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**G O V E R N M E N T N O T I C E**

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**DEPARTMENT OF EDUCATION**

No. 211

3 March 2000

**DRAFT SOUTH AFRICAN COUNCIL FOR EDUCATORS BILL, 2000**

The Minister of Education hereby publishes the **Draft** South African Council for Educators Bill, 2000 for comment.

All interested persons and organisations are invited to comment in **writing** on the **draft** Bills and to direct the comments to:

The Director-General, Private Bag X895, **PRETORIA**, 0001, for attention: Ms M Locke, Fax No. (O 12) 3269128 or e-mail: [locke.m@educ.pwv.gov.za](mailto:locke.m@educ.pwv.gov.za)

The comments must reach the Department of Education not later than 17 March **2000**.

Kindly also provide the name, address, telephone number, fax number and e-mail address of the person or organisation submitting the comments.

**PROFESSOR KADER ASMAL, MP**  
MINISTER OF EDUCATION

## **EXPLANATORY MEMORANDUM ON THE SOUTH AFRICAN COUNCIL FOR EDUCATORS BILL, 2000**

### **INTRODUCTION**

1. This Bill was developed to provide for the continued existence of the South African Council for Educators (**SACE**), as a statutory body but separate from chapter six of the Employment of Educators Act, which Act regulates the employment of state employed educators in public institutions. The scope of this professional council will be extended to all educators employed in private or independent institutions in the general and further education and training sectors.

### **BACKGROUND**

2. The South African Council for Educators was established in 1995 through a collective agreement in the Education Labour Relations Council. It was collectively agreed by the state as employer of educators and the trade unions to establish such a professional council to register educators and discipline them if they are in breach of a code of conduct.
3. This council was therefore perceived to be an extension of the Education Labour Relations Council by the public and educators, and not as a professional body which promotes and controls the profession.
4. In 1998 the Employment of Educators Bill, 1998, was tabled in Parliament. This Bill sought to regulate the employment of educators employed by the state in public schools. During the portfolio committee stage an amendment was introduced to include a chapter in the said Bill to convert the Council from a labour orientated body to a statutory body. This was an attempt to move away from the influence of the Education Labour Relation Council and the Council so established was seen as an independent professional structure.

5. The amendment to the Employment of Educators Bill, 1998, was **not** a perfect solution to the problem, and **it** was requested that a separate Bill for the Council be **drafted** in the near **future**. **The** placement of a professional council in an employment Act applicable to state educators is very restrictive and undesirable as a model for the profession of **educators**. The scope and **functions** of this Council **were** restricted to the employment of educators in **public** schools and public further education and training institutions, and the intention is to get such a council to regulate the whole profession.

## **REASONS FOR AND SUBSTANCE OF BILL**

6. National and international **models** of professional councils of a **similar** nature have **shown** that it can only be effective in its functioning and have the right status and recognition if such council is contained in its own substantial Act.
7. The **interim arrangement** to create the South **African** Council for Educators (**SACE**) as a statutory body by the inclusion of a chapter in the Employment of Educators Act, 1998 (EEA) was not the best or most effective manner to deal with the matter.
8. The fact that chapter 6 (which creates **SACE** as a statutory body) is part of the Employment of Educators Act restricts the scope **and** application of this professional body **to** public schools, public further education and training institutions and public adult learning **centres**. It is not possible **to** extend the current provisions of chapter 6 of EEA to private or independent institutions in the general or **further** education and training sectors as the scope of the EEA only covers employment in public institutions.
9. **The** composition of the new council is also **important**. Currently the council only consists of members representative of the **public** institutions. **In this Bill** the **majority** of members (eighteen) will be institution based educators who are not

officials or office bearers of a trade union. The Bill requires that educators employed in ordinary public schools, independent schools, public further education and training institutions, early childhood development sector, adult basic education sector and education for learners with special needs sector, must be members of the council. It includes members who represent national associations of school governing bodies and the Council for Higher Education. It also includes members nominated by national bodies representing independent or private institutions.

