

REPUBLIC OF SOUTH AFRICA

NATIONAL QUALIFICATIONS FRAMEWORK BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 31039 of 9 May 2008)
(The English text is the official text of the Bill)*

(MINISTER OF EDUCATION)

[B 33—2008]

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BILL

To provide for the National Qualifications Framework; to provide for the responsibilities of the Minister of Education and the Minister of Labour; to provide for the South African Qualifications Authority; to provide for Quality Councils; to provide for transitional arrangements; to repeal the South African Qualifications Authority Act, 1995; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the advancement and recognition of learning is an essential attribute of a free and democratic nation and a prerequisite for the development and well-being of its citizens;

WHEREAS the National Qualifications Framework has been developed and implemented in terms of the South African Qualifications Act, 1995;

WHEREAS the National Qualifications Framework has won wide acceptance as the principal instrument through which national education and training qualifications are recognised and quality-assured; and

WHEREAS a review of the implementation of the National Qualifications Framework has necessitated changes to the governance and organisation of the framework so that its objectives may be more effectively and efficiently realised,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

CHAPTER 1

DEFINITIONS, OBJECT AND APPLICATION OF ACT

Definitions

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- In this Act, unless the context indicates otherwise—
 - “**board**” means the board of the SAQA established by section 11;
 - “**Council on Higher Education**” means the Council established in terms of section 4 of the Higher Education Act, 1997 (Act No.101 of 1997);
 - “**education institution**” means an education institution that is established, 10 declared or registered by law;
 - “*Gazette*” means *Government Gazette*;
 - “**GENFETQA Act**” means the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001);
 - “**Higher Education Act**” means the Higher Education Act, 1997 (Act No. 101 of 15 1997);
 - “**learning**” means the acquisition of knowledge, understanding, values, skill, competence or experience;

- “**level**” means a level contemplated in Chapter 2;
- “**Minister**” means the Minister of Education;
- “**NQF**” means the national qualifications framework contemplated in Chapter 2;
- “**part qualification**” means an assessed unit of learning that is registered as part of a qualification; 5
- “**PFMA**” means the Public Finance Management Act, 1999 (Act No.1 of 1999);
- “**professional body**” means any body of expert practitioners in an occupational field, and includes an occupational body;
- “**professional designation**” means a title or status conferred by a professional body in recognition of a person’s expertise and right to practise in an occupational field; 10
- “**qualification**” means a registered national qualification;
- “**quality council**” means a Quality Council contemplated in Chapter 5;
- “**QC**” means a quality council;
- “**registered**” means registered on the NQF by SAQA in terms of Chapter 4; 15
- “**relevant Minister**” means either the Minister or the Minister of Labour as indicated by the context;
- “**SAQA**” means the South African Qualifications Authority contemplated in Chapter 4;
- “**SAQA Act**” means the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); 20
- “**sector**” means a sector of education or training, as the case may be, for whose sub-framework a QC is responsible;
- “**Skills Development Act**” means the Skills Development Act, 1998 (Act No. 97 of 1998); 25
- “**skills development provider**” means a skills development provider contemplated in section 17 of the Skills Development Act, 1998;
- “**sub-framework**” means a sub-framework contemplated in Chapter 2;
- “**this Act**” includes the regulations;
- “**Umalusi**” means the council established by section 4 of the GENFETQA Act, 2001 (Act No. 58 of 2001). 30

Object of Act

2. The object of this Act is to provide for the further development, organisation and governance of the NQF.

Application of Act 35

3. This Act applies to—
- (a) qualifications offered by—
- (i) education institutions; and
- (ii) skills development providers; and
- (b) professional designations, 40
- subject to the limitations prescribed in this Act.

CHAPTER 2

NATIONAL QUALIFICATIONS FRAMEWORK

Framework

4. The NQF is a comprehensive system of guidelines approved by the Minister for the classification, registration, publication and articulation of quality-assured national qualifications. 45

Objectives of NQF

5. (1) The objectives of the NQF are to—
- (a) create an integrated national framework for learning achievements; 50
- (b) facilitate access to, and mobility and progression within, education, training and career paths;
- (c) enhance the quality of education and training;

- (d) accelerate the redress of past unfair discrimination in education, training and employment opportunities.
- (2) The objectives of the NQF are designed to contribute to the full personal development of each learner and the social and economic development of the nation at large. 5
- (3) SAQA and the QCs must seek to achieve the objectives of the NQF by—
 - (a) developing, fostering and maintaining an integrated and transparent national framework for the recognition of learning achievements;
 - (b) ensuring that South African qualifications meet appropriate criteria, determined by the Minister as contemplated in section 9, and are internationally comparable; and 10
 - (c) ensuring that South African qualifications are of an acceptable quality.

Framework levels

- 6. (1) The NQF is organised as a series of levels of learning achievement, arranged in ascending order from one to ten. 15
- (2) Each level on the NQF is described by a statement of learning achievement known as a level descriptor.
- (3) A level descriptor, referred to in subsection (2), provides a broad indication of learning achievements or outcomes that are appropriate to a qualification at that level.
- (4) Level descriptors must be developed and determined, as provided for in section 14(g). 20
- (5) There is one set of level descriptors for the NQF.

Sub-frameworks

- 7. The NQF comprises of three co-ordinated qualifications sub-frameworks, for—
 - (a) General and Further Education and Training, contemplated in the GENFETQA Act; 25
 - (b) Higher Education, contemplated in the Higher Education Act; and
 - (c) Trades and Occupations, contemplated in the Skills Development Act.

