



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

N\$4.00

WINDHOEK - 31 December 2003

No.3125

### CONTENTS

*Page*

#### GOVERNMENT NOTICE

No. 268	Promulgation of Higher Education Act, 2003 (Act No. 26 of 2003), of the Parliament .....	1
---------	--	---

### Government Notice

#### OFFICE OF THE PRIME MINISTER

No. 268 2003

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 26 of 2003: Higher Education Act, 2003.

## ACT

To regulate higher education; to provide for the establishment, objects, functions and composition of the National Council for Higher Education; to provide for the registration, deregistration and closure of private higher education institutions; to provide for the funding of public higher education institutions; to provide for the establishment and functions of a panel of enquiry into the affairs of higher education institutions; and to provide for matters incidental thereto.

*(Signed by the President on 21 December 2003)*

### ARRANGEMENT OF SECTIONS

#### PART I PRELIMINARY

##### Section

1. Definitions

#### PART II APPLICATION OF ACT AND DETERMINATION OF POLICY

2. Application of Act
3. Determination of national policy on higher education and supervision over higher education system

#### PART III NATIONAL COUNCIL FOR HIGHER EDUCATION

4. Establishment of NCHE
5. Objects of NCHE
6. Functions of NCHE
7. Composition of NCHE
8. Alternate members of NCHE
9. Notice of appointment of members of NCHE
10. Persons disqualified from being members of NCHE
11. Term of office of members of NCHE
12. Meetings and decisions of NCHE
13. Disclosure of interest by members of NCHE
14. Committees of NCHE
15. Allowances of members of NCHE and of committees and other expenses
16. Establishment of Secretariat
17. Composition of Secretariat
18. Functions of Secretariat
19. Accommodation and other facilities
20. Information to be furnished to NCHE
21. Assignment of functions by NCHE

#### PART IV REGISTRATION, DEREGISTRATION AND CLOSURE OF PRIVATE HIGHER EDUCATION INSTITUTIONS

22. Establishment of private higher education institutions
23. Registrar of private higher education institutions
24. Register of private higher education institutions
25. Registration of private higher education institutions
26. Display of registration certificate

27. Application for amendment of registration
28. Requirements for amendment of registration
29. Deregistration of private higher education institutions
30. Right of appeal to Minister
31. Failure to remedy defects and closure of private higher education institutions by Minister
32. Inspection and copies of documents

#### PART V

#### FUNDING OF PUBLIC HIGHER EDUCATION INSTITUTIONS

33. Determination of policy on funding of public higher education institutions
34. Allocation of funds to public higher education institutions
35. Failure by governing body of public higher education institution to exercise proper control

#### PART VI

#### INVESTIGATION OF HIGHER EDUCATION INSTITUTIONS

36. Investigation into affairs of higher education institutions
37. Establishment of panel of enquiry
38. Functions of panel of enquiry
39. Remuneration of members of panel of enquiry
40. Issue of certificates of appointment to members of panel of enquiry

#### PART VII

#### GENERAL PROVISIONS

41. Offences and penalties
42. Preservation of secrecy
43. Limitation of liability
44. Regulations
45. Conflict with other laws
46. Amendment of Schedule to Act No. 16 of 2001
47. Transitional provisions and savings
48. Short title and commencement

**BE IT ENACTED** by the Parliament of the Republic of Namibia, as follows:-

#### PART I

#### PRELIMINARY

#### Definitions

1. In this Act, unless the context indicates otherwise -

“higher education” means all learning programmes leading to qualifications higher than grade 12 or its equivalent, and includes tertiary education as contemplated in Article 20(4) of the Namibian Constitution, but does not include -

- (a) vocational training provided by a vocational training center registered under the National Vocational Training Act, 1994 (Act No. 18 of 1994); or
- (b) open learning provided by the Namibia College of Open Learning established by the Namibian College of Open Learning Act, 1997 (Act No. 1 of 1997);

Act No. 26, 2003

**HIGHER EDUCATION ACT, 2003**

“higher education institution” means any institution that provides higher education and which is -

- (a) established by or under any law; or
- (b) registered as a private higher education institution under this Act;

“Minister” means the Minister responsible for higher education;

“Ministry” means the Ministry charged with the administration of higher education affairs;

“NCHE” means the National Council for Higher Education established by section 4;