10. When deciding on the manner of appointment of members to this council, examples of similar bodies (nationally and internationally) were taken into account. Nominations are made by specified organisations and appointments are made by the Minister. This is a well established model across the world and was judged the preferred option. The option of elected membership was also considered. In small systems such as the Scottish, this model is the preferred option. It is, however, a costly and time consuming process to conduct a proper election. There is also a high risk involved as any deviation from the election procedures may be challenged in a court of law. To conduct an election where more than 300000 educators must take part and where some of them are employed in schools which do not have telephones or effective postal services, and where accessibility is only by off-road vehicles, will create huge challenges to ensure fair election. This option was therefore discarded.
11. The functions of the council are clearly reflected in the Bill. They require council to develop, maintain and develop the professional image of the profession. to register educators who comply with established minimum criteria, to establish, maintain and review a code of professional ethics for educators and advise the Minister on any relevant educational aspect.
12. The Bill creates statutory committees for registration, professional development and discipline to ensure that these functions of council are dealt with effectively. It makes the operation of the council transparent and accessible to all educators.

These measures will ensure that the professional standards are developed and maintained.

13. After extensive consultations with all relevant **stakeholders**, a Bill has been **drafted** which incorporates the above considerations.

#### PARLIAMENTARY PROCEDURE

14. The Department is of the opinion that this Bill must be dealt with in terms of section 76 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) as it also deals with school educators, which, in terms of Schedule 4 of the Constitution, falls within the competence of provincial and national legislation.

## SOUTH AFRICAN COUNCIL FOR EDUCATORS BILL, 2000

To provide for the establishment of the South African Council for Educators and to repeal chapter six of the Employment of Educators Act, 1998 (Act No. 76 of 1998); to provide for the composition of this Council; to enhance the quality of the profession by providing for the determination of minimum standards for entry to the profession; to provide for compulsory registration of educators by the council; to provide for the development and maintenance of a code of professional ethics and the enforcement thereof; and to provide for matters incidental thereto.

### CHAPTER 1

#### INTERPRETATION AND PURPOSE OF ACT

##### Definitions

1. In this Act, unless the context otherwise indicates -
  - (i) **“adult learning centre”** means a public centre which provides basic education to adults and of which the educators are employed in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998);
  - (ii) **“council”** means the South African Council for Educators established in terms of section 4;
  - (iii) **“educator”** means any person appointed within the scope of this Act as contemplated in section 3 and who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at such institutions;
  - (iv) **“further education and training institution”** means a public or private further education and training institution as defined in section 1 of the Further Education and Training Act, 1998, (Act No. 98 of 1998) or any technical college, youth college, community college, state college or other college which is wholly or partly funded by the State;

- (v) “**institution**” means any school, further education and training institution or adult learning centre;
- (vi) “**member**” means a member of the council appointed in terms of section 6;
- (vii) “**Minister**” means the Minister of Education;
- (viii) “**official of the organised profession**” means a person employed by a trade union or federation of trade unions whether or not that person is employed in a full time or part-time capacity including a person who holds office in a trade union or federation of trade unions;
- (ix) “organised profession” means all trade unions or federations of trade unions which are members of the Education Labour Relations Council; and
- (x) “school” means a public or independent school as defined in section 1 of the South African Schools Act, 1996 (Act No 84 of 1996);
- (xi) “this Act” means the South African Council for Educators Act, 2000 and any regulations promulgated in terms thereof.

#### Purpose of Act

2. The purpose of the Act is to provide for the registration of educators and to set, maintain and protect ethical and professional standards for educators through the South African Council for Educators.

#### Scope of Act

3. The Act applies to all educators appointed-
- (a) in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998);
  - (b) in terms of the South African Schools Act, 1996 (Act No. 84 of 1996);
  - (c) at an independent school;
  - (d) in terms of the Further Education and Training Act, 1998 (Act No. 98 of 1998);
  - (e) at a private further education and training institution; or
  - (g) at a private adult learning centre.

