



**ANALYSIS OF THE NATIONAL QUALIFICATIONS FRAMEWORK (NQF)  
AMENDMENT BILL [B20-2018]**

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**1. INTRODUCTION AND BACKGROUND**

The purpose of this brief seeks to present the views of various stakeholders on the amendments of the National Qualifications Framework (NQF) Amendment Bill, B20 of 2018 as suggested by the Department of Higher Education and Training (hereafter called “DHET” or “department with regards to validation of qualifications

**2. THE NATIONAL QUALIFICATIONS FRAMEWORK (NQF) AMENDMENT BILL**

The motive of this Bill arose from incidents of misrepresentation of and/or presentation of invalid qualifications by employees in the wider public sector, members and employees of some Boards or Councils of Public Entities, some members of the Diplomatic Corp, consultants appointed by public entities and State-owned entities (SoEs) and members of the general public.<sup>1</sup>

The National Qualifications Framework Bill (B20-2018) seek to amend the National Qualifications Framework Act, 2008, so as to (i) amend and insert certain definitions; (ii)

<sup>1</sup> Department of Higher Education (2019)



provide for the verification of all qualifications or part-qualifications by the SAQA; (iii) provide for the formulation of criteria for evaluating foreign qualifications; (iv) provide for the establishment and maintenance of separate registers of misrepresented or fraudulent qualifications; (v) provide for a separate register for professional designations; (vi) provide for the referral of qualifications or part-qualifications to SAQA for verification and evaluation; (vii) provide for offences and penalties which have a bearing on fraudulent qualifications; and (viii) provide for matters connected therewith.

### 3. ISSUES THAT EMERGED DURING COMMITTEE DELIBERATIONS

In consonance with the publication of the draft Bill in the Government Gazette No. 40430 on 18 November 2016, 48 comments were received and agreed upon with the Portfolio committee on Higher Education, which are broadly categorised as:<sup>2</sup>. When the Portfolio Committee satisfied itself on the adopted Bill, has since been referred to the Select Committee on Education and Recreation for consideration and been deliberated on the 30 January 2019. During that meeting, the Committee raised the following Issues:

- Statistics of those brought to book and prosecuted or arrested because they have been found with fraudulent qualifications. The Committee since requested that DHET should provide the Committee with the report on the latest statistics on fraudulent or misrepresented qualifications
- Regular monitoring of private institutions and assessment of qualifications they are producing. The DHET provided that Quality Councils use the same procedure in assessing qualifications whether from private or public institutions.
- Blacklisting of people with fraudulent qualifications. DHET reported that individuals are not blacklisted for life instead when the person redeems him/herself, his or her name gets cleared.
- Slow process of verification e.g. more than 3000 bogus qualifications were found versus the 300 affidavits handed over to the Hawks.
- Budget for operationalisation of the amendments: The DHET reported that there is no financial commitments or voted funds were made by the Treasury to SAQA.
- Correlation between SETA and SAQA in as far as verification of qualifications is concerned.

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<sup>2</sup> Ibid



- Actions taken to foreigners discovered with foreign fraudulent qualifications. The DHET indicated that they are reported to the Department of Home Affairs which then deals with those foreigners as well as deport and prosecute them. Moreover, cluster meeting that involves relevant departments such as the Department of Home Affairs are held to discuss these issues.

#### 4. ISSUES THAT EMERGED DURING PUBLIC CONSULTATION

The Select Committee on Education and Recreation (hereafter referred as the “Committee”) received submissions from the Universities South Africa (USAF), an association of South Africa’s 26 public universities and from Managed Integrity Evaluation (MIE) (PTY) LTD, a global screening company responsible for verification and checking qualifications, criminal records by AFIS, credit records, identity, driver’s licences, employment references and background checks. Moreover, the South African Institute of Chartered Accountants (SAICA), UMALUSI and the Independent Institute of Education.

##### 4.1. *Universities South Africa (USAF)*

- 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 believe that the Bill as amended fails to realise this aim.**
- The Bill fails to distinguish between qualification and certification which is one of its key objectives. USAF believes that the Bill should deal with is of three kinds namely;
  - **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**
- USAF believes that it is unworkable for SAQA to verify and evaluate candidates recommended for appointment or admission. As the result, USAF suggest a need for provisions to ensure that the QCs consult each other and SAQA and recommend that there should be a provision for advice after consultation with affected QCs and SAQA.



