

learner. While 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.

(5) **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.

(6) **Sectors not bands.** The regulations under the SAQA Act formalised the concepts of NQF bands as an organising principle: 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 General and Further Education and Training sector, the Higher Education sector, the 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 reflects how provision is actually organised, and therefore 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.

### **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 (QCs). 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 for their sectors of the formal education system. Their Acts must be amended to reflect their new status and additional functions. The position is different for work-related education and training. A new QC for Trades and Occupations must be established from scratch.

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

The NQF Bill will now be explained clause by clause.

## **Chapter 1: Interpretation, Object and Application of the Act**

### **Clause 1: 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 *vis-à-vis* the NQF. The Bill does not interfere with the responsibilities of professional bodies to their members and the public. It reflects the consensus 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, 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.

**Clause 2: 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.

**Clause 3: 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****Clause 4: Framework**

This clause provides a compact explanation of what the NQF is; the first to be provided in our law.

**Clause 5: Objectives of NQF**

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

**Clause 6: 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 (sub-clause 5). 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. This is provided at sub-clause 1.

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. Sub-clause (4) requires that level descriptors be developed separately for each sub-framework of the NQF. The Bill builds in safeguards for the integrity of the NQF. The sub-frameworks must be co-ordinated (clause 7). The three Quality Councils that are responsible for the sub-frameworks must collaborate with one another (clause 26). SAQA has broad oversight responsibility for the

NQF, and must consider level descriptors before recommending them to the Minister for approval (clause 12). The Minister must approve level descriptors only after consultation with the Minister of Labour (clause 8).

#### **Clause 7: Sub-frameworks**

The co-ordinated sub-frameworks are named here, as explained earlier in relation to the definition of 'sub-framework'. This is the most important organisational innovation introduced by the Bill and reflects the upshot of the years of investigation and consideration during the process of reviewing NQF implementation. The change has won widespread acceptance. 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 challenge before SAQA and the Quality Councils is to ensure that the sub-frameworks are indeed co-ordinated, and promote progression and mobility for learners across sectors as well as within them, as the objectives of the NQF require.

### **Chapter 3: 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.

#### **Clause 8: Joint 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 consulting one another on all important matters concerning the NQF.

#### **Clause 9: Responsibilities of Minister**

The Minister of Education has portfolio responsibility for the NQF. The list of the Minister of Education's responsibilities is therefore significant. SAQA and the two formal education QCs are accountable to the Minister of Education, who must therefore ensure these bodies' financial viability. The Minister must provide SAQA with a multi-year remit, or directive, setting out government's expectations from the NQF. On the advice of SAQA, the Minister must determine the NQF's level descriptors, which are the crucial signposts that guide the development and classification of qualifications across NQF sub-sectors. The minister is advised by SAQA on NQF matters and determines NQF policy after consulting the Minister of Labour. Additional Ministerial responsibilities are spelled out in other clauses of the Act (especially clauses 15 and 33).

**Clause 10: Responsibilities of Minister of Labour**

The Minister of Labour has executive responsibility for the QC for Trades and Occupations, and must consider the advice of that body and of SAQA.

**Chapter 4: South African Qualifications Authority**

**Clause 11: Continuation of Authority**

SAQA continues as a juristic person, but with a revised membership structure and revised functions.

**Clause 12: Objects of Authority**

SAQA's oversight and advocacy role on behalf of the NQF is perpetuated.

**Clause 13: Accountability of Authority**

SAQA is accountable to the Minister of Education.

**Clause 14: Functions of Authority**

This clause should dispel fears that SAQA's role in the new NQF dispensation will be vague and without real influence. The opposite is the case. Precise functions are prescribed for SAQA that give form to the crucial oversight role and demonstrate its strategic importance and forward-looking character. SAQA already 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 the preparation of a rolling strategic plan and budget that will guide the development of the NQF in the light of the Minister's remit, and the development of a system of collaboration that will enable the QCs and SAQA to fulfil their respective mandates in a coherent and collaborative manner.

