



UNIVERSITIES SOUTH AFRICA

Universities South Africa (USAf)

Universities South Africa (USAf) is an association of South Africa's 26 public universities. It acts as a voice of the sector and engages the state on policy reforms and policy changes. It plays an advocacy role as well.

Submission to the Select Committee on Education and Recreation of the National Council of Provinces

on

The National Qualifications Framework Amendment Bill [B20B- 2018] (as amended by the Portfolio Committee on Higher Education (House of Assembly))

Executive summary

1. USAf believes that this Bill should be withdrawn and a new measure drafted to deal with qualification fraud and abuse. If this Bill is to be proceeded with, substantial changes need to be made and we submit recommendations for these changes.

Introduction

2. The Bill, as amended by the Portfolio Committee on Higher Education and Training (National Assembly) has passed the National Assembly and is before the National Council of Provinces (NCOP).
3. The Portfolio Committee made two important amendments to the Bill. These were adopted by the National Assembly.

First, the amended Bill will require employers and education institutions to check the qualifications of *those they propose to appoint or register as students* (the Bill as introduced would have required employers and education institutions to check *for every applicant*).

Checking the qualification(s) will involve

- Establishing whether the *qualification (or part qualification)* is registered on the National Learner Record Database (NLRD);
- Establishing whether the *applicant* is registered on the NLRD as having been awarded the qualification;
- If the qualification is not on the NLRD, submitting it to the South African Qualifications Authority (SAQA) for evaluation; and

- If the applicant's claim to the qualification is not verified by checking on the NLRD, submitting the applicant's claim to hold the qualification(s) to SAQA for verification.
4. Second, the amended Bill empowers the Minister, *in consultation* with SAQA, to exempt an employer or entity from these provisions.

General Comment

5. USAf supports the essential aim of the Bill, namely the need to protect the public from, and to expose, people who
- claim qualifications they do not have, or
 - use bogus qualifications

for the purpose of employment, professional practice or to access educational opportunities.

But we believe that the Bill as amended fails to realise this aim.

6. A key object of the Bill fails because the Bill fails to distinguish between *qualification* and *certification*.

The mischief that it should deal with is of three kinds:

- Bogus **qualifications**, including qualifications conferred by degree mills;
 - False and falsified **certificates**; and
 - Claims to qualifications or professional designations made by people who have neither (but who never submit any documentation to substantiate their claim to it) including actions that put it out, without explicit claims, that the claimant has an academic or professional qualification.
7. While as amended the Bill would require verification and where necessary evaluation by SAQA in the case of candidates recommended for appointment or admission, this process will in our view be unworkable.
8. USAf is also concerned at provisions in the Bill that deal with the relationship between SAQA and the three Quality Councils (QCs), the Council on Higher Education (CHE), the General and Further Education and Training Quality Council (Umalusi) and the Quality Council for Trades & Occupations (QCTO).

The most serious of these is contained in S 5 of the Bill. This would amend S 27(f) of the principal Act to provide that QCs in rendering advice to the Minister must do so ***in consultation*** with SAQA. We, in common with at least two of the QCs, argued in the Portfolio Committee that the proposed provision will if enacted

- Give SAQA a mechanism to block advice being submitted to the Minister where it disagreed with the QC;
- Thereby have the potential to deprive the Minister of important advice.

There is a strong argument for a provision that ensures that the QCs consult each other and SAQA, and we recommend that the provision should provide for advice **after consultation with affected QCs and SAQA**

9. USAf is of the view that the amended Bill should not be proceeded with but should be withdrawn by the Minister, both because it is a bad Bill and because of the recently completed Departmental review of the National Qualifications Framework (NQF).

The Department of Higher Education & Training (DHET) has recently concluded a review of the NQF and told the Portfolio Committee that it intends to bring a further Bill to parliament to deal with the problems that the review has identified.

Legislation **is needed** to deal with people who claim qualifications that they do not have, or have qualifications that are in fact bogus, but this amended Bill is so poorly drafted that it will not serve its purpose.

Detailed proposals for amendment

10. The suggested amendments to the amended Bill set out in the following section are intended to make the amended Bill workable if Parliament should proceed with it.

- (a) Clause 1(a) of the amended Bill:

Replace the following phrase in the proposed 1(b):

“is lawfully obtained from a foreign country and is evaluated by the SAQA in terms of this Act”

by

“was lawfully obtained in a foreign country and has been evaluated by the SAQA as a qualification or part-qualification that could be placed on the South African NQF”.

- (b) Clause 1(c) of the amended Bill:

Delete the proposed definition of “fraudulent qualification or part qualification” and insert:

“***Fraudulent qualification or part qualification***” is a claimed qualification or part qualification or professional designation claimed by an applicant which after evaluation is found to be bogus;

“***Fraudulent certificate or transcript of results***” is a false or forged certificate or transcript which purports to certify educational achievements and/or professional registration that the applicant does not have;”

- (c) Clause 1(e) of the amended Bill:

Delete the proposed definition of “**learner achievements**” or insert a new definition that does not limit learner achievements to a qualification of part qualification. Altered grades for subjects/courses are an important part of the problem, and the veracity of these is important.