CHAPTER 3

RESPONSIBILITIES OF MINISTERS 30

Joint responsibilities

- 8. The Minister, in consultation with the Minister of Labour, must—
 - (a) advance the achievement of the objectives of the NQF contemplated in Chapter 2;
 - (b) uphold the coherence and public credibility of the NQF; 35
 - (c) co-operate in discharging their respective responsibilities under this Act; and
 - (d) encourage collaboration among the respective QCs and between QCs and SAQA.

Responsibilities of Minister

- 9. (1) The Minister has the executive responsibility for the— 40
 - (a) NQF;
 - (b) SAQA; and
 - (c) QC for General Education and Training and the QC for Higher Education contemplated in Chapter 5.
- (2) The Minister must— 45
 - (a) consider advice from SAQA or a QC in terms of this Act;
 - (b) determine policy on NQF matters in terms of this Act, after consultation with the Minister of Labour, and publish the policy in the *Gazette*;
 - (c) after consultation with the Minister of Labour, publish guidelines which set out the government's strategy and priorities for the NQF, and which may be updated annually; 50
 - (d) provide funds from money appropriated by Parliament for SAQA to enable it to fulfil its functions in terms of this Act;

- (e) determine, after considering advice from the SAQA and after consultation with the Minister of Labour, the sub-frameworks contemplated in section 7(a) and (b), respectively, and publish them in the *Gazette*; and
 - (f) determine by regulation in the *Gazette*, after consultation with the Minister of Labour, the process by which a dispute involving the SAQA or a QC must be resolved, and any matter relating thereto. 5
- (3) The Minister may perform any other function consistent with this Act that advances the objectives of the NQF contemplated in chapter 2.

Responsibilities of Minister of Labour

- 10.** The Minister of Labour— 10
- (a) has the executive responsibility for the QC for Trades and Occupations established by the Skills Development Act;
 - (b) must consider advice on NQF matters from the SAQA or a QC in terms of this Act;
 - (c) must, after considering advice from the SAQA and after consultation with the Minister, determine the sub-framework contemplated in section 7(c) and publish it in the *Gazette*; and 15
 - (d) may perform any other function consistent with this Act that advances the objectives of the NQF contemplated in chapter 2.

CHAPTER 4 20

SOUTH AFRICAN QUALIFICATIONS AUTHORITY

Continued existence of SAQA

- 11.** The SAQA that existed immediately before the commencement of this Act, continues to exist as a juristic person under the name of the South African Qualifications Authority. 25

Objects of SAQA

- 12.** The objects of the SAQA are to—
- (a) advance the objectives of the NQF contemplated in chapter 2;
 - (b) oversee the further development and implementation of the NQF; and
 - (c) facilitate the co-ordination of the sub-frameworks. 30

Accountability of SAQA

- 13.** The SAQA is accountable to the Minister.

Functions of SAQA

- 14.** (1) The SAQA must, in order to advance the objectives of the NQF—
- (a) perform its functions subject to this Act; 35
 - (b) advise the Minister and the Minister of Labour on NQF matters in terms of this Act;
 - (c) comply with policy determined by the Minister in terms of section 9(2)(b);
 - (d) consider the Minister's guidelines contemplated in section 9(2)(c);
 - (e) oversee the implementation of the NQF in accordance with an implementation framework prepared by the SAQA after consultation with the QCs; 40
 - (f) develop a system of collaboration to guide the mutual relations of the SAQA and the QCs, after consultation with the QCs and taking into account the objects of the SAQA contemplated in section 12 and the regulations contemplated in section 34; 45
 - (g) with respect to levels—
 - (i) develop the content of level descriptors for each level of the NQF and reach agreement on the content with the QCs;
 - (ii) publish the agreed level descriptors in the *Gazette*; and
 - (iii) ensure that they remain current and appropriate; 50

- (h) with respect to qualifications—
- (i) develop and implement policy and criteria, after consultation with the QCs, for the development, registration and publication of qualifications and part-qualifications, which must include the following requirements:
 - (aa) The relevant sub-framework must be identified on any document relating to the registration and publication of a qualification or part-qualification; and
 - (bb) each sub-framework must have a distinct nomenclature for its qualification types which is appropriate to the relevant sub-framework and consistent with international practice;
 - (ii) register a qualification or part-qualification recommended by a QC if it meets the relevant criteria;
 - (iii) develop policy and criteria, after consultation with the QCs, for assessment, recognition of prior learning and credit accumulation and transfer;
- (i) with respect to professional bodies—
- (i) develop and implement policy and criteria for recognising a professional body and registering a professional designation for the purposes of this Act, after consultation with statutory and non-statutory bodies of expert practitioners in occupational fields and with the QCs; and
 - (ii) recognise a professional body and register its professional designation if the criteria contemplated in subparagraph (i) have been met;
- (j) with respect to international relations—
- (i) collaborate with its international counterparts on all matters of mutual interest concerning qualifications frameworks; and
 - (ii) inform the QCs and other interested parties about international practice in the development and management of qualifications frameworks;
- (k) with respect to research—
- (i) conduct or commission investigations on issues of importance to the development and implementation of the NQF, including periodic studies of the impact of the NQF on South African education, training and employment; and
 - (ii) publish the findings of the investigations referred to in subparagraph (i);
- (l) with respect to records of education and training, maintain a national learners' records database comprising registers of national qualifications, part-qualifications, learner achievements, recognised professional bodies, professional designations and associated information;
- (m) with respect to foreign qualifications, provide an evaluation and advisory service consistent with this Act; and
- (n) with respect to other matters—
- (i) inform the public about the NQF;
 - (ii) perform any other function required by this Act; and
 - (iii) perform any function consistent with this Act that the Minister may determine.
- (2) The SAQA must submit, on or before 30 June in each year, to the Minister an annual report which includes the financial statements and audit reports.

