

HIGHER EDUCATION SOUTH AFRICA

PRESENTATION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE ON PUBLIC WORKS

THE BUILT ENVIRONMENT PROFESSIONS BILL (B53-2008) PUBLISHED ON 30 MAY 2008

[The Built Environment Professions Bill was published for comment in Government Gazette No 31093 of 30 May 2008. The Public was invited to comment on the Bill by noon, 18 July 2008. Higher Education South Africa (HESA) requested an extension to this deadline, which was granted by the Committee Secretary of the Parliamentary Portfolio Committee of Public Works.]

1. On behalf of Higher Education South Africa (HESA), I thank you Honourable Chair and your committee for allowing a HESA delegation of myself, Professor Duma Malaza, the CEO of HESA, Dr O Franks, the Dean of Engineering at Cape Peninsula University of Technology, Mr Jody Cedras, Manager at HESA, to appear before your committee.
2. HESA welcomes the development of this Bill and appreciate the opportunity to comment on the Bill. The association affirms its support for professional standards which goal is ultimately to promote the public good and to protect the public against professional misconduct and malpractice.
3. HESA believes that the Bill is in line with international practice and that its time is long overdue, particularly in the context of South Africa as a developmental state.
4. However, HESA has very serious reservations about the Bill:
 - Our first concern relates to the fact that the proposed Built Environment Professions Bill is not aligned with the proposed changes of the National Qualifications Framework (NQF) Bill, currently before Parliament. For example:
 - The Bill refers to the SAQA Act which is in the process of being repealed through the NQF Bill; and
 - The Bill is silent on the roles and responsibilities of the new Quality Council for the higher education band of the NQF which is being proposed in the NQF Bill.
 - Secondly, the Bill proposes changes to separate roles and responsibilities of institutions and the various bodies (Councils, professional boards, etc.). This allocation of roles is not consistent with provisions in the NQF Bill.
 - We believe that each of the four groups (SAQA, Quality Councils, educational institutions and professional bodies) has an important role in the realisation of the objectives of the NQF. In this context we argue that it is important that the respective functions of Quality Councils and professional bodies must be made clear: the QC (and **not** the professional body) must have the functions of quality assurance and accreditation for qualifications on its sub-framework (for Higher Education, this would be the HEQF); the QC may and we believe will recognise the competence of professional bodies and use the professional bodies **to assist** it in the execution of these QA and accreditation functions. And we argue that the domain of a QC must be the qualifications in its sub-framework.
 - The professional body is properly responsible for regulating professional status which is often the basis for licensing those who wish to practise the profession. Where this professional status or licensing is based on, or assumes an educational qualification, the proper role of the professional body is to define **the exit outcomes** of this qualification. This definition of exit outcomes is not a mere one-dimensional activity. It is the function of the QC (and **not** the professional body) to quality assure and accredit the academic qualification; given the expertise in and experience of professional bodies, co-operation between QCs and professional bodies can only promote the public good and it should be possible for a QC to assign or delegate some of its functions to a professional body in terms of the principals of the NQF and its sub-framework.

5. The Bill sets out to :
 - Infringe on the mandate of universities by suggesting that the professional bodies will assume the powers of determining the content of qualifications, methods and content of examinations, and so forth; and
 - Assign roles and responsibilities to professional bodies that are being assigned to the higher education band QC in the NQF Bill.
6. HESA therefore strongly recommends that the Built Environment Professions Bill be redrafted so that it is aligned with the NQF Bill and that the domains of the Quality Councils in relation to the South African Council for the Built Environment (and associated professional bodies) be clearly demarcated.
7. The attached Annexure indicates our proposal on changes to the specific clauses of the Bill.

END.