“NQA” means the Namibia Qualifications Authority established by section 4 of the Namibia Qualifications Authority Act, 1996 (Act No. 29 of 1996);

“panel of enquiry” means the panel of enquiry established by section 37;

“Permanent Secretary” means the Permanent Secretary of the Ministry;

“prescribe” means prescribe by regulation;

“private higher education institution” means any institution that provides higher education and which is established and maintained at the expense of the owner thereof and registered in terms of section 25 as a private higher education institution;

“public higher education institution” means any institution that provides higher education and which is established by or under any law and is funded wholly or partially by the State, but does not, for purposes of Part V, include any teachers’ education college established under the Teachers’ Education Colleges Act, 2003;

“register” means a register kept and maintained in terms of section 24;

“registrar” means the registrar referred to in section 23;

“regulation” means a regulation made under section 44;

“Secretariat” means the National Council for Higher Education Secretariat established by section 16;

“this Act” includes the regulations made thereunder.

**PART II**  
**APPLICATION OF ACT AND DETERMINATION OF POLICY**

**Application of Act**

- 2. This Act applies to higher education in Namibia.

**Determination of national policy on higher education and supervision over higher education system**

- 3. (1) The Minister must -
  - (a) determine the national policy on higher education and endeavour to secure the co-operation of all persons concerned with higher education in implementing such policy; and

- (b) co-ordinate and supervise the higher education system as a whole in order to promote higher education and the establishment and development of higher education institutions in national interest.
- (2) In determining the national policy on higher education the Minister -
  - (a) must consult with the National Council for Higher Education; and
  - (b) may consult with or obtain the advice of such stakeholders as the Minister thinks necessary.
- (3) The Minister must -
  - (a) table the national policy on higher education in the National Assembly within 90 days of its determination, if the National Assembly is then in ordinary session, or, if the National Assembly is not then in ordinary session, within 30 days after the commencement of its next ordinary session; and
  - (b) give notice of such policy in the *Gazette*.

### PART III NATIONAL COUNCIL FOR HIGHER EDUCATION

#### Establishment of NCHE

4. There is hereby established a council to be known as the National Council for Higher Education.

#### Objects of NCHE

5. The objects of the NCHE are -
- (a) to promote -
    - (i) the establishment of a co-ordinated higher education system;
    - (ii) the access of students to higher education institutions; and
    - (iii) quality assurance in higher education; and
  - (b) to advise on the allocation of moneys to public higher education institutions.

#### Functions of NCHE

6. The NCHE may, subject to this Act, do all things necessary or reasonably required to carry into effect its objects and must more specifically -
- (a) accredit, with the concurrence of the NQA, programmes of higher education provided at higher education institutions;
  - (b) monitor the quality assurance mechanisms of higher education institutions;
  - (c) take measures to promote access of students to higher education institutions;
  - (d) undertake such research with regard to its objects as it may think necessary or as the Minister may require;

- (e) advise the Minister of its own accord or at request of the Minister on -
  - (i) the structure of the higher education system in general;
  - (ii) quality promotion and quality assurance in higher education;
  - (iii) the allocation of public moneys to higher education institutions;
  - (iv) the governance of higher education institutions;
  - (v) any other aspect related to higher education; and
- (f) perform such other functions as may be entrusted to the NCHE by or under this Act.

#### Composition of NCHE

- 7. (1) Subject to subsection (6), the NCHE comprises -
  - (a) the Permanent Secretary of the Ministry;
  - (b) the Permanent Secretary: National Planning Commission;
  - (c) the Permanent Secretary: Finance; and
  - (d) 16 other persons appointed by the Minister, of whom -
    - (i) one must be a person nominated by the Council of the Polytechnic of Namibia referred to in section 6 of the Polytechnic of Namibia Act, 1994 (Act No. 33 of 1994);
    - (ii) one must be a person nominated by the Council of the University of Namibia referred to in section 9 of the University of Namibia Act, 1992 (Act No. 18 of 1992);
    - (iii) one must be a person nominated by the Vocational Training Board established by section 5 of the National Vocational Training Act, 1994 (Act No. 18 of 1994);
    - (iv) ten must be persons selected by the Minister from among persons nominated under subsection (2)(b);
    - (v) three must be persons appointed by the Minister on account of their special knowledge, skill or expertise in educational matters.
- (2) The Minister must for the purposes of the appointment of persons referred to -
  - (a) in subsection (1)(d)(i), (ii) and (iii) in writing invite the council or board in question to nominate a person for appointment to the NCHE and to submit such nomination within a specified period to the Minister;
  - (b) in subsection (1)(d)(iv) by notice in the *Gazette* and in two newspapers published and circulating in Namibia and by any other means regarded necessary by the Minister call for the nomination of three persons, of whom at least one must be a woman, by -
    - (i) higher education institutions other than higher education institutions referred to in subsection (1)(d)(i) and (ii); and

