The Department responds as follows to the submission by USAf:  The recommendation by USAf is not materially different from the existing clause it seeks to replace. A foreign qualification has to be verified first in order to ascertain its authenticity. Secondly, that foreign qualification has to be compared with a South African qualification for placement within the NQF.  USAf has not pointed out the mischief it seeks to address by its proposed substitution save that this proposed amendment is not material. USAf has only amended the phrase “from a foreign country” to “in a foreign country” and “for placement within the South African NQF” to “that could be placed on the South African NQF.  The Department is of the view that the Bill does not fail in its object to distinguish between a qualification and certification as set out by USAf. A qualification may be a certificate, a diploma or a degree. |
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| **3** | **clause 1(c)**  **Fraudulent qualifications or part-qualifications** 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”. | USAf recommends that the definition of fraudulent qualifications or part-qualification be amended as shown below and it has also added a new definition of fraudulent certificate or transcripts of results:   1. **Fraudulent qualifications or part-qualifications** is a claimed qualification or part-qualification or professional designation claimed by an applicant which after evaluation is found to be bogus”. 2. **Fraudulent certificate or transcript of results** is a false or forged certificate or transcript which purports to certify educational achievements and/or professional registration that the applicant does not have” | The proposed amendment by USAf ignores the fact that a professional designation is not a qualification or part-qualification and cannot be included in the definition of fraudulent qualification or part-qualification.  The word “bogus” is not a legal terminology.  The issue of academic transcripts will be dealt with when they are fully incorporated into the records of learning; At that point in time, it will be dealt with as part qualification; and this Act already covers part qualification should the transcripts of results be so incorporated.  The concern of USAf relating to the claiming of a qualification or part-qualification has been addressed. Section 32B(3) of the Amendment Bill specifically provides that “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”. This section demonstrates that when a person presents a qualification or part-qualification for any other purpose of set out in the NQF Act, such a person is claiming to be holding a qualification. It is not necessary to include the word “claimed”. |
| **4** | **clause 1(c)**  **Evaluate** means the process followed by the SAQA to verify the authenticity of a foreign qualification and compared it with a South African qualification for placement within the South African NQF, and evaluation has a corresponding meaning”. | USAf recommends**:**  to replace “**verify** the authenticity with “**establish** the authenticity”. | The Department is of the view that the authenticity of a qualification is determined by verification. The purpose of verification is to establish the authenticity of a qualification or part-qualification. The proposed recommendation of USAF seeks to weaken the Bill by taking off the centre purpose of the Bill, i.e. “verification” from SAQA and this recommendation seeks to retain the status quo.  The Department does not support the recommendation by USAf. |
| **3** | **clause 1(e)**  **learner achievements** mean a qualification or part-qualifications contemplated by this Act”. | USAf recommends that the definition be deleted or insert a new definition that does not limit learner achievement to a qualification or part-qualification. Altered grades for subjects/courses are an important part of the problem, and the veracity of these is important. | Curriculum and subjects are not part of what is registered on the NQF. The qualifications and part qualifications comprise the learning outcomes and exit level outcomes. Subjects/courses and the grades attached are dealt with by the Institutions and the Quality Council; and are verified at that point before the final achievement is uploaded onto the NQF. |
| **4** | **clause 4(a)**   1. verify all qualifications or part-qualifications referred to it in terms of section 32A and make a decision on the status thereof”. | USAf recommends that “verify all qualifications” should read “**evaluate** all qualifications”. | The underlying feature of this recommendation is to remove the verification role of SAQA. The inclusion of the term “verification” addresses a core aspect of what this Amendment Bill seeks to do, as directed by Cabinet on 2016, which was to strengthen SAQA’s role to deal with misrepresentation and fraud and to establish registers.  **Evaluate** is linked to the foreign qualification process performed by SAQA; included in the evaluation of foreign qualifications is verifying the authenticity of the institution and its standing in its country of origin.  The USAf recommendation seeks to retain the status quo wherein the role of SAQA was only limited to evaluation. The proposed USAf recommendation is aimed at weakening the Bill.  The recommendation of evaluation on the South African qualification is misplaced since evaluation is only located on foreign qualification. |