SAQA board

- 15.** (1) The SAQA is governed by a board.
- (2) The board comprises—
- (a) 12 members appointed in their personal capacities by the Minister after consultation with the Minister of Labour;
 - (b) the chief executive officer of the SAQA contemplated in section 20, who is a member by virtue of his or her office; and
 - (c) the chief executive officer of each QC contemplated in Chapter 5, who are members by virtue of their offices.

- (3) (a) The Minister must appoint members, from the nomination process contemplated in subsection (4), in such a manner as to ensure, insofar as is practically possible, that the functions of the SAQA are performed according to the highest professional standards.
- (b) To ensure that the functions of the SAQA are performed in the manner contemplated in paragraph (a), the members appointed must—
- (i) be broadly representative of the education and training sectors and related interests;
 - (ii) have thorough knowledge and understanding of education and training;
 - (iii) appreciate the role of education and training in the reconstruction and development of the South African economy and society;
 - (iv) have known and attested commitment to the interests of education and training;
 - (v) have knowledge and understanding of qualifications matters and quality assurance in education and training; and
 - (vi) be competent to undertake the governance and oversee the financial affairs of the SAQA.
- (c) Due attention must be given to the representativity of the board in terms of such factors as race, gender and disability.
- (4) The Minister must invite nominations for the appointment of members by notice in the *Gazette*, from—
- (a) persons involved in education and training;
 - (b) organisations involved in education and training;
 - (c) professional bodies;
 - (d) organised labour;
 - (e) organised business; and
 - (f) organisations representing community and development interests.
- (5) Any member—
- (a) holds office for a period not exceeding five years; and
 - (b) may be reappointed at the expiry of his or her term of office, but may not serve for more than two consecutive terms of office.
- (6) The Minister must appoint one of the members as chairperson.
- (7) The members must elect a deputy chairperson from amongst their number.

Vacation of office by board member and filling of vacancies

- 16.** (1) A member must vacate office if he or she—
- (a) resigns by giving written notice to the chairperson, or in the case of the chairperson, to the Minister;
 - (b) is absent from three consecutive meetings of the board, without leave of the board;
 - (c) is declared insolvent, is removed from an office of trust by a court of law or is convicted of an offence for which the sentence is imprisonment without the option of a fine; or
 - (d) is declared unable to manage his or her personal affairs by a court of law.
- (2) The Minister may, in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), remove a member of the board at any time before the expiry of the member's term of office—
- (a) on the grounds of misconduct, incapacity or incompetence; or
 - (b) for any other sound and compelling reason.
- (3) A vacancy on the board must be filled by appointment in accordance with section 15.
- (4) The Minister may, in accordance with the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000), dissolve the entire board—
- (a) if the board fails to perform in terms of this Act;
 - (b) if there is a total breakdown in the relationship between the board and the Minister; or
 - (c) on any reasonable grounds.

Committees of board

- 17.** (1) The board may establish one or more committees which must perform such functions as the board may determine.
- (2) A committee may co-opt a person who is not a member of the board but the board must consider the criteria contemplated in section 15 when it appoints such a person to a committee. 5
- (3) The board must appoint one of its members as chairperson of a committee.
- (4) A member of a committee is appointed for such period as the board may determine.

Meetings of board and committees 10

- 18.** (1) The board must meet at least four times a year at such times and places as the chairperson may determine by notice in writing to the members.
- (2) The chairperson must convene a meeting of the board—
- (a) within 14 days of receipt of a written request signed by at least one third of the members of the board; or 15
- (b) if requested by the Minister to convene a meeting.
- (3) If the chairperson and deputy chairperson of the board are absent from any meeting of the board, the members present must elect one of their number to preside at that meeting.
- (4) The board must make rules relating to the procedure at meetings of the board and its committees, including the quorum for such meetings, and any other matter necessary or expedient for the performance of the functions of the board or its committees. 20
- (5) The proceedings at a meeting of the board or a committee are not invalid by reason only of the fact that a vacancy exists on the board or committee, as the case may be, at the time of such meeting. 25
- (6) The board and its committees must keep minutes of their proceedings and decisions which when confirmed must be open to scrutiny by an interested person subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

Allowances and remuneration of members of board and committees

- 19.** A member of the board and a member of a committee who is not in the full-time service of the State may, in respect of services rendered by him or her in connection with the affairs of the board or committee, as the case may be, be paid by the SAQA such allowances and, in the case of the chairperson of the board, such additional remuneration as the Minister, with the concurrence of the Minister of Finance, may determine. 30

Appointment of chief executive officer and staff 35

- 20.** (1) The board must appoint a chief executive officer for the SAQA.
- (2) (a) The board must appoint such number of employees as it considers necessary for the performance of the SAQA's functions.
- (b) The board may delegate the function referred to in paragraph (a) to the chief executive officer of the SAQA subject to such conditions as are consistent with the relevant provisions of the PFMA. 40
- (3) The SAQA is the employer of the chief executive officer and other employees.
- (4) The board must determine the remuneration, allowances, subsidies and other conditions of service of the chief executive officer, subject to the approval of the Minister with the concurrence of the Minister of Finance. 45

Functions of chief executive officer

- 21.** The chief executive officer—
- (a) is responsible to the board for executing the functions of the SAQA in terms of this Act;
- (b) must assign responsibilities and supervise the employees of the SAQA; and 50
- (c) is the accounting officer charged with accounting for monies received, payments made and property purchased by the board.

Funds of SAQA

22. The funds of the SAQA consist of—
- (a) money appropriated by Parliament;
 - (b) donations and contributions received by the SAQA;
 - (c) money received by the SAQA in respect of fees charged for services; 5
 - (d) interest received on investments; and
 - (e) any other income received by the SAQA.

Alienation and encumbrance of property

23. The board may not without the prior approval of the Minister, granted with the concurrence of the Minister of Finance, sell, exchange or otherwise alienate the 10 immovable property of the SAQA.

