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LAW REFORM AND DEVELOPMENT COMMISSION

**DISCUSSION PAPER ON
THE TRANSFORMATION OF THE
POLYTECHNIC OF NAMIBIA INTO THE
NAMIBIA UNIVERSITY OF SCIENCE AND
TECHNOLOGY**

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LAW REFORM AND DEVELOPMENT COMMISSION

The Namibian Law Reform and Development Commission (the LRDC) is a creature of statute established by **Section 2 of the Law Reform and Development Commission Act, 1991 (Act No. 29 of 1991)**.

The core mandate of the Commission is to undertake research in connection with all branches of law and to make recommendations for the reform and development thereof.

The current Commission members are—

Mr S Shanghala, Chairperson
Adv J Walters, Ombudsman

Under section 3 of the Law Reform and Development Commission Act, 1991, Commissioners are appointed by the President. Previous Commissioners ceased to hold their office when their term of office for three (3) years lapsed on November 8, 2013. They were –

Ms Dianne Hubbard;
Mr Nixon Marcus;
Ms Damoline Muroko;
Ms Yvonne Dausab; and
Mr Raywood Rukoro

The Secretary to the Commission is Mr J.T. Namiseb who heads the Directorate of Law Reform, an organizational component in the Ministry of Justice. The Directorate of Law Reform serves as Secretariat to the Commission, assisting the Commission in the exercise of its powers and the performance of its duties and functions under the Law Reform and Development Commission Act, 1991. The Commission and Secretariat are housed on the 1st Floor, Mutual Platz Building, Post Street Mall, Windhoek.

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Foreword

Since the attainment of independence on March 21, 1990, the University of Namibia and the Polytechnic of Namibia have been the standard bearers and production centers for higher education graduates in Namibia. Their existence is of course steeped in the apartheid dispensation, however, the manifestation of their existence reveals institutions eager to play their role in the realization of the Government's Vision 2030, and to ensure that Namibia is knowledge based society. Many congratulations are due to the staff and alumni of these institutions for taking charge of roles in society armed with the education garnered during their studies at UNAM or the Polytechnic.

Yet time brings with it the need to dynamically evolve and keep up with the changes, and given the strategic decision to produce higher-level certifications, it is ripe for the Polytechnic to evolve into a university, and join UNAM and the International University of Management (IUM) as the only university level institutions of Namibia.

The Polytechnic of Namibia has received approval from Government to transform into the Namibia University of Science and Technology. The transformation will be guided by the enactment of a new establishing Act. The Law Reform and Development Commission (LRDC) was approached to facilitate the reform process, draft the new legislation and engage stakeholders as the need may be, by virtue of its mandate provided by the Law Reform and Development Commission Act, 1992 (Act No. 29 of 1992), section 6 thereof, which provides that:

“the objects of the Commission shall be to undertake research in connection with and examine all branches of the law of Namibia and to make recommendations for the reform and development thereof...”

The reform process will include the publication of this **Discussion Document** which will be availed to various stakeholders as there can be no gain in an environment where higher institutions do not collaborate and work together, as they should with other statutory bodies relevant to their existence such as the Namibia Qualifications Authority, the Higher Education Council and the Ministry of Education amongst

others. Leading up to the publication of this **Discussion Document**, the media had reported on spats between the management of the Polytechnic and the Ministry of Education, this is regrettable and should be so that the object is the naked transformation of a national institution with all involved eschewing avarice for the greater good.

The LRDC will facilitate discussion for all stakeholders and deliver a Final report with a Bill for consideration by the Minister of Justice as required by section 9 of the Law Reform and Development Commission Act, 1991 (Act No. 29 of 1991). To this end, all those individuals and institutions that have already made input are appreciated and it is anticipated that as the reform process is being conducted, swiftness will not be opted for quality and consultative engagement.

Much appreciation for the Polytechnic which has graciously agreed to fund the process on behalf of the LRDC which relies on partners for its reform projects.



Sakeus Edward Twelityaamena Shanghala
Chairman: Law Reform and Development Commission

1. INTRODUCTION

- 1.1 The political dispensation in place preceding Namibia's independence in 1990 meant that Namibia's higher education has been fairly underdeveloped with only a few higher education institutions being comparable with their international counterparts. To date, these institutions include the University of Namibia (UNAM), the Polytechnic of Namibia and more recently the International University of Management (IUM).
- 1.2 The Polytechnic of Namibia is an institute of higher education established by the Polytechnic of Namibia Act, 1994 (Act No. 33 of 1994) (herein after referred to as the Polytechnic Act, 1994).
- 1.3 The Polytechnic of Namibia has its roots in the Academy for Tertiary Education Act, 1980.¹ Five years later, The Academy Act, 1985 (Act No. 9 of 1985) was promulgated and, by it, the Academy consisting of a university component (the present University of Namibia), a Technikon, and College for Out of School Training (COST) was established. Shortly after independence in 1990 it was resolved that the three components be collapsed into two independent higher education institutions, namely, a university and a polytechnic.²
- 1.4 The University of Namibia Act, 1992 (Act No. 18 of 1992) established the University of Namibia, which left the Technikon and COST in an indeterminate state, but they were placed under the auspices of the new university until the promulgation of the Polytechnic Act, 1994. Two years later, with the establishment of the Polytechnic of Namibia, Technikon Namibia and the College for Out-of School Training (COST) merged to become the Polytechnic of Namibia. The Polytechnic Act, 1994 provides for the gradual phasing out of vocational training courses and the granting of degrees by the Polytechnic.³

¹ Act No. 13 of 1980.

² 2013. Polytechnic of Namibia: About Us: Historical Perspective; Retrieved from (http://www.polytechnic.edu.na/about_us/history.php) last accessed on October 15, 2013.

³ *ibid.*

1.5 Shanghala, S. E.⁴ narrates the history of tertiary education in Namibia as follows:

“Analysing the laws affecting education in the Republic of Namibia requires one to engage in a measure of archaeological exercises, through folios of former issues of the official gazette⁵ and the government gazette⁶ to find out what the legislature intended, at a given point in time, to achieve from legislating on education. This enables one to further seek out the evolution which informs the text of the current applicable legislation on the subject matter – education. The exercise is in itself an exhumation of the history of Namibia through the law books.

From a reading of the text of the Academy for Tertiary Education Act⁷ it did not seem that it discriminated on racial grounds, however the fine print is telling, as there were two campuses: one in town (where the Polytechnic of Namibia is today) for ‘non-whites’, and the one on the Western Bypass, namely the Windhoek Teachers’ College (where the University of Namibia is today) for whites only.⁸

During August 1992, a momentous occasion occurred in the history of education in Namibia with the promulgation of the University of Namibia Act.⁹ The University – or UNAM, as it became known – was, of course,¹⁰ open to all race groups, and stated its principle purposes of, inter alia, providing higher education, undertaking research, advancing and disseminating knowledge, encouraging and nurturing cultural expression within the context of the Namibian society, and contributing to the social and economic development of Namibia.¹¹

⁴ Shanghala, S. E., *Analysis of Legislation, Governance and Management of Education in Namibia*. Namibia Law Journal 3/2 (2011), p.17.

⁵ Prior to independence in 1990.

⁶ After independence.

⁷ No. 13 of 1980.

⁸ Shanghala, S. E., *Analysis of Legislation, Governance and Management of Education in Namibia*. Namibia Law Journal 3/2 (2011), p.17.

⁹ No. 18 of 1992.

¹⁰ Given the equality clause in Article 10, Namibian Constitution.

¹¹ See section 4, University of Namibia Act, 1992.

The tenets of the Constitution are maintained in respect of the fundamental freedom and right to "academic freedom in institutions of higher learning"¹² due to the vesting of the "government and executive authority of the University"¹³ in the University Council. The University of Namibia Act repealed the Academy Act,¹⁴ making UNAM the only institution at the time that conferred Bachelor's, Master's and Doctoral Degrees as well as Diplomas and Certificates.

The National Vocational Training Act¹⁵ created a framework under which vocational training could be regulated in terms of standards for training, and the coordination and promotion of vocational training by public and private institutions in respect of agriculture, industry and commerce under the auspices of a Vocational Training Board. Effectively, this was an alternate route to mainstream white-collar-profession education, standardised for all, regardless of race.

The promulgation of the Polytechnic of Namibia Act¹⁶ aimed at providing post-secondary career education and continuing education at post-secondary level with a view to expanding the adult community's educational horizons.¹⁷ The Act marked constituted yet another momentous educational milestone for peoples expressly subjugated through education for the purposes of becoming servants to colonial masters. As it had done with UNAM, government allowed the institution to administer its own affairs through the designed structures – the Council and Senate. The Polytechnic could also confer degrees with the approval of the Minister of Education, as well as Diplomas and Certificates, as it saw fit.¹⁸

Further educational possibilities came about with the Namibia College of Open Learning Act,¹⁹ which created NAMCOL. NAMCOL targeted out-of-school youth and adults and provided them with open learning i.e. flexible

¹²Per Article 21(b), Namibian Constitution. It can be derogated from under Article 24(3), in accordance with the requirements of the said Article.

¹³Per section 9(1), University of Namibia Act, 1992.

¹⁴As stated earlier, the Academy Act created the institution which previously occupied UNAM's Windhoek campus.

¹⁵No. 18 of 1994.

¹⁶No. 33 of 1994.

¹⁷Section 4, Polytechnic of Namibia Act, 1994.

¹⁸(*ibid*: section 24).

¹⁹No. 1 of 1997.

teaching and learning methods. This aimed at upgrading their general level of education so that they were not left behind, and could later pursue vocational education or academic qualifications.

The Higher Education Act,²⁰ higher education²¹ – with the exclusion of vocational training and open learning – was brought under the ambit of the National Council for Higher Education. This Council, with the concurrence of the Namibia Qualifications Authority,²² accredits programmes for higher education institutions, monitors their quality, and serves to facilitate student access to higher education institutions. It is under this legislation that private citizens are entitled to register private higher education institutions, such as the International University for Management (IUM).²³

- 1.6 The narrative referred to above gives a brief synopsis of the development of higher education in Namibia. It is envisaged that another milestone will be crossed with the coming into operation of the Namibia University of Science and Technology Bill., 2014

2. PURPOSE OF TRANSFORMATION

- 2.1 The transformation of the Polytechnic of Namibia into a University of Science and Technology reflects the changes that are taking place in our society. Its institutional type will develop according to its own unique environment and in response to local and international demands.

“The higher education system must be transformed to redress past inequalities, to serve a new social order, to meet pressing national needs and to respond to new realities and opportunities.”²⁴

²⁰ No. 26 of 2003.

²¹ Higher Education is defined under section 1 of the Higher Education Act as “all learning programmes leading to qualifications higher than grade 12 or its equivalent, and includes tertiary education”.

²² Established under the Namibia Qualifications Authority Act, 1996 (Act No. 29 of 1996)

²³ See section 22, Higher Education Act, 2003.

²⁴ South Africa (1997) White Paper 3: A Programme for the Transformation of Higher Education. (Presented by Professor S. M. Bengu, the then Minister of Education in South Africa) Notice 1196 of 1997. Government Gazette, 386(18207), August 15, 1997.

2.2 A need has been identified to institute a paradigm shift for the Polytechnic of Namibia from a Technikon into the Namibia University of Science and Technology. The transformation will largely be implemented through the promulgation of a new establishing statute, which will repeal the current Polytechnic of Namibia Act, 1994. The new legislation will provide for the institution to function as a University, a new name, namely the Namibia University of Science and Technology, new governance structures, a precise description of its aims and objectives, and a newly established Council.

“With the onset of globalisation and the drive towards internationalisation, the name technikon became a stumbling block. Technikons were not known to, or recognised by international associations, professional bodies, government educational institutions and students. Membership of international university associations was denied, as technikons were not known as degree awarding institutions of higher education. Elsewhere in the world, this type of institution was known variously as a university of technology, university of applied science, university of science and technology, technical university, institute of technology, etc. the redesignation of ‘technikons’ to the more internationally accepted nomenclature of ‘Universities of Technology’ means that in South Africa – and now Namibia -, these institutions can place themselves firmly in the minds of government, industry, parents and students as logical first-choice institutions for career focused, technology higher education.”²⁵

2.3 The transition is aimed at reaching a range of goals including access to career-focused programmes by prospective students being able to choose from a wider variety of programmes with different entry requirements as well as expanding research opportunities and strengthening and developing of applied research and finally to contribute to the development of the communities it serves through the application and extension of its knowledge and expertise.