| **4** | **clause 4(d)**  (m) provide a verification or an evaluation and advisory service consistent with this Act | USAf recommends should read:  “provide a verification and an evaluation and advisory service” | The conjunction “or” between a verification **or** an evaluation and advisory service recognises that verification or an evaluation are two separate concepts. Verification is applied to the activity related to the verification of a South African Qualification. **Verification** is applied to the activity related to the verification of a South African Qualification whereas **evaluation** of a foreign qualification includes comparability and verification of the authenticity of the institution and qualification in the country of origin;  The Department deliberately used the conjunction “or” in order to separate local verification from a foreign qualification evaluation. The Department does not support this recommendation. As indicated above. Local and foreign issue. |
| **4** | **clause 4(e)(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):   1. must inform the requester and the holder of the qualification or part-qualification of the finding; 2. must record such finding in the register of misrepresented qualifications and part-qualifications or fraudulent qualifications and part-qualifications; and 3. 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). | USAf recommends:  if   1. after verification or evaluation, SAQA finds a claimed qualification or part-qualification to be inauthentic; or misrepresented; or 2. a court of law finds a claimed qualification or part-qualification to be forged, fraudulently obtained or awarded in contravention of the Act, SAQA must refer such a finding to such professional body as may be applicable and must, subject to subsection (1C): 3. inform the requester… 4. record such finding…. | The recommendation in relation to “claimed” has been addressed above. |
| **2** | **Clause 5(a)(f)**  “in consultation with the SAQA advise the Minister on matters relating to its sub-framework”. | USAf is concerned with the relationship between three Quality Councils and recommends that the clause should read “after consultation with affected QCs and SAQA”. | The in consultation is only limited to NQF matters. The Quality Councils are not autonomous bodies in terms of the NQF Act; they are Quality Councils and are part of a broader system of the NQF. As such consultation particularly on matters relating to the NQF, and advising the Minister **in consultation with one another is** essential and critical. This “protects” both the QCs and SAQA and the NQF system, as it manages potential disparities which could arise of one of the parties advise the Minister or determines policy which is not aligned to the NQF Act.  The *System of Collaboration* supports “**in consultation**” which requires communication, collaboration and cooperation.  Contradictory advice has already hampered the system - e.g. Policies which are non-aligned. |
| **4** | **clause 5(c)(ii)**  submit at no charge to the SAQA and within 30 days | USAf provides that the clause be deleted. | The heart of this legislation is to provide a credible and up to date national database. This can be achieved if the QCs provide such data to SAQA (as per the current NQF Act requirement) timeously (30 days); and the issue of money should not be an impediment to achieving the national purpose. At the moment SAQA has to pay for data from one of the QCs, for example; and data uploads from the QCs to SAQA sometimes takes up to 8 months.  The issue is to ensure the public interest function is not frustrated due to the lack of funds by SAQA to ensure that the NLRD is current and updated.  The USAf recommendation seeks to retain the status quo; resulting in the current unsatisfactory situation of data not being uploaded to SAQA on time and at no cost.  The USAf recommendation seeks to retain the unsatisfactory status quo. The Department does not support the recommendation. |
| **6** | **clause 7**  32B(1). A person is guilty of an offence if the person   1. makes or causes to be made a false entry in the NLRD or the misrepresented or fraudulent register; or 2. is a party to the falsification and dissemination … 3. with a fraudulent purpose, knowingly provid**ed** false or misleading information in any circumstances in which this Act requires the person to provide information or give notice to another person. | USAf recommends:   1. makes a false entry, or causes a false entry to be made, in the NLRD, the **register of professional designations,** or the registers of misrepresented and fraudulent qualifications; or 2. not challenged. 3. with fraudulent purpose or **intent** knowingly provid**es** false or misleading information in any circumstances in which this Act requires the person to provide information or give notice to another person; or | The purposes of the professional designation register are only to obtain information on professional designations from professional bodies. Professional Bodies award designations and they must manage and administer the awarding of designations. SAQA does not award designations. In the current Act, the designations are registered on the NQF, and this created confusion as people thought that the designation was a qualification. The intention of the separate register is to de-link professional designations from the qualifications.  This clause is not intended to effect offences on professional designations.  It is not necessary to use the word “intent” separately as the word is included in the elements of fraud. It will amount to tautology. |
