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THE PRESIDENCY

No. 1196. 22 November 2000

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 54 of 2000: Higher Education Amendment Act, 2000.

DIE PRESIDENSIE

No. 1196. 22 November 2000

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 54 van 2000: Wysigingswet op Hoër Onderwys, 2000.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 17 November 2000.)

ACT

To amend the Higher Education Act, 1997, so as to define certain expressions; to extend the power of the Minister of Education with regard to the determination of higher education policy; to provide that vacancies in the Council on Higher Education are filled for the unexpired term of office of the predecessor; to provide for the nominations to fill vacancies in the Council; to provide that a public higher education institution may not without the approval of its council and, under certain circumstances, without the concurrence of the Minister, enter into a loan or overdraft agreement or develop infrastructure; to make further provision for information a council has to furnish to the Minister; to make further provision for the registration of private higher education institutions, the requirements for their registration and the determination of applications for their registration; to provide afresh for the change of the name of a public higher education institution; and to make further provision for the repeal of laws; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 101 of 1997

1. Section 1 of the Higher Education Act, 1997 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of “financial year” of the following definition:

“‘foreign juristic person’ means a person—

(i) registered or established as a juristic person in terms of a law of a foreign country; and

(ii) recognised or registered as an external company in terms of the Companies Act, 1973 (Act No. 61 of 1973);”;

(b) by the insertion after the definition of “institutional statute” of the following definition:

“‘local juristic person’ means a person established as a juristic person in South Africa in terms of the Companies Act, 1973 (Act No. 61 of 1973);”;

(c) by the insertion after the definition of “this Act” of the following definition:

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ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 17 November 2000.)

WET

Tot wysiging van die Wet op Hoër Onderwys, 1997, ten einde sekere uitdrukkings te omskryf; die Minister van Onderwys se bevoegdheid betreffende die bepaling van beleid oor hoër onderwys uit te brei; voorsiening te maak dat vakatures in die Raad op Hoër Onderwys gevul word vir die onverstreke ampstermyn van die voorganger; voorsiening te maak vir benoemings om vakatures te vul; voorsiening te maak dat 'n openbare inrigting vir hoër onderwys nie sonder die instemming van sy raad, en in sekere omstandighede nie sonder die instemming van die Minister nie, 'n lenings- of oortrekkingsooreenkoms aangaan of infrastruktuur ontwikkel nie; verder voorsiening te maak vir die inligting wat 'n raad aan die Minister moet verskaf; verder voorsiening te maak vir die registrasie van private inrigtings vir hoër onderwys, die vereistes vir hul registrasie en die bepaling van aansoeke om hul registrasie; opnuut voorsiening te maak vir die naamsverandering van 'n openbare inrigting vir hoër onderwys; en verder voorsiening te maak vir die herroeping van wette; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 101 van 1997

1. Artikel 1 van die Wet op Hoër Onderwys, 1997 (hieronder die Hoofwet genoem),
5 word hierby gewysig—

(a) deur die volgende omskrywing na die omskrywing van “boekjaar” in te voeg:

“ ‘buitelandse regspersoon’ ’n persoon wat—

- 10 (i) ingevolge 'n wet van 'n vreemde land as 'n regspersoon geregistreer of ingestel is; en
(ii) as 'n buitelandse maatskappy ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973), erken of geregistreer is;”;

(b) deur die volgende omskrywing na die omskrywing van “Minister” in te voeg:

15 “ ‘om hoër onderwys te voorsien’—

(a) die registrasie van studente vir—

- 20 (i) volledige kwalifikasies op vlak 5 of hoër van die Nasionale Kwalifikasieraamwerk soos beoog in die Wet op die Suid-Afrikaanse Kwalifikasieowerheid, 1995 (Wet No. 58 van 1995); of
(ii) die gedeelte van 'n kwalifikasie wat aan die vereistes van 'n eenheidstandaard soos erken deur die Suid-Afrikaanse

“ ‘to provide higher education’ means—

- (a) the registering of students for—
 - (i) complete qualifications at or above level 5 of the National Qualification Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); or
 - (ii) such part of a qualification which meets the requirements of a unit standard as recognised by the South African Qualifications Authority at or above the level referred to in subparagraph (i);
 - (b) the taking of responsibility for the provision and delivery of the curricula;
 - (c) the assessment of students regarding their learning programmes; and
 - (d) the conferring of qualifications,
- in the name of the higher education institution concerned.”