- (ii) organizations respectively representing students, academic employees, employees other than academic employees, disabled persons, churches, organized business and organized labour, or from such organizations recognized by the Minister under subsection (3).

(3) The Minister may, for the purpose of paragraph (b) of subsection (2) and by notice in the *Gazette*, recognize any organization as being representative of any group of persons referred to in subparagraph (ii) of that paragraph.

(4) An invitation extended in terms of subsection (2)(b) must specify the period within which the required nominations must be submitted to the Minister for his or her consideration.

(5) If the required nominations is not submitted within the period specified in the relevant invitation extended in terms of subsection (2) the Minister may, notwithstanding the provisions of subsection (1)(d) but having regard to the number of persons required by the relevant provision of that subsection, appoint such person or persons as the Minister thinks fit to serve on the NCHE.

(6) At least four of the members of the NCHE appointed in terms of subsection (1)(d)(iv) must be female.

(7) The Minister must designate a member of the NCHE as chairperson for such period, not exceeding three years, as the Minister may determine at the time of such designation.

#### **Alternate members of NCHE**

8. (1) Subject to this section, the Minister must for every member of the NCHE appointed in terms of subparagraphs (i) to (iv) of paragraph (d) of section 7(1) appoint an alternate member in the same manner as such member, and every member of the NCHE referred to in paragraphs (a), (b) and (c) of that section must designate a staff member to act in his or her stead as an alternate member.

(2) Whenever a member of the NCHE, in respect of whom an alternate has been appointed or designated in terms of subsection (1), is absent from a meeting of the NCHE the alternate member concerned must attend that meeting and when so attending the alternate member is deemed to be a member of the NCHE.

(3) No alternate member is appointed or designated for the chairperson or vice-chairperson of the NCHE.

#### **Notice of appointment of members of NCHE**

9. The Minister must cause notice to be given in the *Gazette* of the names of every member and alternate member of the NCHE appointed or designated in terms of section 7 or 8 and of the date from which the appointment or designation of any such member or alternate member takes effect.

#### **Persons disqualified from being members of NCHE**

10. A person may not be appointed as a member or appointed or designated as an alternate member of the NCHE if he or she -

- (a) is not a Namibian citizen or the holder of a permanent residence permit issued under the laws relating to immigration: Provided that if the Minister is convinced that it is in the interest of higher education in Namibia, the Minister may appoint as a member of the NCHE a person who has extensive

knowledge and experience in a higher education sphere even though such person is not a Namibian citizen or the holder of a permanent residence permit;

- (b) is a member of the National Assembly or the National Council;
- (c) is an unrehabilitated insolvent;
- (d) has been convicted of an offence involving an element of dishonesty and sentenced to imprisonment without the option of a fine.

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

**11.** (1) Subject to subsection (2), any member appointed in terms of section 7(1)(d) or any alternate member appointed or designated in terms of section 8, holds office for a period of three years from the date of his or her appointment or designation, but may be re-appointed upon the expiry of his or her term of office.

(2) The office of any member or alternate member referred to in subsection (1), becomes vacant if he or she -

- (a) becomes subject to any disqualification mentioned in section 10;
- (b) ceases to hold the office by virtue of which he or she became a member or alternate member;
- (c) by notice in writing addressed and delivered to the Minister resigns as member or alternate member;
- (d)
  - (i) in the case of a member, has been absent from three consecutive meetings of the NCHE without the leave of the chairperson of the NCHE; or
  - (ii) in the case of an alternate member, has been so absent during the absence of the member for whom he or she has been appointed as alternate member; or
- (e) is removed from office by the Minister under subsection (3).

(3) The Minister may, on a recommendation by the majority of the members of the NCHE, remove a member or alternate member from office if the Minister is satisfied that any such member -

- (a) is incapacitated by physical or mental illness; or
- (b) is for whatever other reason incapable of efficiently performing his or her functions as member or alternate member of the NCHE,

but the Minister must do so only after having afforded that member or alternate member an opportunity to be heard.