## CHAPTER 2

### ESTABLISHMENT, FUNCTIONS, GOVERNANCE, AND POWERS OF THE COUNCIL

#### Establishment

4. The South African Council for Educators which was deemed to be reestablished in terms of section 27(1) of the Employment of Educators Act, 1998 (Act no. 76 of 1998), is deemed to be established in terms of this Act as a juristic person.

#### Functions and powers of council

5. (1) Subject to this Act and the National Education Policy Act, 1996 (Act No. 27 of 1996), the council-
- (a) with regard to the promotion and development of the education and training profession-
    - (i) must promote, develop and maintain a professional image;
    - (ii) must advise the Minister on matters relating to the education and training of educators, including but not limited to-
      - (aa) minimum entry requirements to the profession;
      - (bb) the standards of programmed of pre-service and in-service teacher education;
      - (cc) requirements for promotion within the education system;
      - (old) educator professionalism;
    - (iii) must promote in-service training of educators;
    - (iv) may develop resource materials to initiate and run, in Consultation with an employer, training programmed, workshops, seminars and short courses that are designed to enhance the profession;
    - (v) must compile, print and distribute a professional journal and other publications;
  - (b) with regard to registration-
    - (i) must establish minimum criteria and procedures for the registration or provisional registration of educators;



- (ii) must consider and decide on any application for registration or provisional registration;
  - (iii) must keep a register of the names of all persons who are registered or provisionally registered;
  - (iv) must decide on the form of the registers and certificates to be kept, maintained or issued under this Act, the reviewing thereof and the manner in which alterations thereto may be effected;
  - (v) may prescribe the period of validity of the registration or provisional registration of an educator;
- (c) with regard to professional ethics-
- (i) must establish, maintain and review a code of professional ethics for educators which applies to all educators registered or provisionally registered with the council;
  - (ii) must establish a fair and equitable enquiry procedure;
  - (iii) subject to subparagraph (ii) has the power to-
    - (aa) caution or reprimand;
    - (bb) impose a fine not exceeding one months' salary on; or
    - (cc) strike from the register the name of, an educator found guilty of a breach of the code of professional ethics; and
  - (iv) may suspend for such period and on such conditions determined by the council, a sanction imposed in terms of subparagraph (iii)(bb) or (cc);
- (d) with regard to fees-
- (i) subject to the approval of the Minister, must determine fees payable to the council by registered educators or educators applying for registration;
  - (ii) may require from employers to deduct fees from the salaries of educators;
  - (iii) has the power, after a fair and equitable enquiry procedure, to-
    - (aa) caution or reprimand; or
    - (bb) strike from the register the name of, an educator found guilty of failing to pay the fees set by the council; and

- (iv) may suspend for such a period and on such conditions determined by the council, a sanction imposed in terms of subparagraph (iii) **(bb)**;
- (e) in general-
  - (i) must advise the Minister on any relevant educational aspect requested to do so by the Minister;
  - (ii) may appoint staff and determine their conditions of service;
  - (iii) may establish committees and assign functions to them; and
  - (iv) must perform any function which is necessary for the proper functioning of the council.

**Composition of the council**

6. (1) The council consists of the following members, appointed by the Minister with due consideration to representation in respect of race, gender, disability and geographic distribution-

- (a) the chairperson, subject to section 7;
- (b) eighteen educators collectively nominated by the organised profession;
- (c) five persons nominated by the Department of Education;
- (d) two persons nominated by national associations of school governing bodies;
- (e) two persons nominated by the council on Higher Education;
- (g) one person nominated by national bodies representing independent or private institutions; and
- (g) the chief executive **officer** of the council.

