

NATIONAL QUALIFICATIONS FRAMEWORK ACT 67 OF 2008

[ASSENTED TO 15 FEBRUARY 2009]

[DATE OF COMMENCEMENT: 1 JUNE 2009]

(English text signed by the President)

Regulations under this Act

REGULATIONS FOR RESOLVING A DISPUTE IN TERMS OF THE NATIONAL QUALIFICATIONS
FRAMEWORK ACT, 2008 (GN R743 in GG 33483 of 27 August 2010)

as amended by

Higher Education Laws Amendment Act 26 of 2010

ACT

To provide for the National Qualifications Framework; to provide for the responsibilities of the Minister of Higher Education and Training; 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.

[Long title substituted by s. 15 of Act 26 of 2010.]

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 (ss 1-3)

1 Definitions

In this Act, unless the context indicates otherwise-

'board' means the board of the SAQA established by section 14;

'Council on Higher Education' means the Council established in terms of section 4 of the Higher Education Act, 1997 (Act 101 of 1997);

'education institution' means an education institution that is established, declared or registered by law;

'Gazette' means *Government Gazette*;

'GENFETQA Act' means the General and Further Education and Training Quality Assurance Act, 2001 (Act 58 of 2001);

'Higher Education Act' means the Higher Education Act, 1997 (Act 101 of 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 Higher Education and Training;

[Definition of 'Minister' substituted by s. 8 (a) of Act 26 of 2010.]

'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;

'PFMA' means the Public Finance Management Act, 1999 (Act 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;

'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;

'relevant Minister'

[Definition of 'relevant Minister' repealed by s. 8 (b) of Act 26 of 2010.]

'SAQA' means the South African Qualifications Authority contemplated in Chapter 4;

'SAQA Act' means the South African Qualifications Authority Act, 1995 (Act 58 of 1995);

'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 97 of 1998);

'skills development provider' means a skills development provider contemplated in section 17 of the Skills Development Act;

'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.

2 Object of Act

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

3 Application of Act

(1) This Act applies to-

- (a) education programmes or learning programmes that lead to qualifications or part-qualifications offered within the Republic by-
 - (i) education institutions; and
 - (ii) skills development providers; and
- (b) professional designations,

subject to the limitations prescribed in this Act.

(2) Every qualification or part-qualification contemplated in subsection (1) must be registered on the National Qualifications Framework in accordance with this Act.

[S. 3 substituted by s. 9 of Act 26 of 2010.]

CHAPTER 2 NATIONAL QUALIFICATIONS FRAMEWORK (ss 4-7)

4 Framework

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

5 Objectives of NQF

(1) The objectives of the NQF are to-

- (a) create a single integrated national framework for learning achievements;
- (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.

(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 8, and are internationally comparable; and
- (c) ensuring that South African qualifications are of an acceptable quality.

6 Framework levels

(1) The NQF is organised as a series of levels of learning achievement, arranged in ascending order from one to ten.

(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 13 (1) (g).

(5) There is one set of level descriptors for the NQF.

7 Sub-frameworks

The NQF is a single integrated system which comprises of three co-ordinated qualifications sub-frameworks, for-

- (a) General and Further Education and Training, contemplated in the GENFETQA

- Act;
- (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 (ss 8-9)**

8 Responsibilities of Minister

(1) The Minister has the overall executive responsibility for the-

- (a) NQF;
- (b) SAQA; and
- (c) QC for General and Further Education and Training, the QC for Higher Education and the QC for Trades and Occupations contemplated in Chapter 5.

[Para. (c) substituted by s. 10 (a) of Act 26 of 2010.]

(2) The Minister must-

- (a) consider advice from SAQA or a QC in terms of this Act;
- (b) determine policy on NQF matters in terms of this Act and publish the policy in the *Gazette*;

[Para. (b) substituted by s. 10 (b) of Act 26 of 2010.]

- (c) publish guidelines which set out the government's strategy and priorities for the NQF, and which may be updated annually;

[Para. (c) substituted by s. 10 (b) of Act 26 of 2010.]

- (d) provide funds from money appropriated by Parliament for SAQA to enable it to fulfil its functions in terms of this Act;
- (e) after considering advice from the SAQA, determine the sub-frameworks contemplated in section 7 and publish them in the *Gazette*; and

[Para. (e) substituted by s. 10 (c) of Act 26 of 2010.]

- (f) determine, by regulation in the *Gazette*, the process by which a dispute involving the SAQA or a QC must be resolved, and any matter relating thereto.

[Para. (f) substituted by s. 10 (c) of Act 26 of 2010.]

(3) The Minister 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;
- (c) encourage collaboration among the QCs and between the QCs and SAQA.

[Sub-s. (3) amended by s. 10 (d) of Act 26 of 2010.]

(4) The Minister may perform any other function consistent with this Act.

9

[S. 9 repealed by s. 11 of Act 26 of 2010.]

CHAPTER 4

SOUTH AFRICAN QUALIFICATIONS AUTHORITY (ss 10-23)

10 Continued existence of SAQA

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.

11 Objects of SAQA

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) co-ordinate the sub-frameworks.