(4) If a member or alternate member dies or vacates his or her office before the expiration of his or her term of office, the vacancy must be filled for the unexpired portion of the term of office of that member or alternate member by the appointment or designation in the manner contemplated in section 7 or 8, as the case may be, of a suitable person.



**Meetings and decisions of NCHE**

12. (1) The chairperson of the NCHE must convene the first meeting of the NCHE and thereafter, subject to subsection (4), meetings must be held at such times and places as the NCHE determines, but a meeting must be held at least every three months.

(2) At the first meeting of the NCHE convened under subsection (1), and thereafter as the occasion arises, the members present must elect from among their number a vice-chairperson.

(3) The chairperson of the NCHE or, in his or her absence, the vice-chairperson must preside at meetings, but if both of them are absent from, or for whatever reason unable to preside at any meeting of the NCHE, the members present thereat must elect from among their number a person to preside at such meeting.

(4) The chairperson of the NCHE may at any time, and must if so requested in writing by the Minister or at least six of the members of the NCHE, convene a special meeting of the NCHE.

(5) The majority of the members of the NCHE constitute a quorum for any meeting of the NCHE.

(6) A decision of the majority of the members present at a meeting of the NCHE constitutes a decision of the NCHE and, in the event of an equality of votes, the person presiding at the meeting has a casting vote in addition to a deliberative vote.

(7) The NCHE may invite any person whose presence is in its opinion desirable to attend and participate in the deliberations at any meeting of the NCHE, but such person may not vote.

(8) The NCHE must cause proper minutes to be kept of the proceedings at its meetings.

(9) No decision taken by the NCHE or act performed under the authority of the NCHE is invalid by reason only of -

- (a) a vacancy on the NCHE; or
- (b) the fact that a person not entitled to sit as a member of the NCHE was in attendance at the time when the decision was taken or the act authorized,

if the decision was taken or the act authorized by the requisite majority of the members who were present at the time and entitled to vote.

(10) The NCHE may, subject to this Act, make rules relating to the holding of and procedure at meetings of the NCHE.

**Disclosure of interest by members of NCHE**

13. (1) A member may not participate in the deliberations or vote on any matter which is the subject of consideration at a meeting of the NCHE if in relation to such matter, such member has any interest, whether direct or indirect, which may preclude such member from performing the functions of a member in a fair, unbiased and proper manner.

(2) If at any stage -

- (a) prior to a meeting of the NCHE it appears to a member that he or she has or may have a direct or indirect interest in any matter to be discussed at such

meeting, such member must fully disclose the nature of his or her interest at such meeting before the NCHE proceeds with the dispatch of any of its business;

- (b) during a meeting of the NCHE it appears to a member that he or she has or may have a direct or indirect interest in a matter to be discussed, or under discussion, by the NCHE, such member must forthwith fully disclose the nature of such interest,

and leave the meeting so as to enable the remaining members to discuss such disclosure and determine whether the member is precluded from participating in such meeting by reason of a conflict of interests.

(3) A disclosure in accordance with subsection (2) by a member at a meeting, and the decision taken at that meeting by the members in connection therewith, must be recorded in the minutes of the meeting.

(4) A member who contravenes subsection (1) or fails to comply with subsection (2) commits an offence and is liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

#### **Committees of NCHE**

14. (1) The NCHE may establish one or more committees -

- (a) to advise the NCHE on such matters, relating to the functions of the NCHE, as the NCHE may refer to any such committee; or
- (b) to assist the NCHE in the performance of such of its functions as the NCHE may assign to any such committee under section 21.

(2) A committee established under subsection (1) is to consist of so many members of the NCHE or other persons, or, so many members of the NCHE and other persons, as the NCHE may appoint.

(3) The NCHE must designate a member of the committee as chairperson thereof.

(4) A committee may, with the approval of the NCHE, invite one or more persons to attend and participate in the deliberations at any meeting of the committee, but such persons may not vote.

(5) The NCHE may make rules relating to the holding of and procedure at meetings of any committee of the NCHE.

(6) The NCHE may at any time dissolve or reconstitute a committee.