(2) The members of the council nominated by the organised profession as contemplated in subsection (1)(b) must consist of-

- (a) twelve educators who are employed at public ordinary schools of whom two are principals;
- (b) one educator who is employed at an independent school;
- (c) one educator who is employed at a public further education and training institution;
- (d) one educator who is employed at a private further education and training institution;

- (e) one educator who is employed in the Early Childhood Development sector;
  - (g) one educator who is employed at a public or private adult learning centre; and
  - (g) one educator who is employed in the Education for Learners with Special Education Needs sector.
- (3) Nominations contemplated in subsection (1)(b) must-
- (a) be institution based educators; and
  - (b) not include an official of the organised profession.
- (4) If the organised profession as a collective is unable to reach agreement with regard to the eighteen educators referred to in subsection (1)(b), the Minister appoints eighteen members from the nominations by individual organisations from the organised profession.
- (5) When any nomination in terms of subsection (1) becomes necessary the council must invite the bodies or authorities in writing to nominate within the period specified, persons who qualify for nominations.
- (6) The period referred to in the invitation must be at least 30 days.
- (7) If the council receives any nomination it must within 30 days from the expiry date specified in the invitation submit the recommendations to the Minister.
- (8) If the council receives no or insufficient nominations within the period specified in the invitation, the Minister may, after consultation with the council, appoint such persons who meet the **necessary** requirements up to the number required, to be members of council.
- (9) The Minister must publish, as soon as practicable after the appointment of the members of the council, the name of every person appointed as a member, together with the date from which the appointment takes effect and the period for which the appointment is made, by notice in the Gazette.

### **Chairperson and deputy chairperson of council**

7. (1) At the first meeting of a new term of office of members, the members must nominate three persons to be taken into account by the Minister for appointment as chairperson.
- (2) The chief executive officer must act as chairperson until such time as a chairperson is appointed.

(3) The chairperson holds office during the term of office of the members of the council.

(4) At the first meeting of a new term of office of members, the members must elect one of their number as a deputy chairperson of council.

(5) In the event of the chairperson being appointed from the members of the council the vacancy so arising must be filled in accordance with section 10.

#### Term of **office** of members

8. All members of the council, excluding the chief executive officer, hold office for a period of four years.

#### Termination of office of chairperson or member

9. The chairperson or any member terminates membership of the council if he or she-
- (a) resigns by giving written notice to the Minister;
  - (b) is absent from three consecutive meetings of the council or from committees to which appointed without the leave of the chairperson, or in the case of the chairperson, the leave of the executive committee of the council;
  - (c) in the opinion of the Minister brings the council or the profession into disrepute;
  - (d) does no longer meet the requirement referred to in section 6(1 ) and (2);
  - (e) is declared insolvent, is removed from an office of trust by a court of law or is convicted of an **offence** involving dishonesty or an **offence** for which the sentence is imprisonment without the option of a fine; or
  - (f) is declared to be of an unsound mind or unable to manage his or her own affairs, by a competent authority.

#### Filling of vacancies

10. (1) If a member vacates his or her **office**, the resultant vacancy must be filled by nomination and appointment as contemplated in sections 6(4) and 6(5).

(2) A member appointed in accordance with subsection (1) shall remain in office for the remaining term of **office** of his or her predecessor.

(3) If the office of the chairperson becomes vacant, the members of the council must at the first meeting after such vacancy occurs, make nominations for appointment as contemplated at section 7(1), and the person so appointed as chairperson must hold office for the remaining portion of the period for which his or her predecessor was elected.

### **Executive committee of the council**

11. (1) The executive committee is hereby established and shall consist of-
- (a) the chairperson of the council who is also the chairperson of this committee;
  - (b) six other members appointed by the council of which at least one shall be a member as contemplated in section 6(1)(c); and
  - (c) the chief executive officer.
- (2) The Council must determine the functions of the executive committee.
- (3) A decision of the executive committee must be regarded as a decision of the council, unless such decision is revoked at the next meeting of the council.
- (4) Anything done in consequence of a decision of the executive committee before its revocation, is not invalid by reason only of the fact that the decision is revoked by the council.