²⁵ Roy Du Pre, 2009 (*The Place and Role of Universities of Technology in South Africa*) p. 12 Durban University of Technology: Bloemfontein.

3. PROBLEMS WITH NOMENCLATURE

- 3.1 The Polytechnic of Namibia, as it is now known, wishes to undertake a new mission which will in turn reflect its new reality. The current aims of the Polytechnic of Namibia are provided under section 4 of the Polytechnic of Namibia Act, 1994, which provides that:

“The aims of the Polytechnic shall be-

- (a) to provide post-secondary career-education with due regard for the human resource requirements of Namibia and with emphasis upon excellence in teaching within a climate conducive to the intellectual, social, aesthetic, and emotional development of students;
- (b) to provide continuing education at a post-secondary school level in order to expand the educational horizons of the adult community;
- (c) to conduct applied research;
- (d) to develop equal opportunities in respect of educational programmes of, admissions to, and employment at, the Polytechnic; and
- (e) to provide an effective collegial governance structure that encourages active participation of all its constituents and that reflects the collective input of all interested parties”.

- 3.2 The Namibia University of Science and Technology Bill (hereinafter referred to as the NUST Bill) will reform these aims by replacing them with the following:

“The aims of the University shall be -

- (a) to contribute to knowledge creation and advance knowledge through research and scientific investigation, with an emphasis on applied research;
- (b) to support and contribute to economic and social development through globally relevant, professional, technical and career-focused higher education, and effective community engagement;
- (c) to drive, promote and facilitate technology development, innovation and technology transfer;
- (d) to engage in national and international partnerships and cooperation with other universities, organisations and institutions; and

(e) to preserve and promote the traditional and constitutional principles of institutional autonomy and academic freedom in the conduct of its internal and external affairs".²⁶

3.3 The goal of the name change is to provide a public institution that can produce the nation's finest undergraduates. The Polytechnic of Namibia will move to define itself in this new role by choosing a new name that reflects its aims.

3.4 The terminology used in the new title, namely science and technology, has been adopted by many institutions as part of the terminology defining their own institutional identity. It may further be used to indicate the range and depth of an institution's academic offerings.²⁷ The South African Council on Higher Education (CHE)²⁸ provides 3 possible categories when choosing a name for higher education institutes. The criteria include where the institute is defined by:

- i. its purpose;
- ii. its specific character; or
- iii. what it should have (the range of programmes on offer and the qualifications it confers).

3.5 Several factors were considered in selecting a new name for the Polytechnic of Namibia, including a combination of the above named criteria. The new name needed to: reflect the aims of the newly established University; carry national recognition; be held in high esteem throughout the nation and worldwide as well as exhibit the prestige associated with this high-quality sciences and technology institution.

²⁶ The Namibia University of Science and Technology Bill, 2014.

²⁷ Gibbon, T. (2004) *Creating Comprehensive Universities in South Africa: A Concept Document* p.3 Department of Education: Pretoria.

²⁸ Gillard E. (2004) *Considerations on the Designation and Nomenclature of Higher Education Institutions* p. 19 Council on Higher Education: Pretoria.

- 3.6 The name change has been rather contentious amongst stakeholders in that further clarity is sought on the naming of the University as it may denote that it is the only University mandated to provide higher education in sciences and technology. The institute should further ensure that it has the necessary capacity, skills and infrastructure (such as scientific laboratories) to specialise in sciences.²⁹ Important considerations include whether the institution will in any way reproduce or duplicate efforts of an existing or prospective university; whether the requisite resources are available or likely to be available; there are realistic plans to achieve stated aims and objectives; the university is likely to attain and maintain standards set; and lastly whether the establishment of the university is in the interest of university education-³⁰in Namibia.
- 3.7 There is no single concept identified to define a University of technology. Van Zijl defines the South African University of Technology as a higher education institution that is research informed, follows curricula developed around graduate profiles defined by industry and professions, has multi-level entry and exit points, is concerned with vocational and professional education, is technologically focussed and has a culture of applied research and development.³¹
- 3.8 Technikons specialise in the provision and promotion of quality career and technology education and research. They are distinguished from the traditional universities not by the quality of their educational product, but by their focus. Their educational programmes cover a variety of specialised occupations and careers. These programmes are developed in consultation with, and regularly evaluated by, members of industry and the professional bodies. The outcome of this approach is the delivery to business and industry

²⁹ Stakeholder input as received by the Law Reform and Development Commission.

³⁰ Supra at fn 28 p. 25.

³¹ Van Zijl C. W. (2005) retrieved from

(www.uir.unisa.ac.za/bitstream/handle/10500/1363/01chapter1.pdf) p. 7 last accessed on January 9, 2014.

of skilled workers, with relevant training, strong technological and other skills, coupled with on-the-job experience.³²

3.9 A clear distinction has been drawn between universities and polytechnics by the New Zealand Education Amendment Act, 1990³³ which provides that a polytechnic is characterised by a wide diversity of continuing education, including vocational training, that contributes to the maintenance, advancement, and dissemination of knowledge and expertise and promotes community learning, and by research, particularly applied and technological research, that aids development. A university, on the other hand, is characterised by a wide diversity of teaching and research, especially at a higher level, that maintains, advances, disseminates, and assists the application of knowledge, develops intellectual independence, and promotes community learning.³⁴

3.10 Whatever the methods developed in choosing a name for the Namibia University of Science and Technology, the purpose is clear: to provide a well-rounded education system that will bring diverse kinds of career-focused learning programs, and to further bring it in line with worldwide trends.

4. LESSONS FROM INTERNATIONAL EXPERIENCES

4.1 Transformation from a Technikon to a University is not a unique manifestation under the current circumstances for the reform of the Polytechnic of Namibia. Transformations have occurred in terms of Technikons and Colleges around the world. While retaining a particular focus, each institutional type has developed according to its own unique environment and in response to local and international demands.

³² Du Pré, R. 2002 (*The Internationalisation of Higher Education: The CTP And The Response To Globalisation*) p.2 Committee of Technikon Principals: South Africa (publisher: anonymous).

³³ Act No. 60 of 1990.

³⁴ Supra at fn. 28 p. 33.

4.2 SOUTH AFRICA

- 4.2.1 There are a number of Technikons and Colleges in South Africa. These institutions of higher education are parallel to, and outside the, University system. They focus on post-matric technical education, which is more job-oriented. Up to 1995 they had conducted only three-year programmes leading to National Diplomas. Radical changes in this dual structure were made in 1995, when the Technikons were granted a degree-awarding status.³⁵
- 4.2.2 The transformation of the South Africa Cape Peninsula Technikon into the Cape Peninsula University of Science and Technology evinces a classic example of the transformation from a Technikon to a University.
- 4.2.3 The transformation of the Cape Peninsula Technikon was aimed at enabling a shift from being a historically disadvantaged institution to a more open, democratic, representative and transparent institution and further as a response to demands for a greater emphasis on science and technology education, and for creating a 'university feel'.³⁶
- 4.2.4 Peninsula Technikon was created in 1962 under the apartheid dispensation for 'Coloured' people. The mode of establishment of Peninsula Technikon meant that Coloured youth comprised the entire student population initially, though the professional staff was all White.³⁷
- 4.2.5 Under the apartheid dispensations for various social groups, institutions were designed for four 'racial social' categories:³⁸ Whites, Indians (people of Indian origin), 'Coloured' (mixed races, primarily an admixture of White and certain tribes of the Cape Province), and African. The quantum of financial assistance was also in that order, with the 'White' institutions getting the largest amounts

³⁵ Vijaya Sherry Chand, V. J. and S. Misra. (2001) *Change in Higher Education: Cases from the Southern African Region. Peninsula Technikon, Cape Town: In Transformation.* p.2 Indian Institute of Management; Ahmedabad.

³⁶ Ibid p. 1.

³⁷ Ibid p. 2.

³⁸ The derogatory terms deployed are not those of the LRDC, however they were legislated upon during the apartheid era. Their use does not reflect the opinions of the LRDC in anyway.

and the African institutions getting the least. In the post-apartheid era, the former non-White institutions are also labelled 'historically-Black' or 'historically-disadvantaged' institutions.³⁹

4.2.6 Transformation was the key theme that underpins attempts to change institutions and their structures, systems and processes in post-apartheid South Africa. In practice, 'transformation' of the education system translates into redressing the historical inequalities that were built into the educational dispensations under apartheid and promoting the commitment of institutions to a new social order that reflects the social structure more accurately. Peninsula Technikon, Cape Town, is no exception to this upsurge.⁴⁰

4.2.7 When the legislative framework governing the Technikon, the Technikon's legislation, was revised in 1993, Technikon's were granted a degree-awarding status. This move brought the two systems of education—University and Technikon—closer since cross-movement between the two sectors at the post-graduate level now became a possibility. In a sense, technikons were moving closer to the university system since they could now grant degrees. At Peninsula Technikon, degree programmes were introduced in 1995. Until that point in time, Peninsula Technikon had only been granting diplomas.⁴¹

4.2.8 A second development in the direction of bringing in a 'university feel', which was also dictated by the need to rationalise the structure of the institution following the decision to focus on science, engineering and technology, was the collapsing of the six schools of Peninsula Technikon into three faculties (the reorganisation of the departments into faculties) each with a Dean.⁴²

4.2.9 At the administrative level, the Dean is assisted by Assistant Deans. Each department has a head of department, as in the old structure. A related change in nomenclature was the redesignation of the Rector as Vice-

³⁹ Ibid p. 1.

⁴⁰ Ibid.

⁴¹ Ibid p. 3, 9.

⁴² Ibid.

Chancellor, and the three Vice-Rectors (Academic, Administrative, Student Affairs) as Deputy Vice-Chancellors. A Chancellor was also appointed.⁴³

4.2.10 The example alluded to above is an indication of the route the Polytechnic of Namibia is expected to take although the reasons for transformation are not analogous to those of the Cape Peninsula University of Science and Technology, a lot of similarities are indicative of Namibia's shared political and educational history with South Africa.

5. ORGANISATIONAL MODEL

5.1 The NUST Bill cannot devise a single blueprint that will fit the requirements of the newly established institution type. It will simply set the tone and establish base conditions on which the institution is to be transformed. The base conditions include the aims of the University, academic and administrative capacity, the governing bodies including senate and the council of the University.

5.2 The NUST Bill contains an arrangement of the following sections⁴⁴

1. Definitions
2. Establishment and seat of the University
3. Seal of the University
4. Status and proprietary capacity of the University
5. Aims of the University
6. Constitution of the University
7. Council of the University
8. Chancellor of the University
9. Council Chairperson and Council Vice-Chairperson
10. Terms of office and vacating of office by members of Council
11. Meetings of Council
12. Committees of Council
13. Vice-Chancellor of the University
14. Deputy Vice-Chancellors of the University
15. Senate of the University

⁴³ Ibid, p.10.

⁴⁴ The sections are listed here to garner a synopsis of the structure and organisational model of the new legislation. The provisions and reasons for the enactments are discussed fully in annexures A and B of this document.

16. Functions of Senate
17. Terms of office and vacating of office of members of Senate
18. Meetings of Senate
19. Committees of Senate
20. Joint committees of Council and Senate
21. Remuneration of members of Council, Senate, and committees
22. Registrar of the University
23. Students Representative Council
24. Academic Units
25. Appointment of staff
26. Degrees, diplomas, and certificates
27. Admission to equivalent status at the University
28. Registration and discipline of, and fees payable by, students
29. Residence and place and medium of instruction
30. Reports and financial statements
31. Subsidies and loans to the University
32. Vacancies not to affect powers of the University or Council or Senate
33. Offences
34. Agreements
35. Statutes and regulations
36. Transitional provisions
37. Transfer of staff
38. Transfer of assets, liabilities, rights, and obligations
39. Repeal of Act 33 of 1994
40. Short title and commencement

6. CONCLUSION

- 6.1 This discussion document is aimed at ensuring stakeholder participation in the development and formulation of policy. The Law Reform and Development Commission hopes that the consultative processes it engages results in the building of an all-embracing consensus around the content of the legislation outlined in this **Discussion Paper** and that it has further ensured that it commands the support of all the key stakeholders in higher education, particularly towards the transformation of the Polytechnic of Namibia into the Namibia University of Science and Technology.
- 6.2 The proposed legislation is aimed at facilitating a name change and structural changes within the current setup of the Polytechnic of Namibia and to provide for transitional provisions that will aid the transformation over a period of time. For example, Durban University of Technology changed its name in 2006

however it only began functioning as a University of Technology in 2008.⁴⁵ Other aspects relating to the transformation will be dealt with at policy levels, within the new set up *id est* matters relating to curriculum; research output, administrative structures, admission requirements; and the soliciting of funds amongst others.