Amendment of section 3 of Act 101 of 1997

2. Section 3 of the principal Act is hereby amended by the addition of the following subsection:

“(3) The Minister may, in terms of the policy contemplated in subsection (1) and in the interest of the higher education system as a whole, determine the scope and range of operations of—

- (a) public higher education institutions;
- (b) private higher education institutions; and
- (c) individual public or private higher education institutions.”

Amendment of section 11 of Act 101 of 1997

3. Section 11 of the principal Act is hereby amended by the addition of the following subsections, the existing section becoming subsection (1):

“(2) A member nominated in accordance with subsection (1) serves for the unexpired term of office of the predecessor.

(3) Notwithstanding section 8(3), the Minister must in writing invite nominations to fill a vacancy contemplated in subsection (1) from—

- (a) national organisations representing—
 - (i) students;
 - (ii) academic employees;
 - (iii) employees other than academic employees;
 - (iv) university principals;
 - (v) technikon principals;
 - (vi) principals of higher education colleges;
 - (vii) principals of private higher education institutions;
 - (viii) organised business; and
 - (ix) organised labour; and
- (b) research and science councils.”

Amendment of section 40 of Act 101 of 1997

4. Section 40 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (d) of the following paragraph:

“(d) money raised by means of loans and overdrafts;”;
- (b) by the addition of the following subsections, the existing section becoming subsection (1):

“(2) (a) Subject to paragraph (b), a public higher education institution may only with a resolution of its council, not taking into account any vacancy that may exist, enter into a loan or an overdraft agreement.

(b) An agreement contemplated in paragraph (a) must be approved by the Minister if the agreement, or the sum of loans and overdrafts to be raised in any financial year, exceeds—

- Kwalifikasiewerheid op of hoër as die vlak bedoel in subparagraaf (i) voldoen;
- (b) die aanvaarding van verantwoordelikheid vir die voorsiening en lewering van die kurrikulums;
- 5 (c) die evaluering van studente betreffende hul leerprogramme; en
- (d) die toekenning van kwalifikasies, in die naam van die betrokke inrigting vir hoër onderwys; en
- (c) deur die volgende omskrywing na die omskrywing van "ouditeur" in te voeg:
- 10 "'plaaslike regspersoon' 'n persoon wat as 'n regspersoon ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973), in Suid-Afrika ingestel is;".

Wysiging van artikel 3 van Wet 101 van 1997

2. Artikel 3 van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg:

- 15 "(3) Die Minister kan, ingevolge die beleid in subartikel (1) beoog en in belang van die hoër onderwysstelsel as 'n geheel, die bestek en omvang van werksaamhede bepaal van—
- (a) openbare inrigtings vir hoër onderwys;
- 20 (b) private inrigtings vir hoër onderwys; en
- (c) individuele openbare of private inrigtings vir hoër onderwys."

Wysiging van artikel 11 van Wet 101 van 1997

3. Artikel 11 van die Hoofwet word hierby gewysig deur die volgende subartikels by te voeg terwyl die huidige artikel subartikel (1) word:

- 25 "(2) 'n Lid wat in ooreenstemming met subartikel (1) benoem is, dien vir die onverstreke ampstermyn van die voorganger.
- (3) Ondanks artikel 8(3) moet die Minister op skrif benoemings vra vir die vul van 'n vakature beoog in subartikel (1) van—
- (a) nasionale organisasies verteenwoordigend van—
- 30 (i) studente;
- (ii) akademiese werknemers;
- (iii) ander werknemers as akademiese werknemers;
- (iv) rektore van universiteite;
- (v) hoofde van teknikons;
- 35 (vi) hoofde van kolleges vir hoër onderwys;
- (vii) hoofde van private inrigtings vir hoër onderwys;
- (viii) georganiseerde handel; en
- (ix) georganiseerde arbeid; en
- (b) navorsings- en wetenskaprade."