### **Disciplinary committee**

12. (1) The disciplinary committee is hereby established and shall consist of -
- (a) the chairperson of the council who is also the chairperson of this committee;
  - (b) four members appointed by the council; and
  - (c) the chief executive officer.
- (2) The disciplinary committee must-
- (a) ensure that an alleged breach of the code of professional ethics is investigated;
  - (b) ensure that a fair hearing in accordance with the procedure determined by the council is conducted;
  - (c) on the basis of a recommendation of "the relevant panel make a finding and determine appropriate action if any; and
  - (d) perform any other function delegated or assigned to it by the council.

(3) The disciplinary committee must establish panels to investigate and hear complaints against educators.

(4) The relevant panel contemplated in subsection (2) must make a recommendation to the disciplinary committee in regard to the finding and possible disciplinary action pertaining to a complaint referred to it.

(5) For purposes of the investigation and hearing, the relevant panel may summon any person who may be able to give information of material importance concerning the subject of the investigation or hearing, or has in his or her possession, custody or control, **any** book, document or object which may have a bearing on the matter, to appear before the panel.

(6) The summons to appear at a disciplinary hearing must be in a form prescribed by the council and signed by the chairperson of the disciplinary committee or the chief executive officer and served on the person by way of-

- (a) delivering by hand;
- (b) **telefax**; or
- (c) registered post.

(7) The date on which the summons is served will be-

- (a) when delivering by hand, the date of delivery;
- (b) when delivering by **telefax**, the date reflected on the **telefax**; and
- (c) when delivering by registered post, the date on which the letter was posted.

(8) The **disciplinary** committee and the panels must keep a record of the proceedings of disciplinary hearings.

### **Registration committee**

13. (1) A registration committee is hereby established and must consist of:-

- (a) a chairperson who is a member of council;
- (b) four other members appointed by council; and
- (c) the chief executive officer.

(2) Subject to chapter 3, the registration committee must-

- (a) consider and make recommendations to council on minimum criteria and procedures for the registration or provisional registration of educators;

- (b) consider and make recommendations to council on any application for registration or provisional registration;
  - (c) recommend the period of validity of the registration of an educator to council; and
  - (d) perform any other function delegated or assigned to it by the council.
- (3) The registration committee must keep a record of its proceedings.

### **Professional Development Committee**

14. (1) The professional development committee is hereby established and shall consist of-
- (a) the chairperson, who is a member of council;
  - (b) four members appointed by the council; and
  - (c) the chief executive officer.
- (2) The council must determine the functions of the professional development committee.
- (3) The professional development committee must keep a record of its proceedings.

### **Committees of the council**

15. (1) The council may establish other committees to assist in the performance of its functions and may invite other persons to attend committee meetings on the basis of their expertise.
- (2) Any committee, other than the executive committee, disciplinary committee and registration committee, may include persons who are not members of the council.
- (3) The chairperson of a committee must be appointed by the council from among its members.
- (4) Members of the committees contemplated in subsection (1) may be appointed for such periods as the council may determine.
- (5) Members of panels contemplated in section 12(2) need not be members of council.

**Meetings and the procedure at meetings of the council and its committees**

16. (1) The council must hold at least two meetings in each year at its head office, and may in addition hold such further meetings as the chairperson of the council may decide.

(2) The council may make rules relating to the procedure at meetings of the council and its committees, and on any other matter necessary or expedient for the performance of its functions.

(3) A majority of the members of the council or a committee constitutes a quorum at any meeting of the council or committee.

(4) A decision of the majority of the members of the council or a committee present at any meeting constitutes a decision of the council or committee, and in the event of an equality of votes the member presiding has a casting vote in addition to a deliberative vote.

(5) No decision taken by the council or a committee is invalid by reason only of an vacancy on the council or a committee, as the case may be, at the time when the decision was taken.

**Appointment of chief executive officer and staff**

17. (1) The council must appoint a chief executive officer and may appoint other employees as it may deem necessary to assist it to perform its functions.