- 6.3 This **Discussion Paper** will be circulated amongst various stakeholders who represent as broadly as possible the spectrum and varied interests of the higher education sector in Namibia, for criticism and comment. Its purpose is to initiate and stimulate debate and to serve as a basis for a Final Report that will be availed to the Minister of Justice to recommend for possible enactment into legislation.⁴⁶

7. STAKEHOLDER INPUT AND RECOMMENDATIONS

- 7.1 The Law Reform and Development Commission has received recommendation from the Polytechnic of Namibia for possible amendments to the current Act. These recommendations were forwarded to stakeholders for input. The stakeholders identified will contribute to the reform process particularly with guidance, direction and counter proposals. The following stakeholders in the reform process of the Polytechnic of Namibia Act, 1994 have been identified:

- i. International University of Management (IUM);
- ii. Ministry of Education (MoE);
- iii. Namibia College of Open Learning (Namcol);
- iv. Namibia National Student Organisation (NaNSO);
- v. Namibia Qualifications Authority (NQA);
- vi. Namibia Training Authority (NTA);
- vii. National Council of Higher Education (NCHE);
- viii. National Youth Service (NYS);

⁴⁵ Du Pre, R (2009) *The Place and Role of Universities of Technology in South Africa* p. xi Durban University of Technology: Bloemfontein.

⁴⁶ Per section 9 of the Law Reform and Development Commission Act, 1991 (Act No. 29 of 1991).

- ix. Polytechnic of Namibia (Polytechnic);
- x. United Nations Educational, Scientific and Cultural Organization (UNESCO); and
- xi. University of Namibia (UNAM).

7.2 Here follows input and recommendations as received by the LRDC, regarding the proposed Act:

7.2.1 AD GENERAL

7.2.1.1 Name: Namibia University of Science and Technology

7.2.1.1.1 Further clarity is sought on the naming of the University as it may denote that it is the only University mandated to provide higher education in science and technology. The institute should further ensure that it has the necessary capacity, skills and infrastructure (such as scientific laboratories) to specialise in sciences.

7.2.1.2 Definition's in the Bill

7.2.1.2.1 The word "adjunct" is defined in the Oxford Dictionary (2013) as a thing added to something else as a supplementary rather than an essential part.⁴⁷ It was submitted by stakeholders that the Bill should not define the term "adjunct professor" as an adjunct professor forms part of the academic component of staff regardless of the fact that such a professor is not a full time staff member of the University. The distinctions in terms of ranks of professorship should rather be determined at the institutions policy levels and not within the Act.

7.2.1.2.2 It may however, be necessary to incorporate other staff positions in the definition section of the Act. The component of assessment should be added to the definition of "academic staff" and should read as follows:

⁴⁷ Retrieved from (www.oxforddictionaries.com) last accessed on January 08, 2014; Oxford University Press.

“Academic staff” means –

All those persons employed by the University whose conditions of employment include the obligation to undertake teaching including **assessment**, teaching development and/or research.”

7.2.1.2.3 The NUST Bill should further distinguish between academic staff and administrative staff. For example Technologists may either be considered as academic staff or as part of the administrative staff component based on the services they render.

7.2.1.2.4 This can be done through the insertion of the following paragraph:

“Administrative staff” means –

All those persons employed by the University who are not academic staff.

7.2.1.2.5 A different approach would be the utilization of the wording of the University of Cape Town (Private) Act, 1999⁴⁸ which makes provisions for the definition of “administrative and support staff” as well as “staff” in general in addition to the definition of “academic staff.” The definitions provide the following:

“Administrative and support staff” means –

The staff appointed to administrative and support positions designated as such by the council, including professional staff in library and information technology services and technical officers.

“ staff” means –

Persons employed at the University.

7.2.1.2.6 The wording per the definitions in the University of Cape Town (Private) Act, 1999 provided above is preferred as it is all encompassing and will circumvent any disparities.

⁴⁸ Act No. 8 of 1999, per section 1 (ii) and (xix).

7.2.2 AD SECTION 5 OF THE NUST BILL

7.2.2.1 Aims of the University

7.2.2.1.1 Section 5(c) of the NUST Bill states that one of the aims of the University is to drive, promote and facilitate technology development, innovation and technology transfer. In its current form this section implies that it is the aim of the University to promote and transfer knowledge in the area of technology. This may give the impression that it is the sole mandate of this University to teach, promote and develop technology, to the exclusion of all other Universities, if contained in this form in an Act of parliament.

7.2.2.1.2 Sub-section 5(d) and (e) of the NUST Bill cannot be aims of a University. The content of Section 5(d) and (e) are **results** of establishing a University and **not an aim** of a University. Section 5 (d) and (e) should therefore be removed.

Section 5(d) and (e)

delete

7.2.3 AD SECTION 7(2)(D) OF THE NUST BILL

7.2.3.1 Council is represented by members of the Industry and member of Senate of the University who are academic staff members. There is no representation on Council from an administrative staff member. The section should include specifically a staff member from the administrative component.

7.2.3.2 The words "of a recognised trade union or not" adds no value to the clause and may be perceived by the Unions to denote a permanent seat specifically for the Unions.

7.2.3.3 Section 7(2)(d) should therefore read as follows:

“One shall be a staff member, who is not a member of Council by any other provision of this section, elected by the administrative employees of the University as provided in the statutes.”

7.2.3.4 A member of Council should be added who represents the alumni of the University. The Section should read:

“One shall be a member from the alumni of the University, who is not a member of Council by any other provision of this section, elected by the alumni of the University as provided in the statutes.”

7.2.4 AD SECTION 10(2)(E) OF THE NUST BILL

7.2.4.1 The words “approved by Council” where they appear in Section 10(2) of the NUST Bill should be changed to the words “without an acceptable apology.” This is based on the fact that in certain circumstances it may be hard to obtain approval from Council to be absent from a meeting and it is unclear from whom this approval should be obtained.

7.2.4.2 The section should thus read as follows:

“...he or she is absent from three consecutive meetings of the Council, without an acceptable apology;”

7.2.5 AD SECTION 11 OF THE NUST BILL

7.2.5.1 Section 11(2) states that Council shall hold at least one meeting in each half of the academic year. Effectively this means at least two meetings a year. Council should meet more regularly to ensure proper and effective governance.

7.2.5.2 This section should therefore read as follows:

“The Council Shall hold at least one meeting every three months and/or as the need arises.”

7.2.6 AD SECTION 13(1) OF THE NUST BILL

7.2.6.1 The section states that the Vice-Chancellor has “such powers as are necessary and expedient”. This may open the powers of the Vice-Chancellor for abuse. What is necessary and expedient should be prescribed in the statutes of the University. Section 13(10) of the NUST Bill should read as follows:

“The Vice-Chancellor of the University shall manage and direct the University in its academic, administrative, financial, personnel, and other activities and for the purpose has such powers as are necessary or expedient as prescribed in the Statutes of the University.”

7.2.7 AD SECTION 15(1) OF THE NUST BILL

7.2.7.1 The assessment component of teaching is added to the duties of the Senate of the University. Section 15(1) of the NUST Bill should therefore read as follows:

“The organisation and superintendence of teaching including assessment and learning, community engagement and research shall be vested in the Senate of the University.”

7.2.7.2 Section 15(2)(e) of the NUST Bill states that Senate shall consist of such Deans of the Schools and Deans of Academic units. In the motivation it is stated that the idea is to move from departments to academic units. Section 24 of the NUST Bill states that Council may from time to time establish academic units, including faculties, schools

and departments. The Head of Faculties and Departments should be members of the University Senate. This can be amended through the insertion of a new subsection, which should read as follows:

“ such heads of faculties and heads of departments who are not members of the senate by virtue of any other provision of this subsection;”

7.2.8 AD SECTION 21(2) OF THE NUST BILL

7.2.8.1 Section 21(2) of the NUST Bill is not clearly stated may be viewed as discriminatory. It is not clear which office entails a person to be paid differently. Does this section mean that the Chairperson and Vice-Chairperson earn more based on the offices they hold on Council or could it mean, that an Engineer on Council could be paid more than a Nurse on Council based on the office they hold outside the NUST? This Section should be more specific and should rather read as follows:

“the allowances determined under subsection (1) shall be in accordance with the provisions of the State-Owned Enterprises Governance Act, 2006 (Act No. 2 of 2006) particularly section 22 thereof;”

7.2.9 AD SECTION 22 AND SECTION 25(1) OF THE NUST BILL

7.2.9.1 The NUST Bill only makes provision for a Registrar who is also appointed by the Council of the University. There is a need for a **Bursar** (i.e. finance head) and a **Librarian** on the Management of the University. This is for the benefit of the students of the NUST and to ensure good governance and administration at the University. The Bursar and the Librarian should be appointed by Council of the University. Thus section 22 should read as follows:

“22. The Council shall appoint -

(a) a person as **Registrar** of the University who shall assist the Vice-Chancellor in the administration of the University and who shall be the secretary of the Council and the Senate;

(b) a person as **Bursar** of the University who shall be responsible for the financial administration of the University; and

(c) a person as **Librarian** of the University who shall be responsible for the administration and safe guarding of the University libraries”.

7.2.9.2 section 25(1) should read as follows:

“25. Appointment of Staff

(1) The Vice-Chancellor, Deputy Vice-Chancellor(s), Registrar, Bursar and Librarian of the University shall be appointed by Council”.

AD SECTION 36(1) OF THE NUST BILL

7.2.10.1 Section 36(1) of the NUST Bill makes it mandatory for the first Vice-Chancellor of the University to be the Rector of the Polytechnic of Namibia. Based on the changed status and mandate of the Polytechnic, the legislator or the Minister may consider the appointment of the Vice-Chancellor and a new Council.

7.2.10.2 The text per section 26 of the University of Namibia Act, 1992 (Act No. 18 of 1992) provides to the effect that, the first Chancellor of the University shall be the incumbent of the office of President of the Republic of Namibia on the date of commencement of this Act, who shall be deemed to have been elected as Chancellor of the University in terms of that section, and the first Vice-Chancellor of the University shall be appointed by the Chancellor.

7.2.10.3 The transitional provisions per section 22 of the University of Cape Town (Private) Act, 1999⁴⁹, provide that the Council as it existed immediately before the commencement of this Act continues to exist until a new Council is constituted in terms of the said Act. Furthermore, section 22(2)(a) of the University of Cape Town (Private) Act, 1999 provides that a new Council must be constituted, in terms of the Act, within 6 months after the commencement of the said Act and any vacancies that arise before the new Council is constituted as contemplated may not be filled.

7.2.10.4 Section 11(4) of The Polytechnic of Namibia Act, 1994⁵⁰ provides that:

“The Rector shall hold office for a period of five years and shall be eligible for re-appointment at the expiration of his or her period of office“

The Law Reform and Development Commission recommends that the incumbent Rector of the Polytechnic of Namibia become the first Vice-Chancellor of the Namibia University of Science and Technology for the unexpired portion of the period of his office as Rector of the Polytechnic of Namibia. This approach may deal with a smooth transition as well as settle any property rights arising from fixed term contracts which may be persisting.

8. Glossary

8.1 International University of Management (IUM)⁵¹

8.1.1 IUM is a Namibian Qualifications Authority fully accredited world-class Management University determined to develop innovative knowledge workers and researchers. Its mission is to establish a higher seat of

⁴⁹ Act No. 8 of 1999.

⁵⁰ Act No. 33 of 1994.

⁵¹ Available at: <http://www.ium.edu.na/> last accessed 08 January 2014.

learning in Namibia and train innovative specialists for the public and private sectors for Namibia and other countries in the world. And to train dedicated knowledge-workers who will provide leadership at national and international level.

8.2 Ministry of Education (MoE)⁵²

8.2.1 The Ministry of Education was created, as a department of the Executive organ of State, to provide a unified education system that will provide education to the Namibian nation on an equitable basis. The mission of the Ministry of Education is to work to realize the overall goals of the nation. It is committed, in partnership with various stakeholders, to provide all Namibian residents with equitable access to quality education programmes to develop the abilities of individuals to acquire the knowledge, understanding, skills, values and attitudes required throughout their lifetimes. The Ministry of Education oversees the operation of the Education Act⁵³, 2001, Regulations and Policy Guidelines.