Financial statements, audit and annual report

24. The Minister must table in Parliament the annual report, including the financial statements and audit report of the SAQA, within one month after receipt thereof, if Parliament is in ordinary session, and if Parliament is not in ordinary session, within one 15 month after the commencement of the next ordinary session.

CHAPTER 5

QUALITY COUNCILS

QC for General and Further Education and Training

25. Umalusi is the QC for General and Further Education and Training as provided for 20 in the GENFETQA Act.

QC for Higher Education

26. The Council on Higher Education is the QC for Higher Education as provided for in the Higher Education Act.

QC for Trades and Occupations 25

27. The QC for Trades and Occupations is provided for in the Skills Development Act.

Functions of QCs

28. A QC must, in order to achieve the objectives of the NQF—
- (a) perform its functions subject to this Act and the law by which the QC is 30 established;
 - (b) comply with any policy determined by the Minister in terms of section 9(2)(b);
 - (c) consider the Minister's guidelines contemplated in section 9(2)(c);
 - (d) collaborate with the SAQA and other QCs in terms of the system 35 contemplated in section 14(f);
 - (e) develop and manage its sub-framework, and make recommendations thereon to the relevant Minister;
 - (f) advise the relevant Minister on matters relating to its sub-framework;
 - (g) with regard to level descriptors— 40
 - (i) consider and agree to level descriptors contemplated in section 14(g)(i); and
 - (ii) ensure that they remain current and appropriate;
 - (h) with regard to qualifications for its sub-framework— 45
 - (i) develop and implement policy and criteria, taking into account the policy and criteria contemplated in section 14(h)(i), for the development, registration and publication of qualifications;

- (ii) develop and implement policy and criteria, taking into account the policy and criteria contemplated in section 14(h)(iii), for assessment, recognition of prior learning and credit accumulation and transfer;
- (iii) ensure the development of such qualifications or part qualifications as are necessary for the sector, which may include appropriate measures for the assessment of learning achievement; and 5
- (iv) recommend qualifications or part qualifications to the SAQA for registration;
- (i) with regard to quality assurance within its sub-framework— 10
 - (i) develop and implement policy for quality assurance;
 - (ii) ensure the integrity and credibility of quality assurance;
 - (iii) ensure that such quality assurance as is necessary for the sub-framework is undertaken;
- (j) with regard to information matters— 15
 - (i) maintain a database of learner achievements and related matters for the purposes of this Act; and
 - (ii) submit such data in a format determined in consultation with the SAQA for recording on the national learners' records database contemplated in section 14(l); 20
- (k) with regard to other matters—
 - (i) conduct or commission and publish research on issues of importance to the development and implementation of the sub-framework;
 - (ii) inform the public about the sub-framework; 25
 - (iii) perform any other function required by this Act; and
 - (iv) perform any function consistent with this Act that the relevant Minister may determine.

CHAPTER 6

PROFESSIONAL BODIES 30

Co-operation with QCs

29. (1) Despite the provisions of any other Act, a professional body must co-operate with the relevant QCs in respect of qualifications and quality assurance in its occupational field.

(2) Nothing in this Act may be construed as superseding any lawful requirement relating to public health and safety. 35

Recognition by SAQA

30. A statutory or non-statutory body of expert practitioners in an occupational field must apply in the manner prescribed by the SAQA in terms of section 14(i)(i) to be recognised as a professional body in terms of this Act. 40

Registration of professional designation

31. A professional body that is recognised in terms of section 30 must apply to the SAQA, in the manner determined by the SAQA in terms of section 14(i)(ii), to register a professional designation on the NQF.

Information 45

- 32.** A professional body must, in consultation with the SAQA—
- (a) maintain a database for the purposes of this Act;
 - (b) submit such data in a format determined in consultation with the SAQA for recording on the national learners' records database contemplated in section 14(l). 50

CHAPTER 7

GENERAL PROVISIONS

Delegation

33. The SAQA and the QCs have the power to delegate any of their functions to a committee, any other body capable of performing the function or an employee, but a delegation— 5

- (a) must be in writing and available for inspection on request by a member of the public;
- (b) must specify the terms and duration of the delegation;
- (c) must be consistent with this Act and the Act by which the relevant QC is established; 10
- (d) must be accompanied by sufficient funds to perform the function;
- (e) does not exempt the SAQA or the QC, as the case may be, from responsibility for the function; and
- (f) does not prevent the performance of the function by the SAQA or the QC, as the case may be. 15

Regulations

34. (1) The Minister may make regulations regarding any matter that this Act requires or permits to be prescribed.

- (2) The Minister may make regulations regarding— 20
 - (a) allowances and remuneration of members of the board or a committee contemplated in section 19; and
 - (b) generally any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act. 25

Conflicting interpretation

35. In the event of a conflict in interpretation between this Act, the Higher Education Act, the Skills Development Act and the GENFETQA Act, this Act must be given preference.

Saving 30

36. The Higher Education Qualifications Framework promulgated by the Minister in Government Notice No. 928 dated 5 October 2007 in terms of section 3 of the Higher Education Act remains the sub-framework for higher education as contemplated in sections 7(b) and 9(2)(e) of this Act.

