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| MEMORANDUM FROM THE PARLIAMENTARY OFFICE |

**NATIONAL ASSEMBLY**

**FOR WRITTEN REPLY**

**QUESTION 2004**

**DATE OF PUBLICATION OF INTERNAL QUESTION PAPER: 20/05/2022**

**INTERNAL QUESTION PAPER NO 18 OF 2022**

**Mr N Singh (IFP) to ask the Minister of Higher Education, Science and Innovation:**

Whether, with reference to case number D11859/2018 relating to the Centre for Fine Art, Animation and Design (CFAD), the necessary (a) assistance has been given to regularise the function of the centre which plays a significant role in the creative arts sector and (b) authority has been granted to CFAD to (i) continue its operations as an institution for education and (ii) be recognised as an accredited institution; if not; why not, in each case; if so, what are the relevant details in each case?

**NW2347E**

**REPLY:**

The concerns around the cancellation of registration of the Centre for Fine Art Animation and Design (Pty) Ltd (“CFAD”) has been ongoing for a long period of time. The following is a detailed response to the Question.

**THE LEGAL CONTEXT**

The Department has the statutory responsibility of regulating the activities of private higher education institutions in accordance with the Higher Education Act, 1997 (Act No. 101 of 1997) (the Act) and the Regulations for the Registration of Private Higher Education Institution, 2016 (the Regulation). To that end, the Department wishes to bring the following your attention:

1. Article 29(3) of the Constitution of the Republic of South Africa requires every private provider of education and training to be registered with the State. The State in this case is the Department of Higher Education and Training. In this regard, there are two sets of legislation applicable to the registration of private providers of education and training:
2. Higher Education Act, 1997, Act No. 101 of 1997 for the registration of private higher education institutions; and
3. Continuing Education and Training Colleges Act, 1996 for the registration of private colleges.
4. The legal point of departure for registration with the Department begins with the registration of the qualification on the National Qualifications Framework (NQF) and the accreditation of the programme and the college or institution by the relevant Quality Council (QC). There are 3 QCs, each one responsible for managing its own qualifications sub-framework. The QCs and the qualifications sub-frameworks are as follows:
5. Council on Higher Education (CHE) manages the Higher Education Qualifications Sub-Framework (HEQSF);
6. UMALUSI which manages the General and Further Education and Training Qualifications Sub-Framework (GENFETQSF); and
7. QCTO which manages the Occupational Qualifications Sub-Framework (OQSF).

1. The purpose of registration is to ensure that private providers of education and training operate within the law, have the necessary resources, capacity and expertise to offer acceptable standards of higher education, the programmes they offer are registered, the qualifications the students attain are aligned to the NQF and students are protected from fraudulent operators in higher education. Further, the Department is required to ensure the highest standards of integrity at all levels, that the Department discharges its responsibilities in an accountable manner and that it protects the public against any form of malicious and unscrupulous conduct threatening the higher education system.
2. With regard to the above, please note that accreditation and registration are two separate functions undertaken separately by two different bodies. For higher education, the registering authority is the Department, and the accreditation body is the CHE.

**REASONS FOR THE CANCELLATION OF THE REGISTRATION OF THE CENTRE FOR FINE ART, ANIMATION AND DESIGN (PTY) LTD AS A PRIVATE HIGHER EDUCATION INSTITUTION**