8.3 Namibia College of Open Learning (NAMCOL)⁵⁴

8.3.1 NAMCOL is an educational institution created by an Act of Parliament, Namibia College of Opening Learning Act, 1997 (Act No. 1 of 1997) which provides learning opportunities for adults and out-of-school youth. In November 1994, NAMCOL was initially established as a directorate within the then Ministry of Basic Education and Culture (MBEC). This transition period was completed on 1st April 1998, when the newly established institution took over responsibility for all continuing education programmes formerly administered by the MBEC. Its mission is to provide wider access to quality educational services for learners and other customers using a variety of open learning methods.

⁵² Available at: http://www.moe.gov.na/m_ab_aboutus.php last accessed 08 January 2014.

⁵³ Act No. 16 of 2001.

⁵⁴ Available at: <http://www.namcol.edu.na/aboutus.php> last accessed 08 January 2014.

8.4 Namibia National Student Organisation (NANSO)⁵⁵

- 8.4.1 The Namibian National Student Organisation (NANSO) was founded in 1984 as a non-racial democratic and independent student Organisation. Since its formation, the Organisation has been organising from the basic understanding that there is a need for students, together with other strata of society, to make education respond to the needs of its country and its people. NANSO exists to advocate for accessible and free Quality Education for all students and to ensure a knowledge based and technology driven society.

8.5 Namibia Qualifications Authority (NQA)⁵⁶

- 8.5.1 The Namibia Qualifications Authority (NQA) is a statutory body established by the Namibia Qualifications Authority Act, 1996 (Act No. 29 of 1996) under Section 2 of the Act, 1996. The NQA is committed to the promotion of quality education and training in Namibia through the development and management of a comprehensive and flexible National Qualifications Framework (NQF). Its mission is to sustain a dynamic national framework that assures quality qualifications through credible recognition of quality learning attainments.

8.6 Namibia Training Authority (NTA)⁵⁷

- 8.6.1 The Namibia Training Authority is the regulating body of the Vocational Education and Training sector in Namibia, entrusted with the effective regulation and funding of the provision of Vocational Education and Training in Namibia. The NTA contributes to the establishment of an effective and sustainable system of skills formation that is aligned with the needs of the labour market and which provides the skills required for accelerated development. Moreover, the NTA promotes access,

⁵⁵ Available at: www.nanso.org.na

⁵⁶ Available at: <http://www.namqa.org/> last accessed on 08 January 2014.

⁵⁷ Available at: <http://nta.com.na/> last accessed on 08 January 2014.

equity and quality in Vocational Education and Training. The mission of the Namibia Training Authority is to deliver quality Vocational Education and Training (VET) by sustainably facilitating organisational effectiveness, funding, regulation, training and Related Services Provision; and the collection of the VET Levy.

8.7 National Council of Higher Education (NCHE)⁵⁸

8.7.1 The National Council for Higher Education (NCHE) was established by Act of Parliament, the Higher Education Act, 2003 (Act No. 26 of 2003) to advise the government on issues related to higher education. The NCHE has as objects to promote the establishment of a co-ordinated higher education system, the access of students to higher education institutions, and quality assurance in higher education; as well as to advice on the allocation of moneys to public higher education institutions.

8.8 National Youth Service (NYS)⁵⁹

8.8.1 The National Youth Service is a youth development service institution, established by the National Youth Service Act, 2005 (Act No. 6 of 2005). Its mission is to deliver relevant national services and offer recognized skills training and personal development programmes to the youth through attaining the requisite institutional capacity while engaging in income generating ventures.

8.9 Polytechnic of Namibia (Polytechnic)⁶⁰

⁵⁸ Available at: <http://www.nche.org.na/about.php> last accessed on 08 January 2014.

⁵⁹ Available at: http://www.nys.com.na/index.php?option=com_content&view=article&id=19&Itemid=53 last accessed on 08 January 2014.

⁶⁰ Available at: http://www.polytechnic.edu.na/about_us/history.php last accessed on 08 January 2014.

8.9.1 The Polytechnic of Namibia was established by the Polytechnic of Namibia Act, 1994 (Act No. 33 of 1994), The act provides for the aims of the institution per section 4, which includes to provide post-secondary career- education with due regard for the human resource requirements of Namibia and with emphasis upon excellence in teaching within a climate conducive to the intellectual, social, aesthetic, and emotional development of students, amongst others.

8.10 United Nations Educational, Scientific and Cultural Organization (UNESCO)⁶¹

8.10.1 UNESCO was created in 1945 to respond to the firm belief of nations that political and economic agreements are not enough to build a lasting peace. Peace must be established on the basis of humanity's moral and intellectual solidarity. UNESCO strives to build networks among nations that enable this kind of solidarity. UNESCO is known as the "intellectual" agency of the United Nations. Its main aims include: mobilizing for education; building intercultural understanding; pursuing scientific cooperation; and protecting freedom of expression.

8.11 University of Namibia (UNAM)

8.11.1 The University of Namibia was established by the University of Namibia Act, 1992 (Act No. 18 of 1992). The aims of the University as provided in section 4 of the Act, 1992 are to provide higher education, to undertake research, to advance and disseminate knowledge, to provide extension services, to encourage the growth and nurturing of cultural expression within the context of the Namibian society, to further training and continuing education, to contribute to the social and economic development of Namibia and to foster relationships with any person or institution, both nationally and internationally.

End.

⁶¹ Available at: <http://en.unesco.org/about-us/introducing-unesco#sthash.RdE4FHDb.dpuf>

EXPLANATORY NOTES

NAMIBIA UNIVERSITY OF SCIENCE AND TECHNOLOGY BILL

To provide for the establishment of the Namibia University of Science and Technology, its control and regulation and to provide for matters incidental thereto.

(Introduced by the Minister of Education)

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

ARRANGEMENT OF SECTIONS

1. Definitions
2. Establishment and seat of the University
3. Seal of the University
4. Status and proprietary capacity of the University
5. Aims of the University
6. Constitution of the University
7. Council of the University
8. Chancellor of the University
9. Council Chairperson and Council Vice-Chairperson
10. Terms of office and vacating of office by members of Council
11. Meetings of Council
12. Committees of Council
13. Vice-Chancellor of the University
14. Deputy Vice-Chancellors of the University
15. Senate of the University
16. Functions of Senate
17. Terms of office and vacating of office of members of Senate
18. Meetings of Senate
19. Committees of Senate
20. Joint committees of Council and Senate
21. Remuneration of members of Council, Senate, and committees
22. Registrar of the University
23. Students Representative Council
24. Academic Units
25. Appointment of staff
26. Degrees, diplomas, and certificates
27. Admission to equivalent status at the University

28. Registration and discipline of, and fees payable by, students
29. Residence and place and medium of instruction
30. Reports and financial statements
31. Subsidies and loans to the University
32. Vacancies not to affect powers of the University or Council or Senate
33. Offences
34. Agreements
35. Statutes and regulations
36. Transitional provisions
37. Transfer of staff
38. Transfer of assets, liabilities, rights, and obligations
39. Repeal of Act 33 of 1994
40. Short title and commencement

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

1 Definitions

In this Act, unless the context otherwise indicates –

"academic staff" means –

- (a) all those persons employed by the University whose conditions of employment include the obligation to undertake teaching including assessment, teaching development or research;
- (b) any incumbent of a post declared by the Council to be an academic post;

"Administrative and support staff" means –

The staff appointed to administrative and support positions designated as such by the council, including professional staff in library and information technology services and technical officers;

"academic year" means the academic year of the University as prescribed by the statutes;

"campus" means grounds and buildings held in ownership or possession by the University and where or upon which teaching and related activities are conducted;

Explanatory Note

As the University will grow and develop in future, colleges or other academic units may be set up throughout the country. The campuses of the university may thus be distributed throughout the country.

"Chancellor" means the Chancellor of the University appointed in terms of section 8;

Explanatory Note

The structure of members constituting the membership of the University should change. The titular head was absent from the Polytechnic structure therefore the addition of a Chancellor who will be the titular head of the University.

"Council" means the Council of the University referred to in section 7;

"Council Chairperson" means the Council Chairperson referred to in section 9(1)(a);

"Council Vice-Chairperson" means the Council Vice-Chairperson referred to in section 9(1)(b);

"Deputy Vice-Chancellor" means a Deputy Vice-Chancellor of the University appointed under section 14(1).

Explanatory Note

The new structure will provide for the renaming of the position of Rector to Vice Chancellor and the renaming of the position of Vice-Rector to Deputy Vice-Chancellor. The aforementioned conforms to the structure of the University of Namibia and is applied in general at Universities throughout the world.

"Honorary Professor" means a person to whom the title professor is granted for significant contributions to the University and the community;

Explanatory Note

It is important to distinguish between the ranks and define specifically what "Honorary Professor" means for the avoidance of doubt when referring to the different ranks of professorship.

"Minister" means the Minister responsible for higher education;

Explanatory Note

Due to the possibility of change in the portfolios of Ministerial position the definition now accommodates any such possible change.

"Senate" means the Senate of the University referred to in section 15;

"staff" means –

Persons employed at the University;

"Statutes" means the statutes of the University framed by the Council under section 35(1)(a);

"Students' Representative Council" means the Students' Representative Council referred to in section 23(1);

"this Act" includes the statutes and regulations framed under section 35;

"the University" means the Namibia University of Science and Technology established by section 2; and

"Vice-Chancellor" means the Vice-Chancellor of the University appointed in terms of section 13(3);

2 Establishment and seat of the University

- (1) There is hereby established a University to be known as the Namibia University of Science and Technology.
- (2) The seat of the University shall be at Windhoek.
- (3) The University may have one or more campuses, of which the main campus shall be at the seat of the University at Windhoek.

Explanatory Note

This section will make provision for the future expansion of the University throughout the country.

3. The Seal of the University

- (1) The Council shall, as soon as practicable after its establishment, provide and retain in its possession a seal of the University.
- (2) The seal of the University shall be authenticated by the signature of the Chairperson of Council and by the signature of the Vice-Chancellor.
- (3) Judicial notice shall be taken of the seal of the University and every document purporting to be an instrument made by the University and to be sealed with the seal of the University, purporting to be authenticated in accordance with this section, shall be received in evidence and shall unless the contrary is shown, be deemed to be such instrument without further proof.

Explanatory Note

The seal of a university is regarded globally as the most visible expression of the mission and purpose of a university. Its primary purpose is to authenticate and certify university documents, including diplomas and certificates thereby graphically symbolizing official association with the University.

The name and graphic identity of a University are important parts of building and presenting the image of the University and validating and protecting its seals ensures the value created by its image remains constant. The seal is a mark of guarantee and should be legally sanctioned, recognized and protected against misuse.

4 Status and proprietary capacity of the University

- (1) The University shall be a juristic person capable in law of suing and being sued in its own name and shall have the power, subject to this Act, of purchasing or in any other manner acquiring, holding, altering, developing, improving, maintaining, hiring, letting, selling, exchanging or otherwise alienating any movable or immovable property, of granting to any person a real right in, or servitude on, its property and of investing, lending or borrowing money.
- (2) The University may receive money or property by way of donation or bequest or in trust and may control, use or administer it or deal with it in any other manner subject to those conditions, if any, of the donation, bequest or trust which are consistent with the aims of the University.
- (3) The University shall have the powers of forming juristic entities with a view to holding shares or membership in those entities either as a main shareholder/member or co-shareholder, to acquiring shareholding in any form in public and private companies and to exercise the powers that shareholders/members in such entities may have and in negotiating loans or to give security for moneys borrowed.

Explanatory Note

For the avoidance of doubt the type of activities that are undertaken is mentioned.

5 Aims of the University

The aims of the University shall be -

- (a) to contribute to knowledge creation and advance knowledge through research and scientific investigation, with an emphasis on applied research;
- (b) to support and contribute to economic and social development through globally relevant, professional, technical and career-focused higher education, and effective community engagement;
- (c) to drive, promote and facilitate technology development, innovation and technology transfer;
- (d) to engage in national and international partnerships and cooperation with other universities, organisations and institutions; and
- (e) to preserve and promote the traditional and constitutional principles of institutional autonomy and academic freedom in the conduct of its internal and external affairs.