#### **Allowances of members of NCHE and of committees and other expenses**

15. (1) The Minister must, with the concurrence of the Minister responsible for finance, determine the allowances payable from moneys appropriated by Parliament, to the members and alternate members of the NCHE and the members of a committee of the NCHE who are not in the full-time employment of the Public Service, for -

- (a) meetings of the NCHE or of a committee attended by any such member or alternate member; and

- (b) reasonable expenses incurred by any such member or alternate member in connection with the performance of the functions of the NCHE or of such committee.

(2) Any other expenses related to the functions of the NCHE or of a committee of the NCHE must be defrayed from moneys appropriated for such purpose by Parliament.

#### **Establishment of Secretariat**

16. There is hereby established a secretariat to be known as the National Council for Higher Education Secretariat.

#### **Composition of Secretariat**

17. The Secretariat comprises such staff members of the Ministry as the Permanent Secretary may designate to perform the functions of the Secretariat.

#### **Functions of Secretariat**

18. The functions of the Secretariat are to provide such secretarial and administrative services and technical assistance as may be required by the NCHE or any committee of the NCHE.

#### **Accommodation and other facilities**

19. The Ministry must facilitate the acquisition of the accommodation and other facilities required by the NCHE or any committee of the NCHE or the Secretariat for the performance of any work related to the functions of any such body.

#### **Information to be furnished to NCHE**

20. Notwithstanding anything to the contrary in any law contained, a higher education institution or any other person must, at the written request of the NCHE, furnish it with such information as the NCHE may reasonably require for purposes of the performance of its functions in terms of this Act.

#### **Assignment of functions by NCHE**

21. (1) The NCHE may in writing assign any function entrusted to the NCHE by or under this Act, to a committee of the NCHE.

- (2) An assignment by the NCHE under subsection (1) -
- (a) may be effected subject to such conditions as the NCHE may determine;
  - (b) may be withdrawn or varied by the NCHE;
  - (c) does not preclude the NCHE from performing any function so assigned.

### **PART IV REGISTRATION, DEREGISTRATION AND CLOSURE OF PRIVATE HIGHER EDUCATION INSTITUTIONS**

#### **Establishment of private higher education institutions**

22. Every person has the right to, at his or her own expense, establish and maintain a private higher education institution, but must, before higher education is provided to any person at the institution, register that institution in terms of section 25.

**Registrar of private higher education institutions**

23. (1) The Permanent Secretary is the registrar of private higher education institutions.

(2) The Permanent Secretary may designate any staff member of the Ministry to assist him or her in the performance of his or her functions as registrar in terms of this Act.

**Register of private higher education institutions**

24. The registrar must keep and maintain a register of private higher education institutions.

**Registration of private higher education institutions**

25. (1) An application for registration as a private higher education institution must be made to the registrar in the prescribed form and be accompanied by the prescribed fee and such further information and documentation in support of the application as the registrar may request.

(2) The registrar must register an institution as a private higher education institution if the registrar is satisfied -

- (a) that such institution or the facilities to be provided by such institution are suitable and adequate and not inferior to that provided by a comparable public higher education institution funded by the State;
- (b) that such institution is financially capable of satisfying its obligations to prospective students;
- (c) after having consulted the NCHE and the NQA, that -
  - (i) the teaching staff to be employed by such institution is sufficiently qualified; and
  - (ii) the higher education programmes to be provided by such institution are of such a quality,

that it will enable the institution to provide a standard of education that is not inferior to the standard of education provided by a comparable public higher education institution funded by the State; and

- (d) that such institution will not impose restrictions of whatever nature with respect to -
  - (i) the admission of students based on race, colour or creed; and
  - (ii) the recruitment of staff based on race or colour.
- (3) If the registrar decides -
  - (a) to grant the application, the registrar may impose any reasonable condition in respect of the registration and must -
    - (i) enter in the appropriate register -
      - (aa) the type and name of the institution;

- (bb) the name of the owner of the institution; and
  - (cc) such further particulars as may be prescribed;
  - (ii) issue the applicant with a certificate of registration containing the terms and conditions of the registration;
  - (iii) give notice in the *Gazette* of the registration; or
- (b) not to grant the application, the registrar must advise the applicant in writing of the decision, supplying the reasons for the decision.

(4) The conditions imposed under subsection (3) may differ with regard to different institutions, but only if there is a reasonable basis for the differentiation.