1. On 27 June 2016, the Registrar of Private Higher Education Institutions cancelled the registration of CFAD for its failure to submit a complete 2014 annual report, after due legal process was followed, and after much pleading with officials from CFAD to submit its annual report. The submission of the annual report is a legal requirement for maintenance of registration as a private higher education institution as it allows the Registrar to establish if the institution has discharged its responsibilities as a private higher education institution. Subsequently, on 15 September 2016, the appeal lodged with the erstwhile Minister, Dr BE Nzimande, was successful.
2. For the second time, on 20 November 2016, the Registrar cancelled the registration of CFAD for its failure to submit its 2015 annual report, after due legal process was followed, and after much pleading with officials from CFAD to submit its annual report. Subsequently, on 7 April 2017, the appeal lodged with the Minister, Dr BE Nzimande was unsuccessful, for the following reasons:
3. Failure to Submit the Institution’s Administrative Data;
4. Failure to Provide Staff and Student Data;
5. Failure to Submit Audited Annual Financial Statements;
6. Failure to Submit the Financial Surety which had expired;
7. Failure to Comply with the Occupational Health and Safety Regulations;
8. Failure to Provide Proof of Certificate Awarded to Students;
9. Failure to comply with the Requirements of the National Learner’s Records Database (NLRD);
10. Failure to Provide the Updated Record of the Directors of the Company as Approved by the Consumer Intellectual Property Commission (CIPC);
11. Failure to Submit the List of Premises on which Teaching and Learning is Provided; and
12. Failure to submit the Declaration Signed by Every Student.
13. Since the start of the registration of private higher education institutions in 1998, it has never been the case that an institution of higher learning was unable to submit its annual report in the required manner, including basic information. It has also never been the case whereby the Department had to plead with an institution to submit its annual report and indefinitely prolong the period of extension. In 2015 and 2016, CFAD was the first such institution.
14. Even the appeal was submitted only after the Department pleaded with CFAD to submit the appeal for the simple reason that the Department wanted to protect the interest students. For that matter, the appeal was only submitted a month after the due date for the submission of the appeal.
15. After parents pleaded with the Department to extend the phase-out period to 31 December 2017 so that final year students will not be affected, the Department contacted Dr N Soobben and pleaded with him to make a formal request with Mr GF Qonde, the Director-General, for an extension to the phase-out period from 31 December 2016 to 31 December 2017. Since the Department no longer had the contact details of the institution, and CFAD was not communicating with the Department, the Department had requested a parent, Ms Allison Shepherd, to provide Dr N Soobben’s cell phone number.
16. At the time of the first cancellation of registration of CFAD, there was no communication or response from CFAD to the Department’s queries. For almost 3 years, repeated calls to CFAD went unanswered. At no stage did CFAD approach the Department or the CHE for assistance regarding the problems it claims to have experienced. It was the Department that had to initiate the communication with CFAD.
17. In August 2017, officials from the Department paid a site visit to the institution at 5 Walnut Road, Smart XChange Building in Durban to endeavour to assist the institution. Subsequent to the visit, two further site visits were made on 24 January 2018 and 25 April 2018, respectively. In the last site visit Dr Shaheeda Essack requested an improvement plan from CFAD which has not as yet been submitted.
18. On 7 June 2018, the Department was informed that on 31 May 2018, the Sherriff of the Court, repossessed all goods of value from CFAD. The pictures on the repossession were circulated on social media.
19. According to the accreditation report dated 28 February 2017, the CHE has withdrawn the accreditation of the institution and its programme. This means that CFAD is no longer accredited with the CHE. The outcome on the subsequent application for accreditation with the CHE is pending. Therefore, the application for registration submitted to the Department is awaiting proof of accreditation from the CHE and the submission of the improvement plan as requested in the meeting of 25 April 2018.
20. In 2018, the High Court in Durban acceded to CFAD’s request to operate in 2018 and 2019 so as to teach out the pipe-line and final year students. The High Court also ruled that no new students should be enrolled.
21. The Minister is also aware that CFAD has filed papers with the High Court in Durban to suspend the Registrar’s decision to cancel its registration and to suspend the Minister’s decision to dismiss the appeal. The Registrar and the Minister await the ruling of the High Court.

**DIRECT RESPONSE TO THE ENQUIRY**

1. The Minister is fully aware of the challenges surrounding the cancellation of registration of CFAD and advises CFAD to ensure that its application for registration with the Department is complete to enable the Registrar to register the institution. Since accreditation is a separate function from registration and handled by the CHE, the institution is advised to contact the CHE directly for any enquiries on accreditation.

1. The High Court had also allowed CFAD until 2019 to teach out final year students, most of whom were in their final year in 2018 and some in 2019. Therefore, the **“situation of distress”** always referred to is not understood.
2. The Department has done everything in its power to assist CFAD in the registration process. Unfortunately, the application currently does not qualify for registration since it has not provided the evidence that it meets the accreditation requirements of the CHE and the registration requirements of SAQA.
3. CFAD, therefore, does not have the legal authority to operate an institution of higher learning