Explanatory Note

The new aims strive to ensure alignment of the aims with the transformation of the Polytechnic into a University. The aims further primarily demonstrate the core functions of a university of science and technology and serves to distinguish this institution type from a traditional, general university.

6 Constitution of the University

The University shall consist of –

- (a) a Chancellor;
- (b) a Council;
- (c) a Vice-Chancellor;
- (d) such Deputy Vice-Chancellors as may be appointed by the Council in terms of section 14(1);
- (e) a Senate;
- (f) the academic and other staff of the University; and
- (g) the students of the University.

7 Council of the University

- (1) Subject to the provisions of this Act, the governance and general control and executive power of the University and of all its affairs and functions, and the administration of its property, shall be vested in the Council of the University.

Explanatory Note

The word “governance” refers to the act of governing and encompasses consistent management, cohesive policies, guidance and processes - it describes what a governing body does.

- (2) Subject to subsection (3), the Council shall consist of –

- (a) the Vice-Chancellor;
- (b) all Deputy Vice-Chancellors;
- (c) at least six and not more than nine members, selected and appointed by the Minister by virtue of an invitation made in terms of subsection (4), and of whom –
 - (i) two shall be representatives of the Government of the Republic of Namibia;

Explanatory Note

In general, the amendments to the composition of Council are aimed at bringing the principal governance body of the institution in line with modern principles and practices at universities,

while ensuring that the body is composed of persons with the right attributes. The evolution of applicable labour legislation and the fact that the enabling legislation empowers Council to govern the institution have made the involvement of the Public Service Commission redundant. However if need be, the Minister can still nominate a person from that sector however, he will not be restricted to do so.

- (ii) one shall be a person nominated for appointment by the Council of the Municipality of Windhoek;
- (iii) one shall be a person nominated by the national organisation recognised as representing the private commercial and industrial sector; and

Explanatory Note

Input from a person nominated by the private business and industrial sector will do more to ensure that stakeholders in the private sector are allowed to give input and guidance at Council level. The Engineering Council is but one of many statutory professional bodies that the University will have to provide education and training for. It is therefore not prudent to have one specific profession serving on Council and others not.

- (iv) at least three and not more than six shall be persons nominated for appointment by each such institution, association or body as the Minister may by notice in the *Gazette* designate for the purposes of this subparagraph and which shall represent the interests of key industries or sectors in the Namibian economy as recommended by the Council and determined by the Minister from time to time;

Explanatory Note

The development of the programmes offered by the university is directly influenced by the vision of government for the effective production of professionals in areas of national importance for that reason it would be unwise to elevate any profession to a level of importance for an indefinite time period. The Minister will be well equipped to at any point in time determine the expertise that should be provided by nominating experts from key industries. The proposed amendment also provides for the Minister to take cognisance of major changes to the economy and to appoint persons from industries or sectors that are major contributors to the gross domestic product or that have importance in national development imperatives as reflected in, amongst other documents, the National Development Plans.

- (d) one shall be a staff member, who is not a member of Council by any other provision of this section, elected by the administrative employees of the University as provided for in the statutes;

Explanatory Note

The proposed enactment is to provide for the employees of the institution to have a direct

Explanatory Note

It is imperative to ensure that Council members possess the necessary skills and expertise to contribute meaningfully to the development of the university. The enumeration of the standards is done in similar legislation.

8 Chancellor of the University

- (1) The Chancellor, who shall be the titular head of the University, and who shall be external to the University, shall be elected by the Council in the manner prescribed in the Statutes;
- (2) The Chancellor shall have the right to confer or grant degrees, diplomas, certificates and other awards and distinctions of the University and to perform such other functions as prescribed;
- (3) The Chancellor shall hold office for a period of five years and shall be eligible for re-election at the expiration of his or her term of office;
- (4) Upon the death, incapacity or resignation of the Chancellor, the Council shall as soon as possible, elect a new Chancellor.

Explanatory Note

The insertion of the section is to provide for a Chancellor for the University and to describe his/her role as the titular head of the University. Said insertion is in line with the University of Namibia Act, as an example.

9 Council Chairperson and Council Vice-Chairperson

- (1) The Council shall elect from among its members referred to in paragraphs (c), (d), and (f) of subsection (2) of section 7 -
 - (a) a Council Chairperson, and
 - (b) a Council Vice-Chairperson.
- (2) The period of office of the Council Chairperson and the Council Vice-Chairperson shall be as prescribed by the statutes.
- (3) Subject to section 11, the Council Chairperson and the Council Vice-Chairperson's powers and duties shall be as prescribed by the statutes.

10 Terms of office and vacating of office by members of Council

- (1) A member of the Council -

- (a) appointed in terms of paragraph (c), (d), (e) or (f) of subsection (2) of section 7 shall hold office for a period of three years;
- (b) elected in terms of subsection (3) of section 7 shall hold office for a period of one year.
- (2) A member of the Council referred to in subsection (1) shall cease to hold office if-
- (a) he or she resigns in writing to the Council;
 - (b) in the case of a member referred to in paragraph (c), or (f) of subsection (2) of section 7, he or she becomes subject to the disqualification referred to in subsection (6) of that section;
 - (c) his or her nomination is withdrawn by the body who nominated such member for appointment; or
 - (d) he or she vacates his or her office on any other ground prescribed by the statutes;
 - (e) he or she is absent from three consecutive meetings of the Council, without an acceptable apology;
 - (f) in the case of a member of Council appointed in terms of paragraph (c) or (f) of Section 7 (2), he or she is, for good and valid reason, removed from office by the appointing authority upon recommendation of Council.

Explanatory Note

The addition of subsections “e” and “f” will ensure that members are not absent from meetings without good reason. The importance of members contributing effectively on a continuous basis is hereby ensured. The addition of subsection “f” will allow the Minister or any other appointing authority to remove a member on recommendation of Council for a good and valid reason, ensuring that Council can regulate the effectiveness and expertise of its members when needed.

- (3) If the office of a member of the Council becomes vacant, the vacancy shall be filled as soon as practicable and with due regard to the provisions of section 7(2), (3), (4) and (5).

Explanatory Note

This addition will ensure that vacancies on Council are filled within a reasonable time once again ensuring that Council can operate effectively with all its intended members present and able to contribute at meetings.

- (4) A member of Council shall at all times act as a member, in the best interests of the University and shall not act as a representative of any special interest provided that a member shall not be restricted from representing at meetings of the Council the views of those by whom he or she has been nominated or to restrict the freedom of expression of that member.

Explanatory Note

This subsection will ensure that members understand the importance of governing the institution in accordance with best practices and by safeguarding the interests of the institution. Members often feel conflicted between interests of the institution and his/her appointing authority and this subsection will give appropriate guidance to avoid possible conflicting interests.

11 Meetings of Council

- (1) The Council Chairperson or, in his or her absence, the Council Vice- Chairperson or, in the absence of both the Council Chairperson and Council Vice-Chairperson, such other member as the members present shall elect, shall preside at a meeting of the Council.
- (2) The Council shall hold at least one meeting every during every quarter of the calendar year and/or as the need may arise.
- (3) The first meeting of the Council shall be held at the time and place determined by the Minister and thereafter meetings of the Council shall be held at such times and places as the Council may determine, but the Council Chairperson may at any time, and shall at the written request of at least one third of the members of the Council, convene a special meeting of the Council.
- (4) The procedures at and the quorum for a meeting of the Council shall be as prescribed by the statutes.

12 Committees of Council

- (1) The Council may establish committees of the Council consisting of members of the Council or of such members as well as other persons and designate the chairperson and the vice-chairperson thereof.
- (2) The Council may -
 - (a) delegate any of its powers to any such committee, but it shall not be divested of a power so delegated, and a decision of such committee may be altered or set aside by the Council at its first ensuing meeting;
 - (b) assign to any such committee such functions or duties of the Council as the Council may deem expedient.
- (3) The Council Chairperson, or in his or her absence the Council Vice-Chairperson, and the Vice-Chancellor shall be *ex officio* members of every committee established under subsection (1).

13 Vice-Chancellor of the University

- (1) The Vice-Chancellor of the University shall manage and direct the University in its academic, administrative, financial, personnel and other activities and for the purpose has such powers as are necessary or expedient as prescribed in the statutes of the University.

Explanatory Note

The subsection is aimed at clarifying the role of the Vice-Chancellor.

- (2) In performing his or her functions the Vice-Chancellor shall be subject to such policies as may be determined from time to time by Council and shall be answerable to Council for the efficient and effective management of the university and for due performance of its functions;

Explanatory Note

This section clarifies the position of the Vice-Chancellor in relation to Council.

- (3) The Vice-Chancellor shall be appointed by the Council in the manner prescribed by the statutes on conditions of employment and privileges determined by the Council.
- (4) The Vice-Chancellor's powers and duties shall be as prescribed by the statutes.
- (5) The Vice-Chancellor shall hold office for a period of five years and shall be eligible for re-appointment at the expiration of his or her period of office.
- (6) The Vice-Chancellor may from time to time designate any person in the employment of the University to serve, in any place, in any particular case or for such period as he or she may determine, in his or her place as a member of any committee referred to in section 12(1), 19(1) or 20(1) and to perform the duties and exercise the powers connected therewith, but shall not be divested of a power so delegated.

Explanatory Note

The subsection provides for the chief executive to delegate to another person. It further clarifies that this can be also be done, where such persons is required to act on his/her behalf in a place other than the main campus, such as at a satellite campus for example, and that the power is not devolved permanently.

14 Deputy Vice-Chancellors of the University

- (1) The Council may appoint one or more persons as Deputy Vice-Chancellors of the University.
- (2) The conditions of employment, privileges, period of office, powers, and duties of a Deputy Vice-Chancellor shall be determined by the Council.

- (3) The Vice-Chancellor may from time to time delegate to a Deputy Vice-Chancellor any of his or her powers, but shall not be divested of a power so delegated.

15 Senate of the University

- (1) The organisation and superintendence of teaching including assessment and learning, community engagement, and research shall be vested in the Senate of the University.

Explanatory Note

The words teaching and learning encompass instruction, examinations, lectures, classes, curricula and therefore entails a much wider interpretation.

- (2) Subject to subsection (3), the Senate shall consist of -
- (a) the Vice-Chancellor, who shall be the chairperson of the Senate;
 - (b) all Deputy Vice-Chancellors;
 - (c) two members of the Council, other than a member referred to in section 7(3), appointed by the Council;
 - (d) all academic staff with the rank of full professor in full-time employment, but excluding any associate professor;

Explanatory Note

The academic staff structure of the University does not make provision for the rank of academic director and the word is therefore replaced with "professor". The term "director" used to refer to the highest academic rank is remnant from the technikon system in South Africa and is not used in that sense anywhere else in the world. Part time or visiting or adjunct professors are excluded for the purpose of this subsection, since these categories of professor would not be full-time staff members of the University.

- (e) such deans of schools and heads of academic units who are not members of the Senate by virtue of any other provision of this subsection;

Explanatory Note

The description "Academic Units" is wide enough to include departments and other divisions that might be created in future. The word departments will restrict the freedom of the university to regulate its academic structures.

- (f) such other persons as may be prescribed by the statutes and who shall be appointed by the Council on the recommendation of the members of the Senate referred to in paragraphs (a) to (e).
- (3) Upon recognition of the Students' Representative Council in accordance with the provisions of section 23(1), the Students' Representative Council shall elect one of its

members as a member of the Senate, and whereupon the Senate shall consist of the members referred to in subsection (2) and such member.

16 Functions of Senate

- (1) The Senate shall –
 - (a) make recommendations to the Council in connection with matters referred to it by the Council or which the Senate considers necessary in the interest of the University;
 - (b) submit to the Council such reports in connection with the functions of the Senate as the Council may require; and
 - (c) perform such other functions as may be prescribed by the statutes.

17 Terms of office and vacating of office of members of Senate

- (1) A member of the Senate -
 - (a) appointed in terms of paragraph (c) or (f) of subsection (2) of section 15, shall hold office for a period of three years;
 - (b) elected in terms of subsection (3) of that section, shall hold office for a period of one year, unless he or she resigns in writing to the Senate or vacates his or her office on any other ground prescribed by the statutes.
- (2) Whenever the office of a member of the Senate becomes vacant, such vacancy shall be filled with due regard to the provisions of section 15(2) and (3).

18 Meetings of Senate

- (1) The Deputy Vice-Chancellor responsible for academic affairs shall be the Vice-chairperson of Senate.