(2) The secretariat of the council is the responsibility of the chief executive officer who must carry out the duties as assigned or delegated by the council.

(3) The council is the employer of the employees and must determine their conditions of service.

**Remuneration and allowances of members of the council and committees**

18. The chairperson of the council, every member and any person appointed as a member of a committee or panel, who is not in the service of the State may, in respect of services rendered by him or her in connection with the affairs of the council or a committee, be paid by the council-

(a) such traveling, subsistence and other allowances; and

(b) in the case of the chairperson of the council, such additional remuneration, Creamer Media Pty Ltd. t/a Polity, 27, 1st Floor, 622, 3rd Avenue, Johannesburg, Polity @sa



as the council may determine.

### **Funds of the council**

**19.** (1) The funds of the council consist of-

- (a) compulsory fees;
- (b) moneys received from donations, contributions, interest or fines; and;
- (c) other moneys received by the council from any other source,

**(2)** The council-

- (a) must in each financial year, at such time and in such manner as the Minister may determine, submit a detailed statement of its estimated income and expenditure for the ensuing financial year to the Minister for his or her approval;
- (b) may in any financial year submit adjusted statements of its estimated income and expenditure to the Minister for his or her approval; and
- (c) may not incur any expenditure which exceeds the total amount approved in terms of paragraphs (a) and (b).

(3) If the Minister does not approve the statement of estimated income and expenditure of the council, the Minister must require the council to provide a revised statement within a specified period to him or her.

(4) The funds contemplated in subsection (1) must be used by the council in accordance with the approved statement referred to in subsection (2), and any unexpended balance must be carried forward as a credit to the following financial year.

(5) Subject to subsection (4), the council may invest any portion of its funds in a manner as the council may approve.

(6) The books of account and financial statements of the council must be audited at the end of each financial year by a registered chartered accountant appointed by the council.

(7) A copy of the audited financial statements shall be submitted to the Minister within three months after the end of a financial year.

**Annual report**

20. (1) The council must, within three months, **after** the end of each financial year, submit a report to the Minister on the performance of its functions during that financial year.

(2) The Minister must table the report in Parliament as soon is reasonably practicable.

**CHAPTER 3****REGISTRATION OF EDUCATORS****Compulsory registration of educators**

21. All persons covered by the scope of this Act must register with the council prior to being appointed as an educator.

**Application for registration**

22. (1) An application for registration must be made to the council in the manner determined by the council, and the applicant must submit the documentation and information required by the council.

(2) The council must consider an application for registration in terms of the requirements for registration determined by the council.

(3) If an applicant for registration satisfies the requirements referred to in subsection (1), the council registers the applicant and issues a registration certificate to the educator.

(4) If an applicant does not satisfy all the requirements but the council is of the opinion that the requirements will be satisfied within a reasonable time, the council may register the applicant provisionally on such conditions as the council may determine.

(5) If an educator who is provisionally registered as contemplated in subsection (4) satisfies all the requirements for registration and conditions referred to in that subsection the council must register the educator in terms of subsection (3).

(6) If an educator referred to in subsection (4) does not satisfy the requirements for registration, the provisional registration lapses and the name of the person is removed from the register.

(7) The period for which an educator is provisionally registered may be extended by the council, and different conditions in respect of different applicants may be set if there is a reasonable basis for the differentiation.

(8) Different categories of registration may be defined by the council to allow for the special circumstances of different sectors in education.

### **Removal of name from register**

23. (1) The council may direct the chief executive officer to remove from the register the name of an educator-

- (a) whose qualification by virtue of the holding thereof he or she was registered, has been withdrawn or cancelled by the higher education institution which issued it;
- (b) who has been registered in error or through fraud;
- (c) who has been found guilty of a breach of the code of professional ethics;
- (d) who fails to pay the prescribed fees; or
- (e) who dies.