ANNEXURE

Reference in the Bill	Proposal	Rationale
4(1)(d) includes that the new council will determine strategic policy regarding education in terms of public works policy.	Revise to reflect that the council will advise the Minister who is responsible for policy	
4(1)(e) The new council will 'control and exercise authority in respect of all matters affecting the education and training of persons in the built environment'.	Revise in light of a university's responsibility in regard to authority over its education and training: perhaps insert a provision giving a university the option to invite the opinion of the council at the university's discretion or re-write the clause to reflect the council's role in defining the exit outcomes or competencies and monitoring of standards in education and training.	This is made subject to four Acts including the HE Act and the SAQA Act (note: no reference to the NQF Bill). This seems unduly burdensome. Quite apart from that, the council cannot control and exercise authority in respect of all matters affecting the regulation and training of persons without infringing on the right of a university to determine what is taught and how.
4(1)(o) proposes that professional boards should obtain recognition (in terms of the SAQA Act) as 'bodies responsible for the establishment of education and training standards'.	Replace "education and training" with "professional"	Professional boards do not establish education and training standards, rather they establish professional standards.
4(1)(p) makes reference to the boards accrediting educational institutions.	Delete	Powers, which are not theirs, may be given to inappropriate parties.
4(2)(d) The council may 'delegate to any professional board or committee or any person such of its functions as it may determine...'	Revise, and state more rigorously	These powers of delegation are extremely wide: potentially, one person, with no specified competence, could be given 'authority in respect of all matters affecting the education and training of persons in the built environment'.
6(4)...or the statutory body referred to in subsection (1)(f)	Replace "statutory" with "voluntary"	HESA is not a statutory body, but rather a voluntary association of the public sector universities
7(1)(g)	Line 40 – "my" should read "may"	
16(1)(b) professional boards must advise and make recommendations to the council on all matters affecting the education and training of persons in ...any profession falling within the ambit of the professional board'	Revise	professional board may advise on matters pertaining to education and training after consultation with educational institutions.

16(1)(c) 'assist the council with liaison in the field of education and training... and to promote the standards of such education and training...'	Revise to better reflect the monitoring role of a professional body.	The scope of 'assist' and 'promote' are not clear.
16(2)(a) professional board may 'conduct accreditation visits to any educational or training institution that has a department, school or faculty of a profession falling under the ambit of a professional board	Revise to read: professional board may ' in consultation with a educational or training institution that has a department, school or faculty of a profession falling under the ambit of a professional board, conduct accreditation visits to such institutions	A professional board should not have unlimited access to a university. It falls to the university to invite the professional board onto the campus for such purposes as the university may request.
16(2)(b) subject to SAQA, HE, SD and FETColleges Acts, conditionally / unconditionally grant, refuse or withdraw accreditation of institutions and the 'educational curricula or training programmes'	Rewrite to reflect withdrawal of professional accreditation as educational accreditation requires a process under the auspices of the QC	Not clear what provisions of the HE Act the clause invokes; and withdrawal of accreditation is not a single event...differentiate between educational accreditation and professional accreditation.
16(2)(c) consult with CHE 'regarding matters relevant to education and training within the profession'	Revise	It is not the responsibility of a professional body to consult the QC regarding education and training, but could rather seek advice from the QC or educational body.
16(2)(d) consult with SAQA 'to determine competency standards for the purposes of registration in the profession'	Revise once the legislation regarding SAQA is settled.	The role of SAQA is changing
16(3)(a) The Bill empowers the Council to establish professional boards, who will then be empowered to accredit, appoint examiners and moderators, and so on.	Rewrite	There will be no need for ratification of a board's decision by the Council (for matters falling entirely within the ambit of the board, where ambit is decided by the Council); if an institution sets an exam, it is not within the authority of the professional body to appoint examiners or moderators; clarify whether this is a professional board exam.