Explanatory Note

The position of DVC: Academic Affairs is the most suitable to assist the VC as Chair of Senate, which has responsibility for academic matters of the University. Past experience has shown that, invariably, the incumbent of this position is elected as Vice-Chairperson of Senate.

- (2) In the event that the position referred to in subsection 1 is vacant, Senate shall elect from among its members a vice-chairperson who shall hold office for such period as may be prescribed by the statutes.

Explanatory Note

This section is to provide for the eventuality that where position of DVC: Academic Affairs is vacant, a Vice-Chairperson of Senate shall be elected by members of Senate.

- (3) The chairperson of the Senate or, in his or her absence, the vice-chairperson of the Senate or, in the absence of both the chairperson and vice-chairperson, such other member as the members present shall elect, shall preside at a meeting of the Senate.
- (4) The Senate shall hold at least three meetings in each academic year, of which at least one meeting shall be held in each half of the academic year.
- (5) The first meeting of the Senate shall be held at the time and place determined by the chairperson of the Senate and thereafter meetings of the Senate shall be held at such times and places as the Senate may determine, but the chairperson may at any time, and shall at the written request of at least one third of the members of the Senate, convene a special meeting of the Senate.
- (6) The procedures at and the quorum for a meeting of the Senate shall be as prescribed by the statutes.

19 Committees of Senate

- (1) The Senate may establish committees of the Senate consisting of members of the Senate or of such members as well as other persons and designate the chairperson and the Vice-chairperson thereof.
- (2) The Senate may -
 - (a) delegate any of its powers to any such committee, but it shall not be divested of a power so delegated and a decision of such a committee may be altered or set aside by the Senate at its first ensuing meeting;
 - (b) assign to any such committee such functions and duties of the Senate as the Senate may deem expedient.
- (3) The Vice-Chancellor shall be an *ex officio* member of every committee established under subsection (1).

20 Joint committees of Council and Senate

- (1) The Council and the Senate may by mutual agreement establish joint committees of the Council and the Senate consisting of members of the Council and the Senate appointed by the Council and the Senate, respectively, from among their own members.

- (2) The Council or the Senate may delegate any of its powers to any such joint committee, but shall not be divested of a power so delegated and may alter or set aside a decision of such joint committee at the first ensuing meeting of the Council or the Senate, as the case may be.
- (3) The Council Chairperson, or in his or her absence the Council Vice-Chairperson, and the Vice-Chancellor shall be *ex officio* members of every joint committee established under subsection (1).

21 Remuneration of members of Council, Senate and committees

- (1) The Council may determine the allowances payable to members of the Council and the Senate, and any committee of the Council or the Senate and any joint committee of the Council and the Senate, but any such allowance payable to a member who is in the full-time service of the State shall be subject to the laws governing his or her conditions of employment.
- (2) The allowances determined under subsection (1) shall be in accordance with the provisions of the State-Owned Enterprises Governance Act, 2006 (Act No. 2 of 2006) particularly section 22 thereof.

22 Registrar, Bursar and Librarian of the University

- (1) The Council shall appoint –
 - (a) a person as Registrar of the University who shall assist the Vice-Chancellor in the administration of the University and who shall be the secretary of the Council and the Senate;
 - (b) a person as Bursar of the University who shall be responsible for the financial administration of the University; and
 - (c) a person as Librarian of the University who shall be responsible for the administration and safeguarding of the University libraries.

23 Students' Representative Council

- (1) The Council shall recognise such body as the Students' Representative Council of the University -
 - (a) if a body is established by the students of the University which the Council considers to be representative of such students; and
 - (b) if the constitution of such body is approved by the Council.

- (2) No amendment of the constitution of the Students' Representative Council shall be of force unless such amendment has been approved by the Council.
- (3) The composition, mode of election, tenure of office, powers, privileges, functions, and duties of the Students' Representative Council shall be governed by its constitution.
- (4) The Vice-Chancellor may suspend, as prescribed in the Statutes, and the Council may dissolve the Students' Representative Council should it be deemed in the best interest of the University.

Explanatory Note

This subsection has been deemed necessary to protect the interests of the university and to avoid arbitrary action in this regard by Council or the Vice Chancellor.

24 Academic Units

- (1) The Council may from time to time establish such academic units, including faculties, schools and departments as it determines on the recommendation of the Senate.

Explanatory Note

The proposed subsection is to provide flexibility in terms of the academic units that may be established and what they should be called.

- (2) There shall be constituted a board of studies for each school or faculty in the manner prescribed by the statutes and which shall perform such functions as may be determined by the Council, on the recommendation of the Senate.

Explanatory Note

This subsection is aimed at providing consistency between this and other subsections dealing with academic units.

25 Appointment of staff

- (1) The Vice-Chancellor, Deputy Vice-Chancellor(s) Registrar, Bursar, and Librarian of the University shall be appointed by the Council.

Explanatory Note

It was deemed necessary to make provision for the appointment of the abovementioned positions by Council by virtue of the seniority of the positions and for the avoidance of doubt in this regard. Not all the positions are academic and therefore not all require Senate's recommendation.

- (2) Academic and other staff not listed in subsection (1) of this section shall be appointed by the Vice-Chancellor.
- (3) Subject to subsection (3), the conditions of employment, disciplinary provisions, privileges and functions of the employees, subject to the provisions of the Labour law, including remuneration, and service benefits of the academic and other staff shall be determined by the Council.
- (4) All persons employed by the University who are not Namibian citizens or permanent residents of Namibia, or domiciled in Namibia, shall be required to enter into a contract of service for a fixed period with the University on such conditions and for such period as may be determined by the Council in each particular case.

Explanatory Note

Bearing in mind the Labour Law Amendment Act, Act 2 of 2012 in particular Section 7 and the requirements of the Affirmative Action Act, the insertion of the words in this subsection, are aimed at widening the pool of persons from whom the University can draw staff, particularly academic staff, on short-term contracts.

In light of a recent newspaper article which highlighted the plight of foreign lecturers and raised particular issues pertaining to short-term contracts of employment; lengthy probation periods and the non affiliation of foreign staff members to trade unions, amongst other complaints, it is proposed that such issues be clarified and remitted to subsequent staff policy documents and conditions of employment. The newspaper article made reference to the situation in South Africa where foreign lecturers are offered 4 to 5 year contracts and are eligible for permanent employment after their initial contract of employment.⁶² An example from which the NUST can draw from.

- (5) The dismissal of any member of the academic or other staff shall, unless such dismissal was effected by the Council, be subject to a right of appeal to the Council in the prescribed manner.
- (6) (a) The Council may appoint qualified persons to the position of Adjunct Professor, Professor Emeritus or Honorary Professor in the manner prescribed by the Statutes on the conditions and privileges determined by the Council.

⁶² Shihepo, T. (2014) *Foreign Lecturers Up In Arms With Constitutions* The Villager, 03 March 2014, p.2.

(b) The Council may, after consultation with Senate, retain any retiring academic staff member with the rank of Professor, but excluding any associate or assistant Professor, in the position of Professor Emeritus on the conditions and privileges determined by Council.

Explanatory Note

The insertions serve to provide a legal basis for the appointment of these categories of professor, which is a university practice the world over.

26 Degrees, diplomas and certificates

- (1) Subject to subsection (2), the University may –
 - (a) confer any degree, and
 - (b) any diploma and certificate, as it may consider expedient to confer.
- (2) Subject to section 28, the University shall not confer a degree, diploma or certificate upon any person unless such person has –
 - (a) attended, as a student thereof, the University for such period, and satisfied all the curricular and such other requirements; and
 - (b) attained the standard of proficiency in assessments, as determined by the Senate.

Explanatory Note

The deletion of the requirement to gain the approval of the Minister for the conferring of degrees is to bring the University in line with the autonomy of universities and the academic freedom to teach, research and serve. The other insertions are aimed at providing flexibility in assessment and to emphasise that qualifications are conferred on persons who have met the requirements of the curriculum of the programme.

- (3)
 - (a) The university may by resolution of the Council on recommendation of Senate and without examination confer a degree *honoris causa* of doctor upon a person whom the Council on recommendation of Senate considers worthy of such a degree.
 - (b) The holder of a degree conferred in terms of Subsection (a) shall not by reason of the conferment of a *honoris causa*, be entitled to practice a profession.
 - (c) The Council may on recommendation of the Senate revoke such a degree conferred on a person, should it be found, in the discretion of Council and Senate, that the holder is no longer worthy of such a degree.

Explanatory Note

The proposed enactment provides a legal basis for the University to confer honorary degrees and also the basis for revoking such degrees. This is a university tradition the world over.

27 Admission to equivalent status at the University

Subject to the provisions of the statutes, the Senate may -

- (a) admit a graduate of any other tertiary institution, whether in Namibia or elsewhere, to such status at the University as the Senate may determine; and
- (b) admit as a candidate for any degree, diploma or certificate of the University any person who has obtained credits at any other tertiary institution, whether in Namibia or elsewhere, considered by the Senate to be equivalent to or higher than such credits which is a prerequisite for such degree, diploma or certificate of the University.

28 Registration and discipline of and fees payable by students

- (1) The requirements, conditions and terms for registration as a student at the University and the renewal and cancellation of such registration shall be determined by the Council, on the recommendation of the Senate.
- (2) Every person who registers as a student of the University shall be registered for one year of study or for such shorter period as the Council may in general or in a particular case determine, and after the expiry of such year of study or period, that person shall, if he or she wishes to remain a student of the University, renew his or her registration.
- (3) Subject to the provisions of this Act, the Council may, after consultation with the Senate -
 - (a) prescribe minimum requirements of study for the purpose of the renewal of the registration of a person as a student of the University;
 - (b) refuse permission to a student who fails to satisfy such minimum requirements of study to renew his or her registration;
 - (c) determine the number of students who shall be permitted to register for a particular course and select, from among the persons who satisfy the minimum requirements of study for such course, those who shall be permitted to register for such course;
 - (d) refuse permission to a person to register as a student of the University if the Council considers it to be in the interest of the University to do so.
- (4) The fees payable by a student shall be determined by the Council after consultation with the Senate.
- (5) A student shall be subject to the disciplinary provisions prescribed by the statutes.

29 Residence and place and medium of instruction

- (1) The Council may determine at which place under the control of the University a student shall receive instruction and shall reside for purposes of instruction, where appropriate.

Explanatory Note

This subsection now provides for instances where instruction takes place off campus and where the university must arrange for accommodation for the student whilst he/she is receiving instruction.

- (2) The medium of instruction at the University shall be English.

30 Reports and financial statements

- (1) The Council shall not later than six months after the end of each academic year furnish to the Minister a report on its activities during the preceding academic year, together with certified copies of its audited financial statements in respect of that academic year.
- (2) The Minister shall lay the report and audited financial statements furnished to the Minister in terms of subsection (1) on the Table of the National Assembly within seven days after receipt thereof if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within seven days after the commencement of its next ensuing ordinary session.

31 Subsidies and loans to the University

The Minister, in consultation with the Minister of Finance, must out of moneys appropriated by Parliament for the purpose –

Explanatory Note

This insertion is in accordance with the Higher Education Act, 2003 (Act No. 26 of 2003) particularly section 33 and 34 thereof.

- (a) grant subsidies to the University in respect of capital and normal recurrent expenditure of the University in a fair and transparent manner and in accordance with the provisions of the Higher Education Act;
- (b) subject to such conditions as the Minister may determine, grant loans to the University in respect of -
 - (i) the erection of buildings and the acquisition of equipment of a permanent nature;
 - (ii) the acquisition of immovable property, including rights therein or thereto, and the defrayment of costs connected with the survey and transfer thereof;

- (iii) the defrayment of the capital outlay on the improvement of immovable property of the University;
- (iv) the purchase, lease or acquisition otherwise of movable property of a capital nature; and
- (v) the payment of any other loan raised by the University for any purpose mentioned in subparagraphs (i) to (iv).

Explanatory Note

The funding must be done in accordance with the funding policy as prescribed by the Higher Education Act, 2003 (Act No. 26 of 2003).

32 Vacancies not to affect powers of the University or Council or Senate

No vacancy in any office at the University or deficiency in the number of members of the Council or the Senate shall impair or affect the corporate existence of the University or any powers, rights or privileges conferred by this Act upon the University, the Council or the Senate.