The need to verify a claimant’s achievements, beyond the qualification he/she/they claims (e.g., altered grades on an NSC certificate or on an academic transcript

issued by a public or private Higher Education Institution (HEI) underlines the weakness in the Bill's provisions for verification of a qualification against the NLRD; in such cases the claimant will be found to have the qualification he/she/they claims but the NLRD record will not pick up the discrepancy at the level of the grades claimed on the fraudulently altered certificate'

- (d) Clause 1 (c) of the amended Bill: in the definition of "evaluate"
"verify the authenticity ..." should read: "establish the authenticity ...".
- (e) Clause 4(a): "(iv) verify all qualifications ..." should read: "evaluate all qualifications";
- (f) Clause 4(b) of the amended Bill: omit proposed (1)(iii) and renumber the following sub sections.

(Listing the requirements of every qualification or part-qualification on the NLRD will place an impossible and unnecessary burden on SAQA and on educational institutions. These requirements are, and must, be dynamic. "The requirement for: "Other related information" is in any event probably void for vagueness.

- (g) Clause 4(d) of the amended Bill:

The proposed (m)(i)

"provide a verification or an evaluation and advisory service ... "
should read

"provide a verification and an evaluation and advisory service ... "
as SAQA will need, if this is to be effective, to evaluate qualifications and verify that the claimant has the claimed qualification

- (h) Clause 4 (e) of the amended Bill

Replace (1B) by the following

(1B) if

- (i) After verification or evaluation, SAQA finds a claimed qualification or part qualification to be
 - (a) Inauthentic; or
 - (b) Misrepresented; or
- (ii) A court of law finds a claimed qualification or part qualification to be forged, fraudulently obtained or awarded in contravention of the Act,

SAQA must refer such finding to the such professional body as may be applicable and must, subject to subsection (1C)

- (a) Inform the requester...
- (b) Record such finding ...

- (j) Clause 5 of the amended Bill: amend the proposed Section 27(f) to read
"(f) after consultation with any other affected QC and SAQA, advise the Minister..."
- (k) Clause 5 of the amended Bill: delete the proposed change to Section 13 (j)(ii).

This is worded with Umalusi's quality assurance process in mind. The QA processes of the CHE and the QCTO do not work in this way, and even in regard to Umalusi this is open to interpretation: when are the all the quality assurance requirements met? When the NSC results are approved for release, or much latter when the data have been checked and verified by the QC?

- (l) Clause 7 of the amended Bill: Delete the proposed S32A and replace by the following:

“32A. (1) An organ of State, employer, education institution, skills development provider or QC may

- (a) establish prior to appointment or registration whether a qualification or part qualification presented to it by an applicant for the purpose of appointment, study or any other related purposes is registered on the NLRD
 - (i) As a qualification or part-qualification; and
 - (ii) As a qualification or part-qualification awarded to the applicant;
- (b) refer any claimed qualification or part qualification that is not registered on the NLRD to SAQA for evaluation; and
- (c) where the NLRD has no record of the qualification or part-qualification having been awarded to the applicant, refer the applicant's claim to have the qualification or part qualification to SAQA for verification.

(2) The minister may after consultation with the SAQA exempt any category of person or entity contemplated in paragraph (1) from the provisions of this section by notice in the Gazette, in general or as specified.

(3) The SAQA must, if

- (a) after evaluation, it finds the qualification or part-qualification to be authentic, record it on the NLRD; and
- (b) after verification, it finds that the applicant holds an authentic qualification or part qualification, register the applicant on the NLRD as a holder of the qualification; and
- (c) after evaluation or verification or both finds that the qualification or part qualification is not authentic, or that the applicant does not hold a claimed authentic qualification, comply with S13(1B) (a) and (b) and refer such a finding or information to the relevant body. “

(4) The SAQA must perform its functions in terms of this section within 30 days so as not to prejudice an applicant. “

USAf reiterates its view that the process of having all successful applicants' qualifications subjected to this SAQA process will not work. The well-intentioned requirement for unabridged birth certificates has done immeasurable damage to the South African tourist industry; the proposed SAQA evaluation and verification process, however well-intentioned, may have equally damaging consequences for the recruitment of highly skilled people from foreign countries.

- (m) Clause 7 of the amended Bill: The proposed subsection 32B. (1) should be replaced by the following:

(1) A person is guilty of an offence if the person

- (i) makes a false entry, or causes a false entry to be made, in the NLRD, the register of professional designations or the registers of misrepresented and fraudulent qualifications; or
- (ii) with fraudulent purpose or intent knowingly provides false or misleading information in any circumstances in which this Act requires the person to provide information or give notice to another person; or
- (iii) falsely or fraudulently claims to hold a qualification or part qualification, or professional registration or designation which the person does not hold or which the person knows to be bogus.

(n) Clause 7 of the amended Bill: the syntax of proposed S 32B(5)(b) needs attention. One way to resolve this would be to replace all words after *aggravating factor* by the following

... aggravating factor the fact that

- (a) The offence was committed with the intent ...; or
- (b) The offender gained financially or received any favour

END

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