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6 September 2012

Adv I Malale, MP
Chairperson
Parliamentary Portfolio Committee on Higher Education and Training
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CAPE TOWN, 8000

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Dear Adv Malale

HESA'S COMMENTS ON THE HIGHER EDUCATION AND TRAINING LAWS AMENDMENT BILL

HESA is grateful for the opportunity to give comments on the **Higher Education and Training Laws Amendment Bill [B23-2012]**, which is before the Portfolio Committee on Higher Education and Training. We have noted that in broad terms, the purpose of the Higher Education and Training Laws Amendment Bill [B23-2012] is to:

- amend the Higher Education Act, 1997, so as to provide afresh for the establishment of a national institute for higher education;
- extend the functions of a National Institute for Higher Education;
- provide for the appointment of an administrator for a National Institute for Higher Education;
- provide for the closure of a National Institute for Higher Education; and
- amend the National Qualifications Framework Act, 2008, so as to change the date on which the annual report of the South African Qualifications Authority must be submitted to the Minister; and to provide for matters connected therewith.

We acknowledge and accept that the Amendment Bill makes provision for the Minister to establish a National Institute for Higher Education after consultation with the Council on Higher Education (CHE). In addition, the Minister is required to publish for public comments in a government gazette, the purpose for which the Institute is to be established. Through these mechanisms and safeguards, our Higher Education sector will respond if it feels that the proposed Institute falls outside the bounds of the provisions.

Directors: M.S. Badat; A.C. Bawa (Chairperson); R. Botman; C. de la Rey; T. Eloff; J.D. Jansen; M.R. Kgaphola; M.S. Makhanya; M.W. Makgoba; F. Mazibuko; L.V. Mazwi-Tanga; P. Mbatii; N.M. Mokgalong; I. Moutlana; T.Z. Mthembu; G.L. Nongxa; B.P. O'Connell; N. Ogude; M. Price (Deputy Chairperson); I.L. Rensburg; D.I. Swartz; M. Tom.

However, our main concern regarding this proposed Amendment Bill, if approved in its current form, is that it will give the Minister the powers to establish National Institutes for Higher Education with a wide-ranging mandate. If the mandate, powers and functions of the National Institutes are not clarified upfront in the Act, there is a risk that their activities could encroach into purposes and functions that have previously been within the remit of our universities and other such relevant bodies as Science Councils. Against this background, HESA would like to raise four issues for consideration by the Portfolio Committee in finalising this Bill:

- (a) **Powers and functions of the National Institute for Higher Education:** HESA would like to raise a fundamental matter to be addressed in the Amendment Bill with regard to the powers and functions of these Institutes, beyond the broad precepts in Section 38B. If these powers and functions are not clearly defined in the Amendments, a risk for the sector is that the Institute to be established could play in the space that was traditionally defined for our public universities in terms of the Act. It is our humble submission that the Bill should be clear in terms of the powers and functions of these Institutes. It is also our view that mechanisms should be found in the Bill to forge possible collaboration between the National Institutes and public universities, particularly in the provinces the former are to be established. Such a conceptual clarity will assist in minimising a possible duplication of effort between public universities and the proposed National Institutes for Higher Education.
- (b) **Governance:** The composition of the Board that governs the National Institute for Higher Education in terms of Section 38C makes provision for the Chairperson and all 10 members to be appointed by the Minister through a nomination process. HESA would like to propose that, in the spirit of fostering collaboration with the Higher Education Institutions and minimising possible duplication of effort, the Board of each National Institute for Higher Education should include at least two representatives from the Higher Education sector.
- (c) **Funding:** One of our major anxieties with the establishment of these National Institutes for Higher Education is how they are going to be funded, particularly in the context of subdued revenue collection from the State. It is our humble submission that the Amendment Bill should clarify as far as practicably possible, the funding instruments and mechanisms available for these Institutes, and assurance should be made that the current funding framework for universities will not be used to cover the costs of running these Institutes. Sufficient safeguards must be put in place to ensure that baseline allocations and additional funding for public universities are not compromised as a result of the establishment of these National Institutes.
- (d) **Definition of the term, National Institute for Higher Education:** HESA would like to call attention to a further issue related to the proposed amendments. It is our view that the term National Institute for Higher Education should be defined and such a definition should be included in the HE Act.

The generic term "Higher Education Institution" (HEI) is defined in the Act as it stands, and by the same token, a conceptual clarity in the Act is needed for the term "National Institute for Higher Education".

HESA would welcome an opportunity to present the above views to the Portfolio Committee during your public hearings scheduled for 11 September 2012. For more details, kindly contact my office as follows:


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We look forward to hearing from you.

Sincerely

A handwritten signature in black ink, appearing to read 'J Mabelebele', is written over a circular stamp. A long horizontal line extends from the right side of the signature across the page.

DR JEFFREY MABELEBELE
ACTING CHIEF EXECUTIVE OFFICER

Cc: Prof Ahmed Bawa (Chairperson, HESA Board)
Dr Max Price (Vice-Chairperson, HESA Board)
Prof Russel Botman
Prof Mahlo Mokgalong
Prof Lineo Mazwi-Tanga
Prof Mandla Makhanya

Ends