#### **Display of registration certificate**

26. A private higher education institution must in a discernable manner display -
- (a) on its premises its certificate of registration or a certified copy thereof; and
  - (b) on all of its official documents its registration number.

#### **Application for amendment of registration**

27. (1) A private higher education institution may at any time apply for an amendment to any of the conditions of registration imposed under section 25 and must apply to the registrar for an amendment to its registration if -

- (a) the ownership of the institution is to be transferred;
- (b) it proposes to deviate from the terms and conditions under which the institution was initially registered.

(2) An application must be made to the registrar in the prescribed form and be accompanied by the prescribed fee and such further information and documentation in support of the application as the registrar may request.

1

#### **Requirements for amendment of registration**

28. (1) The registrar may only amend the registration of a private higher education institution under this section if the registrar is satisfied that the amendment is in the interest of higher education and complies with the provisions of this Act.

(2) If upon consideration of an application in terms of section 27 and after having consulted the NCHE and the NQA, the registrar decides -

- (a) to grant the application, the registrar must -
  - (i) amend the certificate of registration accordingly and make the necessary entries in the register to give effect to such amendment;
  - (ii) provide the applicant with a copy of the amended certificate;
  - (iii) give notice in the *Gazette* of the amended registration; or
- (b) not to grant the application, the registrar must advise the applicant in writing of the decision, supplying the reasons for the decision.

**Deregistration of private higher education institutions**

29. (1) The registrar may deregister a private higher education institution registered in terms of section 25 if -

- (a) subsequent to the registration of the private higher education institution -
  - (i) any circumstance arises on which the registrar would initially have refused such registration;
  - (ii) such institution has contravened any of the terms and conditions imposed in respect of such registration;
- (b) the private higher education institution has ceased to operate or exist;
- (c) the private higher education institution has been closed under section 31 and remains so closed for a period exceeding six months.

(2) Before acting under subsection (1), the registrar must -

- (a) by notice in writing -
  - (i) inform the private higher education institution of his or her intention to so act; and
  - (ii) invite such institution to, within a period of 30 days from receipt of such notice, make written representations to the registrar.
- (b) consider representations made under paragraph (a).

(3) If the registrar decides to deregister a private higher education institution under subsection (1), the registrar must advise such institution in writing of the decision to deregister.

(4) A private higher education institution that has been deregistered under this section must return the certificate of registration, issued to such institution in terms of section 25, within 30 days from the receipt of a notice in writing by the registrar requesting it to do so.

**Right of appeal to the Minister**

30. (1) Any person dissatisfied with a decision of the registrar in terms of this Part may, within 60 days of the decision or such longer period as the Minister may on good cause shown allow, appeal to the Minister -

- (a) by lodging with the Minister a written notice of appeal, stating the grounds of appeal;
- (b) by serving upon the registrar a copy of the notice of appeal.

(2) On receipt of a copy of the notice of appeal in terms of subsection (1), the registrar must forthwith furnish the Minister with his or her reasons for the decision that is the subject of the appeal.

(3) The Minister must, after considering the registrar's reasons for the decision and the appellant's grounds of appeal, give such decision as the Minister considers appropriate.

**Failure to remedy defects and closure of private higher education institution by Minister**

31. (1) If, after an investigation has been conducted at a private higher education institution under Part VI, the Minister is satisfied that the private higher education institution -

- (a) has failed to comply with the terms and conditions of registration of such institution or with any provision of this Act; or
- (b) is being conducted in a way that is prejudicial to the welfare of the students of such institution or to higher education in general,

the Minister must in writing inform the private higher education institution accordingly and instruct such institution to remedy the defects within such period, not exceeding six months, as may be specified in the notice.

(2) If a private higher education institution fails to remedy the defects within the period specified in a notice issued in terms of subsection (1), the Minister may by notice in writing addressed and delivered to such institution order the closure of such institution.

(3) If a private higher education institution complies with the Minister's notice after the closure of such institution has been ordered under subsection (1), the Minister may, subject to subsection (4), authorize the re-opening of such institution.

(4) A private higher education institution that has been closed under subsection (1) and has remained so closed for a period exceeding six months may be deregistered under section 29 and if so deregistered such institution may not re-open unless and until re-registered under section 25.

**Inspection and copies of documents**

32. The registrar may, if he or she is satisfied that it is in the public interest or in the interest of higher education in general, allow any person to at any reasonable time -

- (a) inspect any document kept by the registrar in terms of this Act; and
- (b) obtain a certified copy of, or extract from, any such document from the registrar upon payment of the prescribed fee.