Transitional arrangements 35

- 37.** Despite the repeal of the SAQA Act contemplated in section 38—
- (a) the members of the SAQA appointed in terms of the SAQA Act who are in office immediately prior to the commencement of this Act must fulfil the functions contemplated in section 14 until a new board is appointed by the Minister; 40
 - (b) the NQF, approved by the Minister as contemplated in the SAQA Act, continues to exist to the extent that it is consistent to this Act and must, where necessary, be amended by SAQA to ensure consistency with this Act;
 - (c) the regulations made under the SAQA Act continue to exist to the extent that they are consistent with this Act until they are repealed by the Minister by notice in the *Gazette*; 45
 - (d) a process or action which was started in terms of the SAQA Act prior to the commencement of this Act must be concluded in terms of the SAQA Act unless such process or action is inconsistent with this Act;
 - (e) a policy made under the SAQA Act continues to exist to the extent that it is consistent with this Act until it is withdrawn by the SAQA; 50

- (f) subject to any applicable law, an employee of the SAQA who was employed immediately prior to the commencement of this Act continues to be employed in terms of this Act;
- (g) the conditions of service or service benefits of employees of the SAQA which were applicable immediately prior to the commencement of this Act continue to exist until changed by the board; and 5
- (h) all assets, rights, liabilities and obligations of the SAQA that vested in the SAQA under the SAQA Act, continues to vest in the SAQA.

Repeal of law

38. The South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), is hereby repealed in its entirety. 10

Short title and commencement

39. (1) This Act is called the National Qualifications Framework Act, 2008, and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates of commencement may be so determined for different sections of this Act. 15

EXPLANATORY MEMORANDUM NATIONAL QUALIFICATIONS FRAMEWORK BILL, 2008

Introduction

1. Background

The Ministers of Education and Labour have published a joint policy statement on Enhancing the Efficacy and Efficiency of the National Qualifications Framework (the NQF). This Bill gives legislative effect to the new policy.

The joint policy statement concluded the review of the implementation of the NQF which began in April 2001, when a study team comprising international and local specialists was appointed by the two Ministers. The study team's report was published and drew a vigorous response. The Departments of Education and Labour conferred for a year before publishing a consultative document on the way forward for the NQF. This document too received valuable written comment and was subjected to scrutiny in consultations with stakeholders. Prolonged interdepartmental consultation and engagement with the South African Qualifications Authority resulted in ministerial agreement late in 2007.

The Ministers explained in their joint statement that:

“The new policy retains the original objectives of the NQF but envisages changes in its organisational structures . . . Such changes . . . are designed to address the allocation of responsibility, resolve tensions among important role-players, and simplify the NQF apparatus in order to speed up the achievement of NQF objectives”.

The National Qualifications Framework

The South African NQF has its roots in the 1980s in the struggle against racial discrimination in the workplace. Labour unions campaigned for the right of workers to have their skills formally recognised, be admitted to structured career paths and receive formal education and training to enable them to advance to any level within their industries. By 1994 the concept of a national framework of qualifications in education and training as a whole had taken root. The Reconstruction and Development Programme (RDP) (p. 62) envisaged an NQF that would—

- integrate all elements of the education and training system;
- enable learners to progress to higher levels from any starting point;
- enable learners to transfer credits from one part of the system to another;
- enable assessment and recognition of prior learning and skills acquired through experience; and
- enable curricula to cut across traditional divisions of skills and knowledge.

The South African Qualifications Authority (SAQA) Act, 1995 (Act 58 of 1995), was the first substantive measure on education and training passed by the first democratic Parliament. It was an enabling Act that established SAQA as a statutory body and gave it wide powers to develop and oversee the implementation of the NQF in order to achieve objectives which encapsulated the features envisaged in the RDP base document.

In little more than ten years the NQF, developed by SAQA with the participation of thousands of citizens, has become an essential frame of reference for the nation's education and training system, in formal learning institutions and in the workplace.

The Ministers of Education and Labour observe that “all social institutions benefit from renewed mandates and revised procedures that take experience into account”. The NQF is no exception.

Main features of the Bill

The main features of the Bill distinguish it from the SAQA Act which it will replace.

(1) The NQF.

The SAQA Act did not describe the NQF, since in 1995 it had not yet been established. The NQF Bill, 2008, describes the NQF and thereby clarifies the concept of an NQF and the way it is organised. The change of name from “SAQA Act” to “NQF Bill” reflects the new focus.

(2) Ministerial authority.

The SAQA Act requires the Ministers of Education and Labour to achieve agreement on many matters in consultation with one another. These provisions reflect the wide scope of the NQF, which covers all education and training. They have, however, proved cumbersome in practice. The NQF Bill requires the two Ministers to act collaboratively, but prescribes clear spheres of ministerial responsibility.

(3) A fit-for-purpose approach.

The SAQA Act encompassed all areas of education and training. It was expected that the desired integration of the system would be achieved by means of an essentially uniform approach to designing standards and qualifications. Experience has taught that a different approach is preferable. Learning outcomes should not be dissociated from what is learnt. What is learnt depends on the purpose and context of learning, the age, previous learning and experience of the learner. The NQF will still encompass all areas of learning and advance the integration of education and training. The NQF Bill will foster a variety of fit-for-purpose approaches to standard setting and quality assurance.

(4) Simplification.

The SAQA Act empowered SAQA to establish or recognise sub-structures to carry out the design of standards and qualifications and to undertake quality assurance. SAQA did this by way of regulations.

Many Acts, including the Mine Health and Safety Act, 1996 (Act 29 of 1996), the Higher Education Act, 1997 (Act 101 of 1997), the Skills Development Act, 1998 (Act 97 of 1998), and the General and Further Education and Training Quality Assurance Act, 2001 (Act 58 of 2001), added new statutory quality assurance bodies that were required to work within the SAQA system. NQF processes were thus complicated by the proliferation of sub-structures with overlapping mandates.

By naming Quality Councils for General and Further Education and Training, Higher Education, and Trades and Occupations, respectively, the NQF Bill provides a radically simplified sectoral architecture with clear lines of accountability and explicit requirements for collaboration and dispute resolution.