| **SOUTH AFRICAN INSTITUTE OF CHARTERED ACCOUNTANTS PROPOSED AMENDMENTS** | | | |
| **2** | **clause 4(b)(i)**  with respect to records of education and training, maintain a national learners’ records database comprising of registers of   1. [**national**] qualifications; 2. Part-qualifications; 3. qualifications and part-qualification requirements and other related information; 4. learner achievements; 5. details of the education institution or QC that awarded the qualification or part-qualification 6. recognised professional bodies [**professional designations**] 7. associated information relating to registration, verification and accreditation. | Recommends the inclusion of maintenance of records of achievements against legacy qualifications since it is not listed as an amendment.  Since this clause refers to the maintenance of the register of professional designations but does not allow for professional bodies to recognise and attach designations to additional qualifications which are quality assured by Quality Councils.  Should this amendment be adopted, maintenance of these records should subsequently be included in Section 13. | De-registration of a qualification does not affect the status of a qualification.  Professional bodies award designations and if new designations are established and awarded against new qualifications then the professional bodies must update the register and upload the data to SAQA accordingly. The process is “open ended” as the NQF is not static.  This is an operational activity: and would be incorporated in the SAQA policy dealing with the recognition of Professional Bodies and registration of professional designations; and should not be included in the Act |
| **2** | **Clause 4(e)(1A)**  When verifying or evaluating a qualification or part-qualification in terms of this Act, the SAQ 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) | SAICA recommends that:  This be done in consultation with the Professional body / Training provider in question to ensure that legacy qualifications and international partnerships are considered prior to a decision being taken.  SAICA recommends that since large amounts of data are submitted for upload to the NLRD on a regular basis, they recommend what would be the process if mistakes are made and to correct same.  SAICA recommends that the process be included as an amendment in section 32B offences and Penalties. | SAQA Policy provides for this type of consultation with the professional bodies.  It is an operational process implemented by SAQA, and guided by SAQA’s standard operating procedures for data uploads; and is not a part of the Act. SAQA applies the auditing and checking of the credibility of the Data uploaded to its system, twice a year. The system used by SAQA identifies errors and duplications and alerts the data uploaders about this.  Should there be a need to amend or alter information, when an error has been identified, the definition of misrepresented qualification provides for “altered in any way”. This contemplated error which may have to be corrected. The DHET is of the view that mistakes can be corrected through processes already implemented by SAQA and not through the Act. |
| **INDEPENDENT INSTITUTE OF EDUCATION PROPOSED AMENDMENTS** | | | |
| **2** | **Clause 1** | 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 mentioned 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 IIE is of the view that 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. | The definition of authenticity provides that “authentic” has a corresponding meaning. The amendment Bill has separately defined “authenticity” and “fraudulent qualifications or part-qualifications” and “misrepresented qualifications or part-qualifications”. The proposed definition has combined all these definitions into a single definition.  The proposed recommendation by the Independent Institute of Education that the “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” cannot be supported by the Department.  The IIE is conflating qualification and part qualifications with certification. The term “part qualification” already includes credit-bearing short courses/skills programmes which are loosely referred to as short learning programmes.  This Act does not apply to non-credit bearing courses.  The DHET definitions of the three (3) concepts are clear.  The IIE recommendation in relation to historical qualification has been addressed above on SAICA. |
| **3** | **Misrepresented qualification or part-qualification** is a qualification or part-qualification –   1. which is not authentic; or 2. where the certificate of award or the SAQA certificate of evaluation was erroneously issued or altered in any way. | The IIE recommends the following definition for misrepresented qualification and part-qualification:  **Misrepresented qualification and part-qualification or other certification** is a qualification or part-qualification or other certification, which is inauthentic, and in the case of misrepresented qualification and part-qualification has been registered as such by SAQA in the relevant register”. | The proposed recommendation by the IIE is not material. There is no material difference between the words “inauthentic” and “not authentic” since they imply the same thing.  A qualification is defined as a registered qualification in the NQF Act. The proposed definition of IIE that a misrepresented qualification should be defined as a qualification and part-qualification that has been registered as such by SAQA is confusing. A qualification is defined separately in the Act.    The definition is attempting to separate a qualification from certification and this matter has been addressed above. |