- USAF is also concerned at provisions in the Bill that deal with the relationship between SAQA and the three Quality Councils (QCs).
- 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).
  - Instead, there is a need for Legislation 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

#### *4.1.1. Detailed proposals for amendment by USAF*

- USAF suggest that the following section of suggested amendments could make the amended Bill workable if Parliament should proceed with it.
  - (a) Clause 1(a) of the amended Bill be replaced by 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: 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 (l)(iii) and renumber the following subsections**. (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 (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) as it is worded with Umalusi’s quality assurance process in mind as the Quality Assurance of the Council for Higher Education and Quality Council for Trades and Occupations does not work 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 with “32A. (1) An **organ of State, employer, education institution, skills development provider or Quality Council** 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

#### *4.2. Managed Integrity Evaluation (PTY) LTD*

- MIE fully supports government's objective as entailed in the Bill, namely, to combat, detect and prevent educational qualification fraud in South Africa.
- The Bill appears to be proposing a relocation of the services provided by MIE to SAQA, MIE is justifiably concerned that the said proposals will significantly impact the business activities of MIE.
- MIE has established requisite infrastructure, systems, and processes to maintain a national register of educational qualifications as well as a register of fraudulent educational qualifications systems for over a period of more than twenty years.
- Further MIE's core business activity is the verification and validation of educational qualification information on behalf of employers and recruitment agencies.
- MIE's existing sophisticated and mature educational qualification information processing systems are compliant with applicable laws namely; Protection of Personal Information Act No.4 of 2013, section 70(1) of the National Credit Act No.34 of 2005 (NCA) and can assist government in effectively achieving its objective, to combat, detect and prevent educational fraud, at no cost to government or the taxpayer.
- MIE's systems, and processes relating to the processing, verification and validation of educational qualifications information have evolved over more than 20 years, and has resulted in a mature and reliable educational qualification information processing system, that is efficient and allows for integration with other systems, essential to achieving its business objectives.
- MIE has established constructive and mutually beneficial working relationships with key stakeholders in the industry and within the educational qualifications information life cycle.



- As per the recently introduced "socio-economic impact assessment (SEIA)" requirement set by the DPME' the drafters of the Bill must explore the most cost effective ways of effectively achieving the government's objective of combatting, detecting and preventing educational fraud, by subjecting its policies and proposed legislative interventions to a valid SEIA.
- In this instance a solution on the social problem already exist through entities such as MIE. In this regard It is respectfully submitted that the status quo, that the educational qualifications registers already is in existence, and the qualifications validation and verification services currently provided by entities such as MIE, must be considered, from a cost saving perspective and cannot be simply ignored by the drafters as per the guidelines for SEIAs made available by the DPME.
- According to the guidelines, a SEIA should require change to the status quo based on credible evidence that it is flawed, it should explain why the desired objectives of establishing and maintaining the proposed qualifications registers, as well as the verification and validation of educational qualification information cannot be successfully achieved by the existing system. The Guidelines ask specifically what it is about the status quo ante that could not solve whatever defined problem is envisaged.
- Also, the SEIA guidelines point out that the cost to stakeholders in complying with the proposed measure must also be considered, both the general regulatory burden and the cost of the behavioural change required.
- For instance, how the existing systems of entities such as MIE, universities/sources of educational qualification information, employers and recruitment agencies, that have been developed to "talk to each other" for the purpose of sharing educational qualification information, as well as verifying and validating such information will need to change and at what cost to the various stakeholders.
- Reasonable assessment of the proposed cost of successful implementation of the Act is recommended as there are potential risks associated to over-or underestimated costs of successful implementation of the measure by the drafters. As in instance where costs are underestimated, the result will be inadequacies and deficiencies in the system/measure implemented.
- The implementation risks and encourage measures to mitigate them according to the guidelines should be anticipated as likelihood of potential risks such as economic, social, or political factors outside the control of the state might impact achievement of the objectives.