(2) Notice of the removal of his or her name from the register in terms of subsection (1)(a) to (d) must be given by the chief executive officer to the educator concerned by way of certified mail addressed to the educator at his or her address appearing in the register.

(3) The name of an educator may not be removed from the register in terms of subsection (1)(a) to (d) unless the educator was given a reasonable opportunity to make representations to the council.

(4) As from the date on which the notice contemplated in subsection (2) has been given any registration certificate issued to the educator concerned is deemed to be cancelled.

**Registration certificates**

24. (1) A registration certificate shall be sent to the educator upon registration by the council.

(2) The original certificate shall be issued in English, and a copy in another official language may be requested and shall be issued by the council on payment of the prescribed fee.

(3) If the chief executive officer is satisfied, on proof submitted by the registered educator concerned, that a registration certificate has been destroyed or lost, he or she must issue a duplicate registration certificate to that educator upon payment of the prescribed fee.

**CHAPTER 4****GENERAL****Transitional arrangements**

25. (1) The term of office of the current members of the council shall expire on the date of publication of the names of the members of the new council in terms of section 6(9).

(2) The assets and liabilities which vested in the council immediately prior to the commencement of this Act, continue to vest in the council.

(3) Any functions performed by the South African Council for Educators prior to the commencement of this Act, are deemed to be performed in terms of this Act.

(4) Notwithstanding the provisions of subsection (3), any disciplinary proceedings instituted against an educator for an alleged breach of the code of professional ethics prior to the commencement of this Act must be continued and concluded in terms of the procedures determined in terms of chapter 6 of the Employment of Educators Act, 1998 (Act No. 76 of 1998).

(5) The existing constitution, registration procedure, code of professional ethics and procedures of the South African Council for Educators remain in force until amended or repealed by the council, except where these are in conflict with the provisions of this Act.

(6) The compulsory monthly fees payable to council prior to the commencement of this Act remain in force until amended or repealed by the council in accordance with this Act.

(7) Existing agreements of employment are deemed to be agreements entered into between the staff and the council and continue to exist subject to applicable labour law.

(8) Practicing educators not covered by the provisions of the Employment of Educators Act (Act No. 76 of 1998) and who are required in terms of this Act to register, shall, subject to subsection (9), be deemed to be provisionally registered with the council, regardless of their qualifications.

(9) Provisional registration contemplated in subsection (8) will be effective until a date determined by the Minister, prior to which date such educators must apply and obtain registration in terms of chapter 3.

### **Information to be furnished to the council**

26. (1) A higher education institution and the employer of an educator must furnish the council at its request with such information as is reasonably required by the council for the performance of its functions.

(2) In each case where disciplinary steps were taken against any educator by his or her employer resulting in a sanction other than the cautioning or reprimanding of the educator record a summary of the proceedings at the enquiry and the sanction imposed upon the educator must be forwarded to the council by such employer.

### **Repeal of law**

27. Chapter 6 of the Employment of Educators Act, 1998 (Act No. 76 of 1998) is hereby repealed.

### **Short title**

28. This is the South African Council for Educators Act, 2000.

## **MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN COUNCIL FOR EDUCATORS BILL, 2000**

### **INTRODUCTION**

Chapter six of the Employment of Educators Act, 1998 (Act No. 76 of 1998) contains provisions dealing with the South African Council for Educators (SACE). However, these were found to be inadequate on the grounds that SACE is an independent juristic person, necessitating an own Act in order to cover all aspects of SACE adequately.

Hence, this Bill was developed to provide for the establishment of SACE, the repeal of chapter six of the Employment of Educators Act, the composition of the Council, the professionalisation of education and training, the registration or provisional registration of educators and matters incidental thereto.

### **CLAUSES OF THE BILL**

#### **Chapter 1**

##### **Clause 1**

This clause makes provision for definitions to assist in interpreting the Bill.