40 Wysiging van artikel 40 van Wet 101 van 1997

4. Artikel 40 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (d) deur die volgende subartikel te vervang:
- "(d) geld ingesamel deur middel van lenings en oortrekkings;"; en
- (b) deur die volgende subartikels by te voeg, terwyl die bestaande artikel subartikel (1) word:
- 45 "(2) (a) Behoudens paragraaf (b) kan 'n openbare inrigting vir hoër onderwys slegs by besluit van sy raad, sonder inagneming van enige vakature wat daar mag wees, 'n lenings- of oortrekkingsooreenkoms aangaan.
- (b) 'n Ooreenkoms beoog in paragraaf (a) moet deur die Minister goedgekeur word indien die ooreenkoms, of die som van lenings en oortrekkings wat gedurende 'n boekjaar gewerf moet word—
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- (i) such amount as the Minister had determined for such institution; or
(ii) in the absence of such determination, five per cent of the average income of that public higher education institution received during the two years immediately preceding such agreement.
- (3) (a) Subject to paragraph (b), a public higher education institution may only with a resolution of its council, not taking into account any vacancy that may exist, embark on any—
- (i) construction of a permanent building or other immovable infrastructural development;
(ii) purchasing of immovable property; or
(iii) long-term lease of immovable property.
- (b) Any action contemplated in paragraph (a) must be approved by the Minister if the value of such development or property exceeds five per cent of the average income of that public higher education institution received during the two years immediately preceding such action.”.

Amendment of section 41 of Act 101 of 1997

5. Section 41 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) The council of a public higher education institution must provide the Minister with [—
- (a) **the information that must be provided in terms of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992); and**
- (b) such [additional] information, in such format, as the Minister may reasonably require.”.

Substitution of section 51 of Act 101 of 1997

6. The following section is hereby substituted for section 51 of the principal Act:

“Registration of private higher education institutions

51. No person other than a public higher education institution or an organ of state may provide higher education unless that person is—
- (a) in the prescribed manner, registered or conditionally registered as a private higher education institution in terms of this Act; and
- (b) registered or recognised as a juristic person in terms of the Companies Act, 1973 (Act No. 61 of 1973), before such person is registered or conditionally registered as contemplated in paragraph (a).”.

Amendment of section 53 of Act 101 of 1997, as amended by Act 55 of 1999

7. Section 53 of the principal Act is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:
“The registrar [must] may register an applicant as a private higher education institution if the registrar has reason to believe that the applicant—”;
- (b) by the deletion of subparagraph (iii) of paragraph (b) of subsection (1); and
- (c) by the addition to subsection (1) of the following paragraph:
“(c) complies with any other reasonable requirement determined by the registrar which may include a requirement that none of the words or any derivatives of the words ‘university’ or ‘technikon’ may appear in the name of the applicant.”.

Amendment of section 54 of Act 101 of 1997

8. Section 54 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

- (i) die bedrag oorskry wat die Minister vir sodanige inrigting bepaal het; of
- (ii) in die afwesigheid van so 'n bepaling, vyf persent te bowe gaan van die gemiddelde inkomste van daardie openbare inrigting vir hoër onderwys wat gedurende die twee jaar wat sodanige ooreenkoms onmiddellik voorafgaan, ontvang is.
- (3) (a) Behoudens paragraaf (b) kan 'n openbare inrigting vir hoër onderwys slegs by besluit van sy raad, sonder inagneming van enige vakature wat daar mag wees—
- (i) die oprig van 'n permanente gebou of ander onroerende infrastrukturele ontwikkeling onderneem;
- (ii) die aankoop van onroerende eiendom onderneem; of
- (iii) 'n langtermynhuur van onroerende eiendom onderneem.
- (b) 'n Handeling beoog paragraaf (a) moet deur die Minister goedgekeur word indien die waarde van sodanige ontwikkeling of eiendom vyf persent te bowe gaan van die gemiddelde inkomste van daardie openbare inrigting vir hoër onderwys wat gedurende die twee jaar wat sodanige handeling onmiddellik voorafgaan, ontvang is.”

Wysiging van artikel 41 van Wet 101 van 1997

5. Artikel 41 van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:
- “(3) Die raad van 'n openbare inrigting vir hoër onderwys moet die Minister voorsien van [—
- (a) die inligting wat ingevolge die Wet op Verslagdoening deur Openbare Entiteite, 1992 (Wet No. 93 van 1992), verstrekk moet word; en
- (b) die [bykomende] inligting, in die formaat, wat die Minister redelikerwys vereis.”