<p>17(1) indicates that an educational institution can be prevented from offering a programme if it is not accredited by a professional board.</p>	<p>Revise. A professional body may well de-accredit a programme but it is the CHE's responsibility, in terms of the HE Act, to make the final decision regarding accreditation of qualifications and academic programmes.</p>	<p>A university must be able to decide what it teaches; a university may wish to qualify students who do not intend to enter a profession, i.e. a university is not an instrument of the profession, the professional orientation of a programme is secondary to the education. The drafters have also missed the implications of "subject to the Higher Education Act etc" and how the CHE has set up its accreditation system to make candidacy phase accreditation the permission to offer a programme.</p>
<p>17(2)(a) allows professional boards to request anything – before teaching, an institution must apply for accreditation and 'furnish such particulars regarding the education or training as the professional board in question may require'.</p>	<p>Revise</p>	<p>The boards and council should not be concerned with the activities of a higher education institution 'before teaching', and should not be required to furnish details regarding education or training since it is the nature of the graduate that is of concern to the professional body. Any evaluation of a qualification that may be done by a board or council should be based on the graduate i.e. at the point of qualification or thereafter, and the abilities, knowledge and competence of the graduate.</p>
<p>17(3), following an accreditation application, a professional board may impose any condition or requirement, 'subject to which the education or training ... may be provided...'</p>	<p>Revise.</p>	<p>This gives the professional body inappropriate and unchecked powers. Surely it cannot veto educational programmes. Should be happen in consultation with Quality Councils</p>
<p>17(4) imposes guilt, punishable by a fine or prison term, on anyone contravening or failing to comply with 'any provision of this section'.</p>	<p>Delete</p>	<p>This gives the professional body inappropriate and unchecked powers.</p>

17(5) determines that a professional board is the ETQA for its profession.	Revise (NQF Bill)	'Education and training' and 'profession' are conflated (and reference is to the SAQA Act).
18	Revise	The prohibition of persons from practising 'any built environment profession' unless registered, twinned with the general vagueness of what constitutes the built environment, "definition: the physical world that has been intentionally created through science and technology for the benefit of mankind", makes it difficult to know exactly who this Bill applies to.
25: the Minister may prescribe 'qualifications obtained by virtue of examinations conducted by an accredited institution' as entitling the holder to registration; 30(1) gives power to the Minister, after consultation with the council, to define the scope of any built environment profession that may be registered in terms of the Act by specifying the acts which, for the purposes of application of the Act, must be regarded as acts pertaining to the profession.	Revise 25, and delete 30(1).	This puts far too much discretion into the hands of the Minister, to change his/her mind, to make adjustments, and to extend definitions to include various acts. There are provisions made for the council and boards to make submissions to the Minister, but he/she is not required to pay them any heed.
28(1) and (2)	Delete	Not clear, but appear to infringe on the right of a university to determine who may teach. Why would a foreigner need to be deemed a professional by the board in order to (in (1)) 'promote education or training for practising...' or in order to allow the person to 'give demonstrations' (in (2)) at an institution?
29(1) gives the professional board wide powers to demand 'full particulars' about a person taught, and the education provided, seemingly in an effort to ensure that the teaching of individuals has complied with 'set standards'.	Revise	It is not clear that the section complies with the provisions concerning personal information in the Access to Information Act
29(2) Failure to comply leads to suspension of accreditation of the	Delete	The punitive measure appears to be unaligned with

institution		the offence and unfairly punishes graduates qualifying during the time of suspension of the accreditation. Also, it is silent of the methods in the current accreditation system that address problems, in terms of which programmes are not suspended, but are able to be improved without undue disruption.
29(4) causes automatic loss of recognition of graduates during the suspended period	Delete	This may constitute an unfair practice – see also above
29(5) allows a professional board to send a person to an institution to 'be present whenever tests or examination are being conducted', ostensibly 'to monitor academic progress made by candidates...'	Delete	Such responsibility lies with the university, and not with a professional board.
46(2) seem to prevent the education of future professionals other than by registered professionals.	Delete	A university must be able to decide who teaches.
47(1) and (2)	Delete	Any person could be given search-and-seize powers, notwithstanding any other law; and a person preventing this travesty is guilty of an offence and liable to be fined or jailed for a year.
48(1)(a)(i)	Delete	Provides for registration of students. Whilst this is a practice for health sciences senior students who deal with patients, the necessity for this in built environment studies is not clear.
48(1)(a)(ii), (iii), (iv) (and (e)(ii)): The standards of the programme now become regulations, to be approved by a Minister.	Delete	This responsibility resides with a university, through its quality management systems.
49(1)(d)(vi) The council may rule on fees payable by education and training institutions for accreditation – and the intention of the drafters is to make accreditation mandatory.	Revise	An institution chooses whether or not to invite a professional body to accredit its programmes.