33 Offences

Any person who, without the authority of the University-

- (a) establishes or conducts an institution, not being an institution established by or under any law, under a name that includes the words "Namibia University of Science and Technology";
- (b) in any way makes it known or pretends to any other person that he or she can offer any course of study or part thereof which shall entitle the person who has followed such a course or part thereof to the granting of a degree, diploma or certificate offered by the University; or
- (c) confers a degree, diploma or certificate purporting to be a degree, diploma or certificate granted by the University; or
- (d) performs any act which purports to have been done by or on behalf of the University,

shall be guilty of an offence and liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

34 Agreements

The Council may enter into agreements with any educational, other institution, industry association or organisation, whether in Namibia or elsewhere, with a view to the better carrying out of its functions.

Explanatory Note

The section is vaguely worded to avoid the limitation on the powers of Council to operate effectively, in so far as it conforms to the provision of this Act and all other laws of Namibia.

35 Statutes and regulations

- (1) Subject to the provisions of subsection (2), the Council may frame -
 - (a) statutes relating to any matter required or permitted to be prescribed by statute in terms of this Act or any other matter which the Council considers necessary or expedient for the effective carrying out of the aims of the University or the achievement of the purposes of this Act;
 - (b) regulations for the better carrying out of the statutes.
- (2) No statute or regulation proposed to be framed under subsection (1) and which deals with any matter in relation to the activities of the Senate shall be adopted by the Council unless the Council has consulted with the Senate.

36 Transitional provisions

- (1) Notwithstanding the provisions of section 13, the first Vice-Chancellor of the University shall be the incumbent in the position of Rector of the Polytechnic of Namibia on the date of the coming into force of this Act, for the remainder of the unexpired portion of the position as Rector of the Polytechnic of Namibia.
- (2) Notwithstanding the provisions of section 7, the Council members of the Polytechnic of Namibia shall constitute the Council of the Namibia University of Science and Technology for a period determined by the Minister from this Act coming into effect and shall thereafter be duly constituted as provided for in terms of Section 7 of this Act, which appointment shall be deemed a first term of appointment as Council member.
- (3) Notwithstanding the repeal of the Polytechnic of Namibia Act, 1994 (Act 33 of 1994) by section 39 of this Act -
 - (a) any regulations, statutes, and rules in force immediately before the commencement of this Act by virtue of that subsection; and
 - (b) any directives issued, and statutes and rules made or framed, under that subsection and in force immediately before that commencement, shall, in so far as the provisions thereof are not inconsistent with this Act, remain in force until such regulations, statutes, rules, and directives are superseded by statutes and regulations framed under section 35 of this Act.
- (4) Any person who immediately before the commencement of this Act was registered or provisionally registered as a student of the Polytechnic of Namibia, shall, with

effect from the commencement of this Act be so registered or provisionally registered, as the case may be, with the Namibia University of Science and Technology.

- (5) For the purposes of section 28(1) any period attended as a student of the Polytechnic of Namibia referred to in subsection (4) shall be calculated as a period attended as a student of the Namibia University of Science and Technology.

37 Transfer of staff

- (1) Subject to subsections (2), all persons who immediately before the commencement of this Act were employed in posts under the supervision and control of the Council of the Polytechnic of Namibia by virtue of subsections 1 and 2 of section 23 of the Polytechnic of Namibia Act, 1994, prior to the amendment of that Act by section 39 of this Act, shall, with effect from that commencement, be deemed to be in the employment of the University.

(2)(a) the rights and entitlement in terms of tenure, remuneration, fees, allowances, expenses and superannuation enjoyed on the commencement of this section by persons who are employees, of the University to which this Act applies shall not, by virtue of the operation of this Act, be any less beneficial than those rights and entitlements enjoyed by persons as employees of the University immediately before that commencement; and

(b) the conditions of service, restrictions and obligations to which such persons were subject to immediately before the commencement of this Act, shall unless they are varied by agreement, continue to apply to such persons and shall be exercised or imposed by the University while such persons are employed by the University.

38 Transfer of assets liabilities rights and obligations

- (1) As from the commencement of this Act -

(a) all immovable property of which the Polytechnic of Namibia was the owner before the commencement of this Act, together with all improvements thereon, including all fixtures and fittings;

(b) all furniture, equipment and other movable property of which the Polytechnic of Namibia was the owner before the commencement of this Act;

(c) all rights, liabilities, and obligations connected with any immovable or movable property contemplated in paragraph (a) or (b), respectively, shall vest in the University.

(d) Where, immediately before the commencement, proceedings to which the Polytechnic of Namibia was a party were pending in any court or arbitration, then, after the commencement, the Polytechnic of Namibia is substituted for the Namibia University of Science and Technology as a party to the proceedings and has the same rights in the proceedings as the Polytechnic of Namibia had.

(e) Any agreement lawfully entered into by or on behalf of the Polytechnic of Namibia is deemed to have been concluded by the University.

- (2) The Registrar of Deeds shall without payment of transfer duty, stamps duty or any other fee or charge and on production to him or her of the title deed of any immovable property which vests in terms of subsection (1) in the Polytechnic, endorse such title deed to the effect that the immovable property described therein is vested in the University, and shall make the necessary entries or endorsements in or on any relevant register or other document in his or her office.

39 Repeal of Act 33 of 1994

The Polytechnic of Namibia Act, 1994 (Act No. 33 of 1994) is hereby repealed.

Explanatory Note

Although the 1994 Act is hereby repealed, it should be noted that the Polytechnic will be phased into a University over time and will not be wound up.

40 Short title and commencement

This Act shall be called the **Namibia University of Science and Technology Act, 2014** and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

NAMIBIA UNIVERSITY OF SCIENCE AND TECHNOLOGY BILL

To provide for the establishment of the Namibia University of Science and Technology, its control and regulation and to provide for matters incidental thereto.

(Introduced by the Minister of Education)

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

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

1 Definitions

In this Act, unless the context otherwise indicates –

"academic staff" means –

- (a) all those persons employed by the University whose conditions of employment include the obligation to undertake teaching including assessment, teaching development or research;
- (b) any incumbent of a post declared by the Council to be an academic post;

"Administrative and support staff" means –

The staff appointed to administrative and support positions designated as such by the council, including professional staff in library and information technology services and technical officers;

"academic year" means the academic year of the University as prescribed by the statutes;

"campus" means grounds and buildings held in ownership or possession by the University and where or upon which teaching and related activities are conducted;

"Chancellor" means the Chancellor of the University appointed in terms of section 8;

"Council" means the Council of the University referred to in section 7;

"Council Chairperson" means the Council Chairperson referred to in section 9(1)(a);

"Council Vice-Chairperson" means the Council Vice-Chairperson referred to in section 9(1)(b);

"Deputy Vice-Chancellor" means a Deputy Vice-Chancellor of the University appointed under section 14(1).

"Honorary Professor" means a person to whom the title professor is granted for significant contributions to the University and the community;

"Minister" means the Minister responsible for higher education;

"Senate" means the Senate of the University referred to in section 15;

"Staff" means –

Persons employed at the University;

"Statutes" means the statutes of the University framed by the Council under section 35(1)(a);

"Students' Representative Council" means the Students' Representative Council referred to in section 23(1);

"this Act" includes the statutes and regulations framed under section 35;

"the University" means the Namibia University of Science and Technology established by section 2; and

"Vice-Chancellor" means the Vice-Chancellor of the University appointed in terms of section 13(3);

2 Establishment and seat of the University

- (1) There is hereby established a University to be known as the Namibia University of Science and Technology.
- (2) The seat of the University shall be at Windhoek.
- (3) The University may have one or more campuses, of which the main campus shall be at the seat of the University at Windhoek.

3. The Seal of the University

- (1) The Council shall, as soon as practicable after its establishment, provide and retain in its possession a seal of the University.
- (2) The seal of the University shall be authenticated by the signature of the Chairperson of Council and by the signature of the Vice-Chancellor.
- (3) Judicial notice shall be taken of the seal of the University and every document purporting to be an instrument made by the University and to be sealed with the seal

of the University, purporting to be authenticated in accordance with this section, shall be received in evidence and shall unless the contrary is shown, be deemed to be such instrument without further proof.

4 Status and proprietary capacity of the University

- (1) The University shall be a juristic person capable in law of suing and being sued in its own name and shall have the power, subject to this Act, of purchasing or in any other manner acquiring, holding, altering, developing, improving, maintaining, hiring, letting, selling, exchanging or otherwise alienating any movable or immovable property, of granting to any person a real right in, or servitude on, its property and of investing, lending or borrowing money.
- (2) The University may receive money or property by way of donation or bequest or in trust and may control, use or administer it or deal with it in any other manner subject to those conditions, if any, of the donation, bequest or trust which are consistent with the aims of the University.
- (3) The University shall have the powers of forming juristic entities with a view to holding shares or membership in those entities either as a main shareholder/member or co-shareholder, to acquiring shareholding in any form in public and private companies and to exercise the powers that shareholders/members in such entities may have and in negotiating loans or to give security for moneys borrowed.

5 Aims of the University

The aims of the University shall be -

- (a) to contribute to knowledge creation and advance knowledge through research and scientific investigation, with an emphasis on applied research;
- (b) to support and contribute to economic and social development through globally relevant, professional, technical and career-focused higher education, and effective community engagement;
- (c) to drive, promote and facilitate technology development, innovation and technology transfer;
- (d) to engage in national and international partnerships and cooperation with other universities, organisations and institutions; and
- (e) to preserve and promote the traditional and constitutional principles of institutional autonomy and academic freedom in the conduct of its internal and external affairs.

6 Constitution of the University

The University shall consist of -

- (a) a Chancellor;

- (b) a Council;
- (c) a Vice-Chancellor;
- (d) such Deputy Vice-Chancellors as may be appointed by the Council in terms of section 14(1);
- (e) a Senate;
- (f) the academic and other staff of the University; and
- (g) the students of the University.

7 Council of the University

(1) Subject to the provisions of this Act, the governance and general control and executive power of the University and of all its affairs and functions, and the administration of its property, shall be vested in the Council of the University.

(2) Subject to subsection (3), the Council shall consist of –

- (a) the Vice-Chancellor;
- (b) all Deputy Vice-Chancellors;
- (c) at least six and not more than nine members, selected and appointed by the Minister by virtue of an invitation made in terms of subsection (4), and of whom

- (i) two shall be representatives of the Government of the Republic of Namibia;
- (ii) one shall be a person nominated for appointment by the Council of the Municipality of Windhoek;
- (iii) one shall be a person nominated by the national organisation recognised as representing the private commercial and industrial sector; and
- (iv) at least three and not more than six shall be persons nominated for appointment by each such institution, association or body as the Minister may by notice in the *Gazette* designate for the purposes of this subparagraph and which shall represent the interests of key industries or sectors in the Namibian economy as recommended by the Council and determined by the Minister from time to time;

(d) one shall be a staff member, who is not a member of Council by any other provision of this section, elected by the administrative employees of the University as provided for in the statutes;

(e) one shall be a member from the alumni of the University, who is not a member of Council by any provision of this section, elected by the alumni of the University as provided in the statutes;

(f) one member of the Senate appointed by the Senate; and

(g) two persons appointed by majority decision of the members of the Council referred to in paragraphs (a) to (e) to represent the interests of the University as the Council may determine.

- (3) Upon recognition of the Students' Representative Council in accordance with the provisions of section 23(1), the Students' Representative Council shall elect one of its members as a member of the Council, and whereupon the Council shall consist of the members referred to in subsection (2) and such member.
- (4) Whenever any nomination in terms of any subparagraph of paragraph (c) of subsection (2) becomes necessary the Minister shall, in writing, request the institution, association or body, as the case may be, referred to in that subparagraph to nominate, within the period specified by the Minister, a person for appointment to the Council.
- (5) If a nomination is not received by the Minister within the period requested, the Minister may appoint such person as the Minister thinks fit, subject to the conditions stated in subsection 2(c), and a person so appointed shall hold office as if he or she had been nominated as required by subsection (4).
- (6) A member of the academic or other staff shall not be appointed as a member of the Council in terms of subsection (2)(c) or (f).
- (7) Selection of membership under subsections 2(c) and (f) must be undertaken in such a manner as to ensure that the functions of Council are performed in accordance with the highest professional standards and the membership as a whole:
 - (i) possesses a broad and general understanding of the higher education system and related matters;
 - (ii) appreciates the role of higher education in the economic and social development of the country;
 - (iii) is committed to the development of higher education in the country;
 - (iv) adheres to the highest professional standards of practice in his/her respective field of endeavour;
 - (v) possesses expert skills that would complement the development of the university;
 - (vi) possesses experience and competence in governance and strategic management;
 - and
 - (vii) reflects, as much as possible, a gender balance.