**PART V****FUNDING OF PUBLIC HIGHER EDUCATION INSTITUTIONS****Determination of policy on funding of public higher education institutions**

33. The Minister must, after consultation with the NCHE and with the concurrence of the Minister responsible for finance, determine the policy on the funding of public higher education institutions.

**Allocation of funds to public higher education institutions**

34. (1) The Minister must, from moneys appropriated by Parliament for such purpose but subject to the policy determined in terms of section 33, allocate funds to public higher education institutions on -

- (a) a fair and transparent basis; and

(b) such reasonable conditions as the Minister may determine.

(2) Different conditions may be determined under subsection (1) in respect of different public higher education institutions, but only if there is a reasonable basis for such differentiation.

**Failure by governing body of public higher education institution to exercise proper control**

35. (1) If the Minister is satisfied that the financial statements or the report of the members of a panel of enquiry submitted to the Minister in terms of this Act or any other law, reveals financial or other maladministration at a public higher education institution that may undermine the effective functioning of that institution, the Minister may by notice in writing instruct that public higher education institution to within a specified period take such steps as may be specified to rectify the issues concerned.

(2) If the governing body of a public higher education institution fails to comply with or adhere to an instruction under subsection (1), the Minister may withhold payment of a portion of the funds allocated in terms of section 34 to that public higher education institution.

(3) Before acting under subsection (2), the Minister must -

(a) give notice to the governing body of the public higher education institution in question of his or her intention to so act; and

(b) (i) give that governing body a reasonable opportunity to make representations; and

(ii) consider those representations.

(4) The Minister must, as soon as practicable after having acted under subsection (2), table a report regarding the action in the National Assembly.

**PART VI  
INVESTIGATION OF HIGHER EDUCATION INSTITUTIONS**

**Investigation into affairs of higher education institutions**

36. All higher education institutions are subject to investigation in terms of this Part.

**Establishment of panel of enquiry**

37. (1) There is hereby established a panel of enquiry for higher education institutions.

(2) The panel of enquiry established under subsection (1) consists of three members appointed by the Minister whenever circumstances arise at -

(a) a public higher education institution involving financial or other maladministration that may, in the Minister's opinion, undermine the effective functioning of that institution;

(b) a private higher education that may, in the Minister's opinion, result in a contravention of the terms and conditions under which that institution has been registered.



(3) The members of the panel of enquiry are appointed for such period as the Minister considers necessary to conclude an investigation in terms of this Part at a higher education institution and must be persons who -

- (a) are not members of the NCHE; and
- (b) have no interest, directly or indirectly, in that higher education institution.

#### **Functions of panel of enquiry**

38. (1) The members of the panel of enquiry appointed under section 37 must -

- (a) within such period and, subject to subsection (2), on such terms of reference as may be specified by the Minister, conduct an investigation at the higher education institution in question; and
- (b) within 30 days of such investigation, submit a written report to the Minister containing their findings and recommendations on such findings.

(2) An investigation at a private higher education institution must be on matters related to the terms and conditions of registration of that institution.

(3) For the purposes of carrying out an investigation in terms of this Part, a member of a panel of enquiry may -

- (a) after having given such prior notice to the higher education institution in question as may in the circumstances be reasonable, enter at any reasonable time any property of the institution;
- (b) inspect and make copies of, or extracts from, any register, document or record which contains information that may be of relevance to the investigation;
- (c) by notice in writing direct any person, who may be able to produce a book or document or furnish information that may be of relevance to the investigation, to within such reasonable period as may be specified-
  - (i) produce that book or document; or
  - (ii) furnish that information; and
- (d) question any person who may be able to furnish information that may be of relevance to the investigation.

(4) When a member of a panel of enquiry performs a function in terms of this section in the presence of any person that may be affected thereby, he or she must on demand of that person present to him or her the certificate of appointment issued to that member in terms of section 40.

#### **Remuneration of members of panel of enquiry**

39. (1) The Minister must, with the concurrence of the Minister responsible for finance, determine the remuneration and allowances (if any) payable to the members of the panel of enquiry who are not in the full-time employment of the Public Service.

(2) The remuneration and allowances referred to in subsection (1) and any other expenses related to performance of the functions of the panel of enquiry must be defrayed from moneys appropriated by Parliament for such purpose.