##### **Clauses 2 and 3**

These clauses make provision for the purpose and the scope of this Bill. Its main objective is to set, maintain and protect ethical and professional standards for educators. It applies to all educators appointed at schools, adult learning centres, further education and training institutions and lecturers at a higher education institution in the education faculty of such an institution.

## Chapter 2

### **Clause 4**

This clause establishes SACE as a juristic person so as to ensure that it can act independently within the framework of the Bill.

### **Clause 5**

This clause makes provision for the functions and powers of the council. Its powers and functions range from promoting, developing and maintaining a professional image of the profession, advising the Minister on matters relating to the education and training of teachers, registration of educators, prescription of fees payable to the Council by registered educators, to taking disciplinary measures against educators who contravene the code of conduct of the Council.

### **Clause 6**

This clause makes provision for the composition of the council. The council consists of 29 nominated members, who are subsequently appointed by the Minister in terms of this clause of the Bill, and the chief executive officer who is appointed by the council in terms of clause 16 of the Bill.

Members of the council are nominated by the organised profession, Department of Education, national associations of school governing bodies, Business South Africa, South African Principals Association, Council for Higher Education and national bodies representing independent or private education institutions.

### **Clause 7**

This clause makes provision for the nomination and subsequent appointment of the chairperson by the Minister. It also makes provision for the election of the deputy chairperson by members of the council.

**Clauses 8,9 and 10**

**These** clauses make provision for the terms of office of members of the council, their termination of office and the filling of vacancies where a member vacates his or her office.

**Clauses 11, 12, 13,14 and 15**

In terms of these clauses, provision is made for the establishment of various committees to assist the Council in performing its functions. The following committees may be established in terms of these clauses:

- (a) Executive committee whose decision is the decision of the council.
- (b) Disciplinary committee which ensures that allegations regarding breach of the code of professional ethics are investigated and prosecuted in accordance with a fair procedure determined by the council.
- (c) Registration committee which is responsible for the registration of eligible educators.
- (d) Professional development committee.
- (e) Other committees which the council may establish to assist in performing its functions.

**Clause 16**

This clause makes provision for meetings and procedures at meetings of the council and its committees.

**Clause 17**

This clause makes provision for the appointment of the chief executive officer and other employees by the council. The council as the employer of the aforesaid must determine their conditions of service.



**Clause 18**

This clause provides for the remuneration and allowance of members of the council and committees. Members who are not in the service of the State may, in respect of services rendered by them regarding the affairs of the council, be paid by the council for such traveling, subsistence and other allowances.

**Clause 19**

This clause provides for the finding of the council and the submission of a copy of the audited financial statements to the Minister within three months after the end of a financial year.

The funds may consist of compulsory fees from educators, moneys received from donations, contributions, interest or fines and moneys received by the Council from any other source.

**Clause 20**

In terms of this clause, the council must submit an annual report on the performance of its functions to the Minister and the Minister must in turn table the report in Parliament as soon as is reasonably practicable.

**Chapter 3****Clauses 21,22,23 and 24**

These clauses provide for the compulsory registration of educators covered by the scope of this Bill, the manner in which an application should be made to the council by eligible educators, removal of the name of an educator from the register of the council and a registration certificate for each and every educator who has successfully applied for registration.

## Chapter 4

### Clause 25

This clause provides for transitional arrangements to ensure that there is no vacuum left when chapter 6 of the Employment of Educators Act, 1998 (Act No. 76 of 1998) is repealed by this Bill when it is passed as an Act by Parliament.

### Clause 26

This clause provides for the furnishing of information by a higher education institution and the employer of an educator to the council whenever the council for the performance of its functions requires such information.

### Clause 27

This clause provides for the repeal of chapter 6 of the Employment of Educators Act, 1998 (Act No. 76 of 1998). This chapter was an interim measure devised to deal with the affairs of the South African Council for Educators. It was therefore necessary to replace the chapter by this Bill.

### Clause 28

This clause deals with the short title of the Bill. When this Bill is passed as an Act, its short title shall be "The South African Council for Educators Act, 2000".