| **3** | **Clause 3(b)**  Every private education institution or skills development offering education and training programmes 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 providers and accredited by the relevant QC to offer such qualification or part-qualification | Recommends insertion of the definition of **Private education institution**  **“means an independent educational institution registered and accredited in terms of the relevant law”**. | The Department is of the view that it is not necessary to define Private Education Institution since the NQF Act defines an Education Institution to mean “an education institution that is established, declared or **registered by law**”. The institutions registered by law is a reference to private education institutions and there is no confusion. |
| **3** | **Clause 4(IB)**  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 (IC).  (IC) The verification and evaluation processes referred to in subsection (1) must conform to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No 3 of 2000). | Recommends that the register of misrepresented qualifications be subjected to the Promotion of Administrative Justice Act, 2000. | This concern is addressed at clause 4(IB) read with clause I(C). Section 4(IB)(b) and (1C) provides that when the recording is made in the register of misrepresented qualifications or part-qualifications or fraudulent qualifications or part-qualifications and in the verification and evaluation processes, the PAJA Act must be adhered to.  The issue is addressed. |
| **4.** |  | The IIE recommends that the Bill should:   1. deal with matters relating to confidentiality of the register and clarify how the register may be accessed or disclosed; 2. 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 provisions for a process if erroneous entry is found; 3. the Bill needs to provide clarity on the consequences of wrong entry of a person or institution into the Register; 4. The Bill needs to provide for the removal of the entry from the register i.e. expungement 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 form the register and provide for circumstances in which a person may not be removed from the Register.   The IIE is of the view that the above concerns may be addressed if the Bill should empower SAQA to develop a policy on misrepresentation and fraudulent qualifications which will address the above.   1. The Bill should make a provision for the reporting for criminal investigations. The IIE believes that 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 cause being brought to court, the offences and penalties under section 32B will remain on paper. 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. Alternatively, the QC or the Professional body may be required to open a case against such alleged holder of fraudulent qualification or part-qualification. | SAQA is an Organ of State and various legislation relating to the Promotion of Access to Information Act and the POPI Act apply to it. SAQA in its verification and evaluation processes, already considers the implications of the processing of personal information; and its forms already include the provision of permission granted by an individual.  Section 32B(1)(b) is a demonstration that the dissemination and publication of a qualification or part-qualification or the records of the NRLD should be handled responsibly.  The individuals can approach SAQA and obtain information related to the verification of qualifications.  The definition of “misrepresentation” already deals with this issue. If a record is found to be an error, and there is no misrepresentation, then the register can be corrected for erroneous entries. The issue of the correction of entries in the Register has already been dealt with above.  SAQA already has a standard operating procedure which it follows to direct its relationship with SAPS and Special Investigating Units (such as the Hawks) |
| **UMALUSI PROPOSED AMENDMENTS** | | | |
| **2** |  | UMALUSI is of the view that the NQF Act is silent on the functions of the Minister of Basic Education. According to the NQF Act, as amended the Minister has the overall executive responsibility for the   * QC for General and Further Education and Training.   In terms of the 2009 Presidential Proclamation, Umalusi reports to the Minister of Basic Education and receives funding from the Minister of Basic Education and the NQF Act is silent on the role of this Minister. | In terms of Section 8 of the NQF Act, the Minister of Higher Education and Training has the overall executive responsibility for the NQF, SAQA and the QC for General and Further Education and Training, the QC for Higher Education and the QC for Trades and Occupations.  For the purposes of this Act, the Minister is defined as the Minister of Higher Education and Training.  The GENFETQA Act deals with the DBE Minister. We are not dealing with amendment to the GENFETQA Act, in this process. |