SAQA's specific functions (on the advice of the QCs) include recommending level descriptors to the Minister and ensuring that they are kept up to date; preparing policy frameworks for the Minister's approval on the main areas of NQF activity that will guide the QC's operations (qualifications, assessment, recognition of prior learning, credit accumulation and transfer, quality assurance, 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.

#### **Clause 15: The SAQA board**

The SAQA Act used the same term "Authority" for the juristic person and for the governing body. The NQF Bill follows the accepted convention of reserving the term "Authority" for the juristic person and using the term "board" to describe the governing body.

The Bill changes the structure of the SAQA board and reduces the membership. The current appointment process is cumbersome and protracted. The SAQA Act provides for a chairperson, 20 members nominated by constituencies (covering the entire education and training spectrum as well as social partners), up to six members appointed by the Minister, no more than two co-opted members, and the executive officer (*ex officio*) for a maximum total of 30. All appointed and co-opted members must be approved by the Minister of Education in consultation with the Minister of Labour. The term of office of appointed and co-opted members is three years.

Clause 15 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, representivity and organisational competence.

#### **Clause 16: Vacation of office by a board member and filling of vacancies**

#### **Clause 17: Committees of board**

#### **Clause 18: Meetings of board and committees**

#### **Clause 19: Allowances and remuneration of members of board and committees**

#### **Clause 20: Appointment of chief executive officer and staff**

#### **Clause 21: Functions of chief executive officer**

#### **Clause 22: Funds of Authority**

#### **Clause 23: Alienation and encumbrance of property**

#### **Clause 24: Financial statements, audit and financial report**

These clauses deal with straightforward procedural and organisational matters and are virtually identical to corresponding sections of the SAQA Act, except that they reflect the requirements of the PFMA. Clause 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 authorization.

### **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 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 Departments of Education for the quality assurance of education provision.

**Clause 26: 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 Quality Council in terms of this Bill.

**Clause 27: 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.

**Clause 28: Functions of QCs**

This clause provides a common template for all three QCs which dovetails with the functions of 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 co-ordinated multi-year rolling strategic plans. They will propose policy frameworks to

SAQA for level descriptors; qualifications, assessment, recognition of prior learning and credit accumulation and transfer; and quality assurance. Their information systems will be integrated with 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**

### **Clause 29: 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 SAQA, which will act in terms of the policy envisaged by clause 14(f).

### **Clause 30: 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.

### **Clause 31: Registration of professional designation**

SAQA and the professional body community have formulated a process for the registration of professional designations on the NQF. This clause gives it legal recognition.

### **Clause 32: Information**

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

## **Chapter 7: Miscellaneous**

### **Clause 33: Regulations**

The SAQA Act empowers 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. This will be done on the advice of SAQA and the QCs and after consultation with the Minister of Labour.

### **Clause 34: Transitional arrangements**

The customary transitional provisions ensure the continuity of the SAQA board and its operations until new regulations come into effect. The current (fourth) Authority's members 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. SAQA employees' contracts are safeguarded until altered by a new board.

**Clause 35: Repeal of law**

**Clause 36: Short title and commencement**

These clauses are self-explanatory.

**OTHER DEPARTMENTS OR BODIES CONSULTED**

The Department of Labour was consulted. After publication for comment, the Bill will be referred to the National Treasury and the Department of Social Development. The Department will also supply stakeholders with copies of the Bill so that they may comment on it.

**FINANCIAL IMPLICATIONS FOR THE STATE**

The Bill merely replaces the South African Qualifications Authority Act 58 of 1995, for amendments to existing legislation and therefore, no additional costs are foreseen.

**PARLIAMENTARY PROCEDURE**

The State Law Advisers and the Department of Education's Legislative Services Section are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76 of the Constitution.

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, seeing that it does not contain provisions pertaining to customary law or to the customs of traditional communities.