(5) Sectors, not bands

The regulations under the SAQA Act formalised the concepts of NQF bands as an organising principle, viz the General Education and Training band (level 1), the Further Education and Training band (levels 2-4), the Higher Education and Training band (levels 5-8). This horizontal organisation was meant to give expression to the integration of all forms of learning within a band, no matter how or where it was provided.

The Bill, by contrast, is based on the idea of education and training sectors. The envisaged sectors are the—

- General and Further Education and Training sector;
- Higher Education sector; and
- Trades and Occupations sector.

The first two sectors comprise formal education institutions (schools, adult education centres, FET colleges, higher education institutions) and fall under the Minister of Education. The third comprises education and training in and for the workplace, and falls under the Minister of Labour.

The sectoral approach runs with the grain of the education and training system. The Bill provides both a conceptual framework and organisational mechanisms to ensure that the work of the sectors is co-ordinated and that the progressive objectives of the NQF are safeguarded and advanced.

(6) SAQA's role vis á vis Quality Councils

The SAQA Act gave SAQA the responsibility of conceptualising the NQF and leading its implementation. SAQA has been true to its mandate to act consultatively. However, many participants felt that the NQF system, as it developed, entailed an unnecessary degree of centralisation and conceptual and procedural rigidity.

The NQF Bill envisages an apex role for SAQA as custodian of the values of the NQF, research organisation, learning database manager and advisor on the entire NQF system to the government (among other responsibilities).

The Bill seeks to give responsibility for NQF implementation to three sectoral Quality Councils (QCs) which will act in close liaison with each other and with SAQA. It is envisaged that a system of collaboration will develop that will ensure the integrity of the NQF. The Minister is empowered to determine regulations to deal with the settlement of disputes that may arise. In this way damaging deadlocks will be avoided.

The relationship between SAQA and the QCs is a matter of importance for all NQF actors and stakeholders. The Ministers' review of NQF implementation put a high premium on simplifying and streamlining NQF structures and processes. Consultations during the drafting process have re-emphasised that the three QCs are the executive structures for the NQF. Two of the three (Umalusi and the Council on Higher Education) are existing statutory bodies with original powers and responsibilities under their founding Acts and direct accountability to the Minister of Education. The third QC (for Trades and Occupations) will follow that pattern, with direct accountability to the Minister of Labour. A hierarchical arrangement between SAQA and the QCs would therefore be legally inappropriate and make for cumbersome, time-consuming and costly decision-making processes. The credibility of the QCs' quality assurance role depends on them being able to form independent judgments based on evidence and observation tested against agreed and publicly known standards. In the case of higher education, especially, the role of peer review is crucial.

The QCs must therefore fulfil their functions in the best interests of their respective sectors, but with the advantage of mutual advice, collegial oversight from SAQA and a common national frame of reference in the NQF itself and ministerial policy and guidelines. Information sharing, linked board memberships, the requirement for prior consultation among the QCs and SAQA and similar co-ordinating measures will ensure common purpose and mutually compatible decision-making.

A suite of Bills

The passage of the NQF Bill requires consequential amendments to a number of Acts in the 2008 parliamentary session.

The most important changes relate to the establishment of the three Quality Councils. Umalusi is to become the QC for General and Further Education and Training. The Council on Higher Education is to become the QC for Higher Education. These bodies already have experience as quality assurers and have already exercised influence on qualifications structures for their sectors of the formal education system. The relevant Acts must be amended to reflect their new status and additional functions as QCs. The position is different for work-related education and training. A new QC for Trades and Occupations must be established by the Department of Labour.

The NQF Bill is therefore accompanied by Bills to amend the General and Further Education and Training Quality Assurance Act, 2001, and Higher Education Act, 1997 (both to be introduced by the Minister of Education), and the Skills Development Act, 1998 (to be introduced by the Minister of Labour). Consequential amendments to other Acts, where the changes required are less significant, do not need to be introduced in the 2008 session of Parliament.

SUMMARY OF BILL

Preamble

The Preamble explains the conceptual and historical foundations of the Bill.

Chapter 1: Definitions, Object and Application of Act

Definitions

Most definitions in clause 1 are straightforward. A few involve policy considerations that may not be self-evident.

“learning”

The definition of learning is deliberately broad in order to reflect the fact that the NQF is not confined to one or other variety of learning. In the Act the term is used in phrases like “learning achievements”, “occupational learning” and “recognition of prior learning”.

“part qualification”

This term covers terms in common use in different sectors that refer to an assessed unit of learning, such as “unit standard” or “module”.

“professional body”

SAQA is empowered in chapter 6 to recognise professional bodies for purposes of the Act. SAQA has engaged over many years with the community of professional bodies to clarify their role in relation to the NQF. The Bill does not interfere with the responsibilities of professional bodies to their members and the public. It reflects the view that professional designations be registered on SAQA’s National Learners’ Records Database.

“quality councils”

These are the new, sector-based structures that will be responsible for the development and quality assurance of qualifications in their sub-frameworks of the NQF.

“sub-framework”

The concept of a sub-framework covering a particular sector of education and training was introduced during the review process and is a significant feature of the Ministers’ joint policy statement. Clause 7 of the Bill provides that the NQF will henceforth be organised in three co-ordinated sub-frameworks, viz for General and Further Education and Training, for Higher Education, and for Trades and Occupations. The Higher Education Qualifications Framework (HEQF) has already been determined and gazetted by the Minister of Education in terms of the Higher Education Act, 1997, following advice given by the Council on Higher Education. The General and Further Education and Training Qualifications Framework is being prepared by Umalusi. The Department of Labour in consultation with its stakeholders has begun work on the Trades and Occupations sub-framework.

Object of Act

Clause 2 makes it clear that the NQF is a going concern and that the Act is intended to foster it and prescribe its organisation and governance.