12 Accountability of SAQA

The SAQA is accountable to the Minister.

13 Functions of SAQA

(1) The SAQA must, in order to advance the objectives of the NQF-

- (a) (i) perform its functions subject to this Act; and
- (ii) oversee the implementation of the NQF and ensure the achievement of its objectives;
- (b) advise the Minister on NQF matters in terms of this Act.

[Para. (b) substituted by s. 12 of Act 26 of 2010.]

- (c) comply with policy determined by the Minister in terms of section 8 (2) (b);

- (d) consider the Minister's guidelines contemplated in section 8 (2) (c);
- (e) oversee the implementation of the NQF in accordance with an implementation framework prepared by the SAQA after consultation with the QCs;
- (f)
 - (i) 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 11 and the regulations contemplated in section 33; and
 - (ii) resolve disputes regarding the QCs;
- (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;
- (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.

14 SAQA board

- (1) The SAQA is governed by a board.
- (2) The board comprises-
 - (a) 12 members appointed in their personal capacities by the Minister;
[Para. (a) substituted by s. 13 of Act 26 of 2010.]
 - (b) the chief executive officer of the SAQA contemplated in section 19, 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 provided that at least two members must be appointed from the nominations made by organised labour.

(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.

15 Vacation of office by board member and filling of vacancies

- (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 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 14.

(4) The Minister may, in accordance with the Promotion of Administrative Justice Act, 2000 (Act 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.

16 Committees of board

(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 14 when it appoints such a person to a committee.

(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.

17 Meetings of board and committees

(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

(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.

(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.

(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 2 of 2000).

18 Allowances and remuneration of members of board and committees

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.

19 Appointment of chief executive officer and staff

(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.

(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.

20 Functions of chief executive officer

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
- (c) is the accounting officer charged with accounting for monies received, payments made and property purchased by the board.

21 Funds of SAQA

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;
- (d) interest received on investments; and
- (e) any other income received by the SAQA.

22 Alienation and encumbrance of property

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 immovable property of the SAQA.

23 Financial statements, audit and annual report

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 month after the commencement of the next ordinary session.

CHAPTER 5 **QUALITY COUNCILS (ss 24-27)**

24 QC for General and Further Education and Training

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

25 QC for Higher Education

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

26 QC for Trades and Occupations

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

27 Functions of QCs

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 established;
- (b) comply with any policy determined by the Minister in terms of section 8 (2) (b);
- (c) consider the Minister's guidelines contemplated in section 8 (2) (c);
- (d) collaborate with the SAQA and other QCs in terms of the system contemplated in section 13 (1) (f) (i);
- (e) develop and manage its sub-framework, and make recommendations thereon to the Minister;

[Para. (e) substituted by s. 14 (a) of Act 26 of 2010.]

- (f) advise the Minister on matters relating to its sub-framework;

[Para. (f) substituted by s. 14 (a) of Act 26 of 2010.]

- (g) with regard to level descriptors-
 - (i) consider and agree to level descriptors contemplated in section 13 (1) (g) (i); and
 - (ii) ensure that they remain current and appropriate;
- (h) with regard to qualifications for its sub-framework-
 - (i) develop and implement policy and criteria, taking into account the policy and criteria contemplated in section 13 (1) (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 13 (1) (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
 - (iv) recommend qualifications or part qualifications to the SAQA for registration;
- (i) with regard to quality assurance within its sub-framework-
- (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-
- (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 13 (1) (l);
- (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;
 - (iii) perform any other function required by this Act; and
 - (iv) perform any function consistent with this Act that the Minister may determine.

[Sub-para. (iv) substituted by s. 14 (b) of Act 26 of 2010.]

CHAPTER 6

PROFESSIONAL BODIES (ss 28-31)

28 Co-operation with QCs

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.

29 Recognition by SAQA

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 13 (1) (i) (i) to be recognised as a professional body in terms of this Act.

30 Registration of professional designation

A professional body that is recognised in terms of section 29 must apply to the SAQA, in the manner determined by the SAQA in terms of section 13 (1) (i) (ii), to register a professional designation on the NQF.

31 Information

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 13 (1) (l).

CHAPTER 7 GENERAL PROVISIONS (ss 32-38)

32 Delegation

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-

- (a) must be in writing and available for inspection on request by a member of the public;
- (b) must specify the terms and conditions of the delegation;
- (c) must be consistent with this Act and the Act by which the relevant QC is established;
- (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.

33 Regulations

(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-

- (a) allowances and remuneration of members of the board or a committee contemplated in section 18; 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.

34 Conflicting interpretation

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.

35 Saving

The Higher Education Qualifications Framework promulgated by the Minister in Government Notice 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 8 (2) (e) of this Act unless amended in terms of section 8 of this Act and section 3 of the Higher Education Act.

36 Transitional arrangements

Despite the repeal of the SAQA Act contemplated in section 37-

- (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 13 until a new board is appointed by the Minister;
- (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*;
- (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;

- (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
- (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.

37 Repeal of law

The South African Qualifications Authority Act, 1995 (Act 58 of 1995), is hereby repealed in its entirety.

38 Short title and commencement

(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.