- The Bill has substantive shortcomings as it wholly ignores the status quo such as existence of infrastructure, systems and processes in place that enable verifications of qualifications the collection, withheld results due to non-payment of fees, incomplete qualifications and only provides for findings of authentic, fraudulent or misrepresented in relation to the validation of educational qualifications.
- In this regard, the Bill may open the door to corruption, which is the natural consequence of giving officials subjective discretion.
- The Bill does not provide for critical financial legislative tools in terms of qualifications, responsibility of the employers in terms of verification fees payments and standards or turn around times for validating qualifications, and required stakeholder service level agreements.
- It is recommended that the drafters consider making provision in the Bill for the appointment of suitably qualified service providers to assist SAQA with the establishment and maintenance of educational qualifications registers, as well as the validation of educational qualifications. In this regard it may be useful for the drafters to consider the Consumer Protection Act No.68 of 2008 (CPA), in particular section 11 which prohibits direct marketing under certain conditions, and make provision in section 11(3),
- The Bill should further require that both sources and users of educational qualifications information develop effective quality assurance systems applicable to educational qualifications information

#### *4.3. South African Institute of Chartered Accountants (SAICA)*

- SAICA is pleased with the amendment that SAQA will be retaining overall responsibility for the NQF and that QCs will be required to consult on matters relating to their sub-frameworks and quality assurance.
- There is a need for an additional process which allows for structural and content changes to qualifications as necessary.
- Inclusion of maintenance of records of achievements against legacy qualifications is currently not listed as an amendment and it is our recommendation that this be added to #4 Section 13 of the Principal Act (b) (i) page 4.
- Section 13 of the Principal Act (b) (i) page 4 refers to the maintenance of a register of professional designations but does not allow for Professional Bodies to recognise and attach designations to additional qualifications which are quality assured by Quality Councils. Should



this amendment be adopted, maintenance of these records should subsequently be included in Section 13.

- Section 13 of the Principal Act (e) (1A) page 4 refers “When verifying or evaluating a qualification” it is recommended that this be done in consultation with the Professional Body / Training Provider in question to ensure that legacy qualifications and international partnerships are considered prior to a decision being taken.
- Large amounts of data are submitted for upload to the NLRD on a regular basis. We recommend that, if this recommendation is approved, the process to correct mistakes related to submission of data be included as an amendment in 32B Offences and Penalties, page 6.

#### ***4.4. UMALUSI***

- The Bill is silent on the role of the Minister of Basic Education regardless of the fact that UMALUSI report to the Minister.
- SAQA cannot attest on authenticity of certificate in court whilst is not a certifying body same as UMALUSI cannot issue certificate and have other body verify the certificates. Consequently, it is recommended for inclusion of UMALUSI verification function in the NQF Act.

#### ***4.5. The Independent Institute of Education***

- The IIE welcomes certain provisions of the Bill in particular those relating to the: verification, formulation, separate register, register of misrepresentation, register of fraudulent qualifications, referrals and offenses.
- The IIE highlights inadequacies it has identified and discusses key issues that need further attention for the strengthening of the Bill and is concerned about the following:
  - a) definition of “authenticity”, “fraudulent qualification and part-qualification” and “misrepresented qualification and part qualification” which needs strengthening.
  - b) Lack of clarity on how the Bill proposes the fraudulent foreign qualifications should be dealt with.
  - c) Lack of clarity in dealing with the qualifications in the period prior to the implementation of the NQF Act, 2008 and other forms of certification such Short Learning Programmes (SLPs) should be dealt with.



- d) Lack of clarity if the registers will be published, confidentiality of such information, access to it and removal from the register.
- e) The Bill is not clear about the reporting to the SAPS.

## 5. THE PROCESS GOING FORWARD

The Bill after consideration by the National Council of Provinces could find its way towards adoption by Parliament through its processes.

### **FOR CONSIDERATION:**

- The Committee welcome the submissions made and wishes to establish at what level the Department engages public/private stakeholders/entities that has similar mandate?
- Does the Department exploits available infrastructure to strengthen its works? For example both SAQA and MIE focus on vetting and verification of qualifications. How open is their database to one another?

## 6. REFERENCES

Department of Higher Education and Training (2018) National Qualifications Framework Amendment Bill [B 20—2018]. Available at :< <https://www.gov.za/sites>>[Assessed on 27 January 2019]

Managed Integrity Evaluation (PTY) LTD (2019) Response to the Select Committee on Education and Recreation with regards to the National Qualifications Framework Amendment Bill (B20b-2018. 19 February 2019

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