Application of Act

The Bill applies to all education institutions for which the Minister of Education and MECs for Education are responsible and all occupational training providers for whom the Minister of Labour is responsible in terms of the Skills Development Act, 1998. It also applies to the professional designations conferred by recognised professional bodies insofar as they are to be registered on the National Learners’ Records Database.

Chapter 2: National Qualifications Framework**Framework**

This clause provides a compact explanation of what the NQF is.

Objectives of NQF

The objectives of the NQF provided in subsection (1) are identical to those in the SAQA Act, 1995. They have won widespread endorsement. Subsection (2) sets out the categories of actions required for the objectives to be realised.

Framework levels

The NQF (like its counterparts in other countries) is organised as a series of levels of learning achievements. When a qualification is registered by SAQA on the NQF it is registered at a particular NQF level. This is the basic organising principle of the NQF which enables qualifications at different levels to be related to one another for purposes of learner progression and mobility. The initial organisation of the NQF in eight levels proved too constraining, and a consensus was achieved during the review process that a framework of ten levels would cover all requirements.

Each level has a level descriptor which specifies the nature of the learning achievement deemed appropriate for that level. This is the case at present and the Bill recognises this essential feature of a qualifications framework. The Bill expresses the consensus view that the NQF must have a single set of level descriptors which applies to all qualifications regardless of the sub-framework where they are located.

Sub-frameworks

This is the most important organisational innovation introduced by the Bill. It provides opportunity for creative and holistic thinking about the structure of qualifications for a sector of learning, and the processes by which learners progress from level to level or advance horizontally by receiving credit for a qualification when enrolling for another.

The Bill stipulates that the relevant sub-framework must be named on all documents dealing with the registration and publication of a qualification. The clause also requires that the nomenclature of qualification types must be distinct and appropriate for each sub-framework as well as being compatible with international practice. Both requirements will foster transparency, minimise confusion and clarify each sub-framework's identity.

Responsibilities of Ministers

The NQF originated in a historic collaboration between education and training constituencies associated with the Ministries of Education and Labour, respectively. The Bill confirms that collaboration, but specifies clearly the Ministers' joint and individual responsibilities.

This clause affirms the joint responsibility of the two Ministers for the advancement of NQF objectives and retaining public confidence in the NQF. They must do so by discharging their responsibilities in a co-operative manner and encouraging collaboration among SAQA and the QCs for which they are responsible.

Responsibilities of Minister

The Minister of Education (the Minister) is responsible for the NQF. SAQA and the two formal education QCs are accountable to the Minister. Amongst other responsibilities, the Minister must—

- consider advice from SAQA and the QCs;
- after consultation with the Minister of Labour, determine and gazette NQF policy and publish guidelines setting out government's strategy and priorities.
- determine by regulation the arrangements by which a dispute among SAQA or the QCs will be settled.

On recommendation of the QCs concerned, and after consulting the Minister of Labour, the Minister must determine the qualifications sub-frameworks for general and further education and training and for higher education.

Responsibilities of Minister of Labour

The Minister of Labour is responsible for the QC for Trades and Occupations, and must consider the advice of that body and of QCs. The Minister of Labour determines the qualifications sub-framework for trades and occupations, on the recommendation of the QC concerned and after consulting the Minister.

Chapter 4: South African Qualifications Authority

Continuation of SAQA

SAQA is established as a juristic person. The Bill recognises that SAQA (which was initially established in terms of the SAQA Act, 1995) is a going concern and provides for the transition to the new legislative environment.

Objects of SAQA

SAQA's oversight and advocacy role on behalf of the NQF is perpetuated, and it has new responsibility for facilitating the co-ordination of the sub-frameworks to ensure the integrity of the NQF.

Accountability of SAQA

SAQA is accountable to the Minister of Education.

Functions of SAQA

Precise functions are prescribed for SAQA that give form to the crucial oversight role and demonstrate its strategic importance and forward-looking character. SAQA currently operates a highly devolved but complex system of qualifications development and quality assurance. The devolved operations will henceforth be structured more simply by sub-framework in the three QCs. They will have the task of co-ordinating operations in their sectors, and SAQA will have close relations with them.

SAQA's functions are both broad and specific. Broad functions include its responsibility to advise the Ministers on NQF matters; the preparation of an implementation framework for the NQF in the light of the Minister's guidelines; and the development of a system of collaboration that will enable the QCs and SAQA to fulfil their respective mandates in a coherent and collegial manner.

SAQA's specific functions (on the advice of the QCs) include deciding upon level descriptors in agreement with the QCs and ensuring that they are kept up to date; preparing policy and criteria frameworks on the main areas of NQF activity that will guide most QC operations (qualifications, assessment, recognition of prior learning, credit accumulation and transfer, recognition of professional bodies and the registration of professional designations); international collaboration with counterpart NQF authorities; research, including studies of the NQF's impact on South African education, training and employment; the maintenance of the national learners' records database (a vital and accessible electronic storehouse of historic and contemporary data on South African education and training); the evaluation of foreign qualifications; and public information on the NQF.

SAQA board

The Bill changes the structure of the SAQA board and reduces the membership. The current appointment process is cumbersome and protracted.

The Bill provides for a smaller board appointed for a period of five years by the Minister after consultation with the Minister of Labour. The board will comprise 12 members appointed in their personal capacities on the basis of nominations by the general public and by constituencies, and the CEOs of SAQA and the three QCs (ex officio), for a total of 16. The Minister must ensure that the board, taken as a whole, meets strict criteria relating to knowledge of the education and training system, the NQF mandate, development goals, representativity and organisational competence.

The proposed section 23 is identical to the corresponding section of the SAQA Act except that by omitting the word “let” the Bill enables SAQA to make decisions about the letting of space in SAQA House or any other property without having to seek ministerial authorisation.