**Issue of certificates of appointment to members of panel of enquiry**

40. The Minister must in such form as may be determined by him or her issue a certificate of appointment to every member of the panel of enquiry.

**PART VII  
GENERAL PROVISIONS****Offences and penalties**

41. (1) A person commits an offence, if that person -
- (a) without the authority of a higher education institution -
    - (i) offers or purports to offer higher education;
    - (ii) confers a degree, diploma or certificate purporting to be a degree, diploma or certificate conferred by a higher education institution; or
    - (iii) performs any other act, which purports to have been done by or on behalf of a higher education institution;
  - (b) contravenes section 26;
  - (c) obstructs, hinders, handicaps or disturbs any member of the panel of enquiry in carrying out an investigation in terms of Part VI;
  - (d) refuses or fails to allow any member of the panel of enquiry to enter any premises for purposes of carrying out an investigation in terms of Part VI;
  - (e) refuses or fails, without reasonable excuse, to produce any material, book or document, or to furnish any information in accordance with any directive referred to in section 38;
  - (f) refuses or fails, without reasonable excuse, to properly answer any question put to him or her under section 38, or knowingly gives an answer which is false or incorrect in a material respect; or
  - (g) contravenes section 42.
- (2) A person convicted of an offence -
- (a) in terms of subsection (1)(a), is liable to a penalty not exceeding a fine of N\$20 000 or a period of five years imprisonment, or to both such fine and such imprisonment; or
  - (b) in terms of subsection (1)(b) to (g), inclusive, is liable to a penalty not exceeding a fine of N\$8 000 or a period of two years imprisonment, or to both such fine and such imprisonment.

**Preservation of secrecy**

42. No person may disclose any information obtained by him or her in the performance of his or her functions in terms of this Act, except -

- (a) to the extent to which it may be necessary for the proper administration of this Act;

- (b) when authorized to do so in writing by the Minister; or
- (c) when required to do so by any court of law or under any law.

#### **Limitation of liability**

43. No person, including the State, is liable in respect of anything done or omitted in good faith and not attributable to gross negligence during the performance of any function in terms of this Act.

#### **Regulations**

44. (1) The Minister may make regulations -
- (a) in relation to any matter which is required or permitted to be prescribed under this Act;
  - (b) in relation to the records to be kept and the information to be furnished by higher education institutions;
  - (c) to promote quality assurance in higher education; and
  - (d) generally in relation to any matter in respect of which the Minister considers it necessary or expedient to make regulations in order to achieve the objects of this Act or to effectively administer this Act.

(2) A regulation made under subsection (1) may prescribe a penalty not exceeding a fine of N\$2 000 or imprisonment for a period of six months, or not exceeding both such fine and such imprisonment, for any contravention thereof or failure to comply therewith.

#### **Conflict with other laws**

45. If any conflict arises between this Act and any other law dealing with higher education, except the Namibian Constitution, this Act prevails.

#### **Amendment of Schedule to Act No. 16 of 2001**

46. The Schedule to the Education Act, 2001 (Act No. 16 of 2001) is amended by substituting in column 3 thereof the words "The whole except in so far as it applies to teachers' education colleges and agricultural colleges providing tertiary education" for the words "The whole in so far as it applies to schools and education other than tertiary education", where those words occur two times.

#### **Transitional provisions and savings**

47. (1) Notwithstanding the provisions of section 46, but subject to subsections (2) and (3), any institution which was established or registered under the National Education Act, 1980 (Act No. 30 of 1980) and maintained by virtue of the provisions of section 83 of the Education Act, 2001 (Act No. 16 of 2001) and which existed or was registered immediately before the commencement of this Act, is, from such commencement, deemed a higher education institution under this Act.

(2) Anything done or purporting to have been done under a provision of the National Education Act, 1980, before the commencement of this Act and which can be done under a corresponding provision of this Act, is deemed to have been done under that corresponding provision.

(3) A private institution registered as contemplated in subsection (1) must, notwithstanding subsection (2), within 12 months from the date of commencement of this Act be registered in terms of section 25 as a private higher education institution, failing which that institution's previous registration lapses.

**Short title and commencement**

48. (1) This Act is called the Higher Education Act, 2003, and comes into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined in terms of subsection (1) in respect of different provisions of this Act.

---