| **2** |  | The QC as the custodian of qualifications on their respective sub-framework must verify attained qualifications. While the QCs certify attained qualifications and part-qualifications and issue the certificates to qualifying candidates, detailed verification function can only be performed by the QCs.  In terms of the law SAQA cannot attest to the authenticity of a certificate in court if they are not the certification body. Umalusi cannot issue certificates and have another body exclusively verify them. It must also be noted that the verification function provides an income stream for Umalusi.  Recommendation: is made for the inclusion of Umalusi’s verification function to be inserted in the NQF Act as follows:  Section 27(v) by addition of the following sub-paragraph: “verify all attained qualifications or part-qualifications registered on the sub-framework referred to it in terms of section 32A and made a decision on the status thereof”. | Umalusi’s role is clearly defined in the NQF Act, in terms of its data uploading function. The QCs must verify that their data is correct before they upload the data to SAQA. But there can be only one final MIS - this being the NLRD. SAQA therefore relies on the QCs to have conducted their quality assurance functions credibly; and that the data they upload to SAQA has been audited and verified as correct by them prior to the uploads.  UMALUSI, is conflating their QA role with the ultimate verification role SAQA performs when it verifies that a person has a qualification; or verifies that a provider is accredited to offer a qualification, based on the information uploaded by the QCs.  The Department is of the view that once SAQA has verified the authenticity of a qualification or part-qualification or evaluated a foreign qualification or part-qualification, SAQA will be in a position to attest to the authenticity of a qualification which includes a certificate in a court of law. SAQA will be in a position to attest to the process it followed in order to verify the authenticity of such a qualification or part-qualification and why that qualification or part-qualification was not lawfully obtained.  The focus of the amendment Bill is not on the certificate. The focus is on the authenticity of a qualification or part-qualification obtained by a person. The focus is whether such a qualification is registered on the NQF, whether it is offered by a registered and accredited education institution and whether it was lawfully obtained.  Section 27 of the NQF Act is a section dealing with the functions of the QCs. Umalusi intends to propose the addition of section 27(v) as an additional function in order to ensure that it is accorded the function of verifying qualifications or part-qualifications.  The NQF is a single integrated system which comprises of three co-ordinated qualifications sub-framework for General and Further Education and Training; Higher Education and Trades and Occupations. SAQA through the amendment is the apex body that will be responsible for the verification of qualifications. |
| **3** |  | 1. Umalusi is of the view that the definition of “qualification” and “education institution” need to take to cognisance the changing landscape and the definitions must be clear to include other forms of offerings such as distance and online learning. 2. It is not clear what “offering of a qualification” entails. Does it include all aspects such as administration of learners, facilitation of learning assessment and certification or only one or more of them. | 1. The Department is of the view that a qualification or part-qualification may be offered in various modes such as online, distance (in the case of the University of South Africa). What matters is that the qualification must be registered; the education institution must be accredited and the qualification must be lawfully obtained by an individual. The mode is not the institution.   Offering of a qualification is inclusive what facilitates the achievement of a qualification, whether summative assessment, formative assessment, teaching, learning etc. It is not necessary to define offering of a qualification as such offering within the context of the NQF Act must give rise to the qualification or part-qualification that is authentic. |
|  |  | **MANAGED INTEGRITY EVALUATION (PTY) LTD**  The concerns of the MIE are as follows:   1. That employers will not refer verification of qualifications of employees to them by law; 2. That amendment is creating a monopoly for SAQA in regard to the validation and verification of employee’s qualifications 3. The issue of timeous access to the verification results from SAQA whereas the MIE claims it can provide instant information. 4. That the performance of verification or evaluation within 30 days is unrealistic as information may be required on an urgent basis. 5. Whether the SEAIS process was followed. 6. It will have impact on their revenue. 7. That SAQA may have to be registered as a credit bureau in terms of section 43 of the NCA. | This act deals with the official learner database; and even bodies need to use this database (NLRD). The NLRD is the only place where authentic data is provided. The Act does not prohibit other bodies to verify that it is on the database.  However, at paragraph 16 of its submission, MIE states that “although nothing prevents employers from approaching us to conduct the qualification verification process through our own resources and in particular our own database. MIE admits that SAQA is not a monopoly.  SAQA’s role is only limited to the verification or evaluation of the authenticity of qualification or part-qualifications and does not stretch to the credit bureau related information.  Generally, the submission by MIE is more of its concern over its revenue base. |