Vervanging van artikel 51 van Wet 101 van 1997

6. Artikel 51 van die Hoofwet word hierby deur die volgende artikel vervang:

- “**Registrasie van private inrigtings vir hoër onderwys**
51. Geen persoon, behalwe 'n openbare inrigting vir hoër onderwys of 'n staatsorgaan, mag hoër onderwys [in die Republiek] aanbied nie tensy daardie persoon—
- (a) op die voorgeskrewe wyse geregistreer of voorwaardelik geregistreer is as 'n private inrigting vir hoër onderwys ingevolge hierdie Wet [nie]; en
- (b) as 'n regspersoon ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973), geregistreer of erken is voordat sodanige persoon geregistreer of voorwaardelik geregistreer word soos beoog in paragraaf (a).”

Wysiging van artikel 53 van Wet 101 van 1997, soos gewysig deur Wet 55 van 1999

7. Artikel 53 van die Hoofwet word hierby gewysig—
- (a) deur die woorde wat paragraaf (a) van subartikel (1) voorafgaan, deur die volgende woorde te vervang:
- “Die registrateur [moet] kan 'n applikant as 'n private inrigting vir hoër onderwys registreer indien die registrateur rede het om te glo dat die applikant—”;
- (b) deur subparagraaf (iii) van paragraaf (b) van subartikel (1) te skrap; en
- (c) deur die volgende paragraaf by subartikel (1) te voeg:
- “(c) voldoen aan enige ander redelike vereiste deur die registrateur bepaal, wat 'n vereiste kan insluit dat nie een van die woorde of enige afleidings van die woorde ‘universiteit’ of ‘tegnikon’ in die naam van die applikant mag verskyn nie.”

Wysiging van artikel 54 van Wet 101 van 1997

8. Artikel 54 van die Hoofwet word hierby gewysig—
- (a) deur subartikel (1) deur die volgende subartikel te vervang:

- “(1) The registrar [**must**]
- (a) must consider any application for registration as a private higher education institution and any further information, particulars or documents provided by the applicant; [and]
- (b) may, when considering the application, differentiate between a foreign juristic person and local juristic person with regard to matters such as its scope and range of operations, its size and its institutional configuration; and
- (c) may register the applicant as a private higher education institution if the requirements for registration contemplated in section 53 are fulfilled.”;
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) Notwithstanding subsection (1), the registrar may conditionally register an applicant who does not fulfill the requirements for registration, other than a foreign juristic person if the registrar believes that the applicant will be able to fulfill the relevant requirements within a reasonable period.”; and
- (c) by the addition of the following subsection:
- “(7) No independent school as defined in the South African Schools Act, 1996 (Act No. 84 of 1996), or other private education institution may call itself a university or a technikon or confer a professorship or an honorary degree or use the title of rector, vice-chancellor or chancellor, unless it is registered as a private higher education institution in terms of Chapter 7 and the word “university” or “technikon” appears in its name.”.

Substitution of section 65 of Act 101 of 1997

9. The following section is hereby substituted for section 65 of the principal Act:

“Name change of public higher education institution

(1) [A] Notwithstanding anything to the contrary contained in any other law, a council of a public higher education institution [other than a council of a university established or incorporated by a private Act of Parliament] may, with the approval of the Minister and by notice in the *Gazette*, change the name of such higher education institution.

(2) Any change of name contemplated in subsection (1) does not affect any right, duty, liability or obligation of the public higher education institution in question.”.

Amendment of section 66 of Act 101 of 1997

10. Section 66 of the principal Act is hereby amended by the substitution for subsection (3) for the following subsection:

“(3) Any person who contravenes section 51(1)(a), 54(7) or 55(2) is guilty of an offence and is liable on conviction to a fine or to imprisonment not exceeding five years or to both such fine and imprisonment.”.

Amendment of section 68 of Act 101 of 1997, as amended by section 9 of Act 55 of 1999

11. Section 68 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The council of a public higher education institution may, on such conditions as it may determine, delegate any of its powers under this Act or delegated to it in terms of subsection (1), except the power to—

- (a) make an institutional statute;
- (b) enter into an agreement contemplated in section 40(2); or
- (c) perform an action contemplated in section 40(3).