Chapter 5: Quality Councils

Clause 25: QC for General and Further Education and Training

The Bill provides that Umalusi is the QC for General and Further Education and Training. Umalusi is established by the General and Further Education and Training Quality Assurance (GENFETQA) Act, 2001 (Act No. 58 of 2001), and is the successor to the South African Certification Council (SAFCERT). Umalusi discharges the functions previously performed by SAFCERT with respect to the moderation of public examinations and certification of learners at exit points for schools, FET colleges and adult education, but it has a broader mandate under its Act, “to ensure that continuous enhancement of quality is achieved in the delivery and outcomes of the general and further education and training sectors of the national education and training system”. Umalusi is therefore well placed to assume the responsibilities of a sectoral Quality Council in terms of this Bill.

The GENFETQA Act is under review by the Department of Education and the Umalusi Council with a view to its replacement by a new Umalusi Act that will be fully in tune with the new environment created by this NQF Bill. The new Umalusi Act will also resolve outstanding questions relating to the respective responsibilities of Umalusi and the Department of Education for the quality assurance of public education provision.

QC for Higher Education

The Bill provides that the Council on Higher Education (CHE) is the QC for Higher Education. The CHE is established by the Higher Education Act, 1997 (Act 101 of 1997), to advise the Minister on higher education matters and related functions. The Act also established the Higher Education Quality Committee (HEQC) as a permanent committee of the CHE to undertake quality assurance and quality promotion in the higher education sector. The HEQC has developed a well-regarded and robust regime of quality assurance for higher education programmes. The CHE’s well-researched advice to the Minister on qualifications policy led to the formulation and determination by the Minister of the Higher Education Qualifications Framework, which becomes a sub-framework of the NQF in terms of this Bill. The CHE is therefore well placed to assume the functions of a sectoral QC in terms of this Bill.

QC for Trades and Occupations

No single pre-existing statutory body provides a platform for the new QC for Trades and Occupations, which will therefore be established from scratch by amendments to the Skills Development Act, 1998 (Act 97 of 1998), introduced by the Minister of Labour.

Functions of QCs

This clause provides a common template for all three QCs, which dovetails with the functions of the SAQA prescribed in the Bill. The QCs will advise their respective Ministers on NQF matters related to their sub-frameworks. They will operate according to ministerial policy and guidelines. They will collaborate with each other and the SAQA under a common system. They will develop and implement policy for their sub-frameworks on qualifications, assessment, recognition of prior learning, credit accumulation and transfer, and quality assurance. Their information systems will be integrated with the SAQA’s national learners’ records database. They will undertake or commission research to advance their respective sub-frameworks and provide an information service to the public.

Chapter 6: Professional Bodies

Co-operation with QCs

Within the current SAQA system, professional bodies have become vital players in the development of qualifications and quality assurance of programmes in their fields of expertise. This clause formalises a practice of collaboration that is already well accepted.

Recognition by SAQA

Professional bodies are autonomous bodies governed by statute or their own constitutions. This Bill does nothing to disturb that status. If a professional body wishes to register its professional designation on the NQF it must apply for recognition by the SAQA, which will act in terms of the policy envisaged by clause 14(i).

Registration of professional designation

The SAQA and the professional body community have been in discussion about the registration of professional designations on the NQF. This clause gives such a process legal recognition.

Information

Professional bodies house important information that should be stored on the national learners' records database and be available for analysis. This clause formalises an accepted practice.

Chapter 7: Miscellaneous

Delegation

Delegation is a necessary requirement in organisations that undertake complex functions. It is a serious matter and must be properly undertaken with the necessary safeguards.

Regulations

The SAQA Act empowers the SAQA to make regulations subject to the approval of the Minister. The Bill adopts the customary formulation that empowers the Minister with portfolio responsibility to determine and publish regulations in terms of the Act. Earlier provisions relating to advice from the SAQA and the QCs and consultation with the Minister of Labour will apply.

Conflicting interpretation

Since three other related Bills are being introduced alongside the NQF Bill and are related to it, it is prudent to anticipate that conflicts of legal interpretation might arise. In such a case the courts will give preference to the provisions of this Bill.

Saving

This clause takes account of the fact that the Higher Education Qualifications Framework contemplated in the proposed sections 7(b), 9(2)(e) and 28(e) has already been determined and published by the Minister in the *Gazette*.

Clause 37: Transitional arrangements

Transitional provisions ensure the continuity of the SAQA board and its operations (if consistent with the NQF Act) until new arrangements come into effect in terms of the new Act. The current (fourth) members of the SAQA were appointed by the Minister in 2007 for a three-year term. They will continue in office until the Minister appoints a new board in terms of clause 15. The SAQA's regulations and policies remain effective to the

extent that they are consistent with the Bill, until the Minister replaces them. Any process under way at the time the new Act comes into effect may be completed under the old arrangements if consistent with the new Act. The SAQA employees' employment contracts are safeguarded until altered by a new board.

CONSULTATION

The Department of Labour, Department of Agriculture, Department of Water Affairs and Forestry, Department of Finance, National Economic Development and Labour Council (NEDLAC), SAPS, SAQA, Umalusi, the CHE.

The Department received comments from 26 stakeholders. These comments were incorporated into the Bill on merit.

FINANCIAL IMPLICATIONS

There are expected to be no significant financial implications in the current financial year. The implications for subsequent years will be studied and explained in the budgetary process. In principle, reducing the SAQA's functions should result in savings which will offset the cost of adding functions to Umalusi and the CHE, but the extent of the offset is not yet known.

CONSTITUTION IMPLICATIONS

None.

PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Education are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76 of the Constitution, because it deals with a functional area listed in Schedule 4 to the Constitution, namely "Education".

The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1) (a) of the Traditional Leadership and Governance Framework Act 41 of 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or to the customs of traditional communities.

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