Die registrateur [moet]—

- (a) moet enige aansoek om registrasie as 'n private inrigting vir hoër onderwys en enige verdere inligting, besonderhede of dokumente wat deur die applikant voorsien is, oorweeg; [en]
- 5 (b) kan, wanneer die aansoek oorweeg word, onderskei tussen 'n buitelandse regs persoon en 'n plaaslike regs persoon met betrekking tot aangeleenthede soos sy bestek en omvang van werksaamhede, sy grootte en sy institusionele vorm; en
- 10 (c) kan die applikant as 'n private inrigting vir hoër onderwys registreer indien daar aan die vereistes vir registrasie soos beoog in artikel 53 voldoen is.”;
- (b) deur subartikel (3) deur die volgende subartikel te vervang:
- “(3) Ondanks subartikel (1) kan die registrateur 'n applikant wat nie aan die vereistes vir registrasie voldoen nie, anders as 'n buitelandse regs persoon, voorwaardelik registreer indien die registrateur van oordeel is dat die applikant binne 'n redelike tydperk aan die toepaslike vereistes sal voldoen.”;
- 15 en
- (c) deur die volgende subartikel by te voeg:
- “(7) Geen onafhanklike skool soos omskryf in die Suid-Afrikaanse Skolewet, 1996 (Wet No. 84 van 1996), of ander private onderwysinrigting mag homself 'n universiteit of technikon noem nie of 'n professoraat of 'n eregraad toeken of die titels van rektor, visekanselier of kanselier gebruik nie, tensy dit ingevolge Hoofstuk 7 as 'n private inrigting vir hoër onderwys geregistreer is en die woord “universiteit” of “teknikon” in sy naam voorkom.”.
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Vervanging van artikel 65 van Wet 101 van 1997

9. Artikel 65 van die Hoofwet word hierby deur die volgende artikel vervang:

“Naamsverandering van openbare inrigting vir hoër onderwys

- 30 (1) [’n Raad] Ondanks enige teenstrydige bepaling in enige ander wet kan ’n raad van ’n openbare inrigting vir hoër onderwys [behalwe ’n raad van ’n universiteit gevestig of geïnkorporeer deur ’n private Wet van die Parlement, kan] met die instemming van die Minister en by kennisgewing in die Staatskoerant die naam van die inrigting vir hoër onderwys verander.
- 35 (2) Enige naamsverandering beoog in subartikel (1) raak nie enige reg, plig, aanspreeklikheid of verpligting van die betrokke openbare inrigting vir hoër onderwys nie.”.

Wysiging van artikel 66 van Wet 101 van 1997

10. Artikel 66 van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

- “(3) Enige persoon wat artikel 51(1)(a), 54(7) of 55(2) oortree, is aan ’n misdryf skuldig en by skuldigbevinding strafbaar met ’n boete of met gevangenisstraf van hoogstens vyf jaar of met sowel die boete as die gevangenisstraf.”.

45 Wysiging van artikel 68 van Wet 101 van 1997, soos gewysig deur artikel 9 van Wet 55 van 1999

11. Artikel 68 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

- 50 “(2) Die raad van ’n openbare inrigting vir hoër onderwys kan, op die voorwaardes wat hy bepaal, enige van sy bevoegdhede kragtens hierdie Wet of aan hom gedelegeer ingevolge subartikel (1), delegeer, behalwe die bevoegdheid om—
- (a) ’n institusionele statuut uit te vaardig;
- (b) ’n ooreenkoms beoog in artikel 40(2) aan te gaan; of
- (c) ’n handeling beoog in artikel 40(3) te verrig,

and assign any of its duties in terms of this Act or assigned to it in terms of subsection (1), to the other internal structures, the principal or any other employee of the public higher education institution concerned.”.

Amendment of section 76 of Act 101 of 1997

12. Section 76 of the principal Act is hereby amended by the addition of the following subsection: 5

“(5) The University Staff (Education and Training) Act, 1984 (Act No. 91 of 1984), is hereby repealed in its entirety.”.

Short title

13. This Act is called the Higher Education Amendment Act, 2000. 10

en enige van sy pligte ingevolge hierdie Wet of ingevolge subartikel (1) aan hom toegewys, toewys aan die ander interne strukture, die hoof of 'n ander werknemer van die betrokke openbare inrigting vir hoër onderwys.”.

Wysiging van artikel 76 van Wet 101 van 1997

- 5 **12.** Artikel 76 van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg:

“(7) Die Wet op Universiteitspersoneel (Onderwys en Opleiding), 1984 (Wet No. 91 van 1984), word hierby in sy geheel herroep.”.

Kort titel

- 10 **13.** Hierdie Wet heet die Wysigings op Hoër Onderwys, 2000.