8 Chancellor of the University

- (1) The Chancellor, who shall be the titular head of the University, and who shall be external to the University, shall be elected by the Council in the manner prescribed in the Statutes;

- (2) The Chancellor shall have the right to confer or grant degrees, diplomas, certificates and other awards and distinctions of the University and to perform such other functions as prescribed;
- (3) The Chancellor shall hold office for a period of five years and shall be eligible for re-election at the expiration of his or her term of office;
- (4) Upon the death, incapacity or resignation of the Chancellor, the Council shall as soon as possible, elect a new Chancellor.

9 Council Chairperson and Council Vice-Chairperson

- (1) The Council shall elect from among its members referred to in paragraphs (c), (d), and (f) of subsection (2) of section 7 -
 - (a) a Council Chairperson, and
 - (b) a Council Vice-Chairperson.
- (2) The period of office of the Council Chairperson and the Council Vice-Chairperson shall be as prescribed by the statutes.
- (3) Subject to section 11, the Council Chairperson and the Council Vice-Chairperson's powers and duties shall be as prescribed by the statutes.

10 Terms of office and vacating of office by members of Council

- (1) A member of the Council -
 - (a) appointed in terms of paragraph (c), (d), (e) or (f) of subsection (2) of section 7 shall hold office for a period of three years;
 - (b) elected in terms of subsection (3) of section 7 shall hold office for a period of one year.
- (2) A member of the Council referred to in subsection (1) shall cease to hold office if-
 - (a) he or she resigns in writing to the Council;
 - (b) in the case of a member referred to in paragraph (c), or (f) of subsection (2) of section 7, he or she becomes subject to the disqualification referred to in subsection (6) of that section;
 - (c) his or her nomination is withdrawn by the body who nominated such member for appointment; or
 - (d) he or she vacates his or her office on any other ground prescribed by the statutes;
 - (e) he or she is absent from three consecutive meetings of the Council, without an acceptable apology;

(f) in the case of a member of Council appointed in terms of paragraph (c) or (f) of Section 7 (2), he or she is, for good and valid reason, removed from office by the appointing authority upon recommendation of Council.

- (3) If the office of a member of the Council becomes vacant, the vacancy shall be filled as soon as practicable and with due regard to the provisions of section 7(2), (3), (4) and (5).
- (4) A member of Council shall at all times act as a member, in the best interests of the University and shall not act as a representative of any special interest provided that a member shall not be restricted from representing at meetings of the Council the views of those by whom he or she has been nominated or to restrict the freedom of expression of that member.

11 Meetings of Council

- (1) The Council Chairperson or, in his or her absence, the Council Vice-Chairperson or, in the absence of both the Council Chairperson and Council Vice-Chairperson, such other member as the members present shall elect, shall preside at a meeting of the Council.
- (2) The Council shall hold at least one meeting every during every quarter of the calendar year and/or as the need may arise.
- (3) The first meeting of the Council shall be held at the time and place determined by the Minister and thereafter meetings of the Council shall be held at such times and places as the Council may determine, but the Council Chairperson may at any time, and shall at the written request of at least one third of the members of the Council, convene a special meeting of the Council.
- (4) The procedures at and the quorum for a meeting of the Council shall be as prescribed by the statutes.

12 Committees of Council

- (1) The Council may establish committees of the Council consisting of members of the Council or of such members as well as other persons and designate the chairperson and the vice-chairperson thereof.
- (2) The Council may -
 - (a) delegate any of its powers to any such committee, but it shall not be divested of a power so delegated, and a decision of such committee may be altered or set aside by the Council at its first ensuing meeting;

(b) assign to any such committee such functions or duties of the Council as the Council may deem expedient.

- (3) The Council Chairperson, or in his or her absence the Council Vice-Chairperson, and the Vice-Chancellor shall be *ex officio* members of every committee established under subsection (1).

13 Vice-Chancellor of the University

- (1) The Vice-Chancellor of the University shall manage and direct the University in its academic, administrative, financial, personnel and other activities and for the purpose has such powers as are necessary or expedient as prescribed in the statutes of the University.
- (2) In performing his or her functions the Vice-Chancellor shall be subject to such policies as may be determined from time to time by Council and shall be answerable to Council for the efficient and effective management of the university and for due performance of its functions;
- (3) The Vice-Chancellor shall be appointed by the Council in the manner prescribed by the statutes on conditions of employment and privileges determined by the Council.
- (4) The Vice-Chancellor's powers and duties shall be as prescribed by the statutes.
- (5) The Vice-Chancellor shall hold office for a period of five years and shall be eligible for re-appointment at the expiration of his or her period of office.
- (6) The Vice-Chancellor may from time to time designate any person in the employment of the University to serve, in any place, in any particular case or for such period as he or she may determine, in his or her place as a member of any committee referred to in section 12(1), 19(1) or 20(1) and to perform the duties and exercise the powers connected therewith, but shall not be divested of a power so delegated.

14 Deputy Vice-Chancellors of the University

- (1) The Council may appoint one or more persons as Deputy Vice-Chancellors of the University.
- (2) The conditions of employment, privileges, period of office, powers, and duties of a Deputy Vice-Chancellor shall be determined by the Council.
- (3) The Vice-Chancellor may from time to time delegate to a Deputy Vice-Chancellor any of his or her powers, but shall not be divested of a power so delegated.

15 Senate of the University

- (1) The organisation and superintendence of teaching including assessment and learning, community engagement, and research shall be vested in the Senate of the University.
- (2) Subject to subsection (3), the Senate shall consist of -
 - (a) the Vice-Chancellor, who shall be the chairperson of the Senate;
 - (b) all Deputy Vice-Chancellors;
 - (c) two members of the Council, other than a member referred to in section 7(3), appointed by the Council;
 - (d) all academic staff with the rank of full professor in full-time employment, but excluding any associate professor;
 - (e) such deans of schools and heads of academic units who are not members of the Senate by virtue of any other provision of this subsection;
 - (f) such other persons as may be prescribed by the statutes and who shall be appointed by the Council on the recommendation of the members of the Senate referred to in paragraphs (a) to (e).
- (3) Upon recognition of the Students' Representative Council in accordance with the provisions of section 23(1), the Students' Representative Council shall elect one of its members as a member of the Senate, and whereupon the Senate shall consist of the members referred to in subsection (2) and such member.

16 Functions of Senate

- (1) The Senate shall –
 - (a) make recommendations to the Council in connection with matters referred to it by the Council or which the Senate considers necessary in the interest of the University;
 - (b) submit to the Council such reports in connection with the functions of the Senate as the Council may require; and
 - (c) perform such other functions as may be prescribed by the statutes.

17 Terms of office and vacating of office of members of Senate

- (1) A member of the Senate -
 - (a) appointed in terms of paragraph (c) or (f) of subsection (2) of section 15, shall hold office for a period of three years;
 - (b) elected in terms of subsection (3) of that section, shall hold office for a period of one year, unless he or she resigns in writing to the Senate or vacates his or her office on any other ground prescribed by the statutes.
- (2) Whenever the office of a member of the Senate becomes vacant, such vacancy shall be filled with due regard to the provisions of section 15(2) and (3).

18 Meetings of Senate

- (1) The Deputy Vice-Chancellor responsible for academic affairs shall be the Vice-chairperson of Senate.
- (2) In the event that the position referred to in subsection 1 is vacant, Senate shall elect from among its members a vice-chairperson who shall hold office for such period as may be prescribed by the statutes.
- (3) The chairperson of the Senate or, in his or her absence, the vice-chairperson of the Senate or, in the absence of both the chairperson and vice-chairperson, such other member as the members present shall elect, shall preside at a meeting of the Senate.
- (4) The Senate shall hold at least three meetings in each academic year, of which at least one meeting shall be held in each half of the academic year.
- (5) The first meeting of the Senate shall be held at the time and place determined by the chairperson of the Senate and thereafter meetings of the Senate shall be held at such times and places as the Senate may determine, but the chairperson may at any time, and shall at the written request of at least one third of the members of the Senate, convene a special meeting of the Senate.
- (6) The procedures at and the quorum for a meeting of the Senate shall be as prescribed by the statutes.

19 Committees of Senate

- (1) The Senate may establish committees of the Senate consisting of members of the Senate or of such members as well as other persons and designate the chairperson and the Vice-chairperson thereof.
- (2) The Senate may -
 - (a) delegate any of its powers to any such committee, but it shall not be divested of a power so delegated and a decision of such a committee may be altered or set aside by the Senate at its first ensuing meeting;
 - (b) assign to any such committee such functions and duties of the Senate as the Senate may deem expedient.
- (3) The Vice-Chancellor shall be an *ex officio* member of every committee established under subsection (1).

20 Joint committees of Council and Senate

- (1) The Council and the Senate may by mutual agreement establish joint committees of the Council and the Senate consisting of members of the Council and the Senate appointed by the Council and the Senate, respectively, from among their own members.
- (2) The Council or the Senate may delegate any of its powers to any such joint committee, but shall not be divested of a power so delegated and may alter or set aside a decision of such joint committee at the first ensuing meeting of the Council or the Senate, as the case may be.
- (3) The Council Chairperson, or in his or her absence the Council Vice-Chairperson, and the Vice-Chancellor shall be *ex officio* members of every joint committee established under subsection (1).

21 Remuneration of members of Council, Senate and committees

- (1) The Council may determine the allowances payable to members of the Council and the Senate, and any committee of the Council or the Senate and any joint committee of the Council and the Senate, but any such allowance payable to a member who is in the full-time service of the State shall be subject to the laws governing his or her conditions of employment.
- (2) The allowances determined under subsection (1) shall be in accordance with the provisions of the State-Owned Enterprises Governance Act, 2006 (Act No. 2 of 2006) particularly section 22 thereof.

22 Registrar, Bursar and Librarian of the University

- (1) The Council shall appoint –
 - (a) a person as Registrar of the University who shall assist the Vice-Chancellor in the administration of the University and who shall be the secretary of the Council and the Senate;
 - (b) a person as Bursar of the University who shall be responsible for the financial administration of the University; and
 - (c) a person as Librarian of the University who shall be responsible for the administration and safeguarding of the University libraries.

23 Students' Representative Council

- (1) The Council shall recognise such body as the Students' Representative Council of the University -

- (a) if a body is established by the students of the University which the Council considers to be representative of such students; and
- (b) if the constitution of such body is approved by the Council.

- (2) No amendment of the constitution of the Students' Representative Council shall be of force unless such amendment has been approved by the Council.
- (3) The composition, mode of election, tenure of office, powers, privileges, functions, and duties of the Students' Representative Council shall be governed by its constitution.
- (4) The Vice-Chancellor may suspend, as prescribed in the Statutes, and the Council may dissolve the Students' Representative Council should it be deemed in the best interest of the University.

24 Academic Units

- (1) The Council may from time to time establish such academic units, including faculties, schools and departments as it determines on the recommendation of the Senate.
- (2) There shall be constituted a board of studies for each school or faculty in the manner prescribed by the statutes and which shall perform such functions as may be determined by Council, on the recommendation of the Senate.

25 Appointment of staff

- (1) The Vice-Chancellor, Deputy Vice-Chancellor(s) Registrar, Bursar, and Librarian of the University shall be appointed by the Council.
- (2) Academic and other staff not listed in subsection (1) of this section shall be appointed by the Vice-Chancellor.
- (3) Subject to subsection (3), the conditions of employment, disciplinary provisions, privileges and functions of the employees, subject to the provisions of the Labour law, including remuneration, and service benefits of the academic and other staff shall be determined by the Council.
- (4) All persons employed by the University who are not Namibian citizens or permanent residents of Namibia, or domiciled in Namibia, shall be required to enter into a contract of service for a fixed period with the University on such conditions and for such period as may be determined by the Council in each particular case.

- (5) The dismissal of any member of the academic or other staff shall, unless such dismissal was effected by the Council, be subject to a right of appeal to the Council in the prescribed manner.
- (6) (a) The Council may appoint qualified persons to the position of Adjunct Professor, Professor Emeritus or Honorary Professor in the manner prescribed by the Statutes on the conditions and privileges determined by the Council.
- (b) The Council may, after consultation with Senate, retain any retiring academic staff member with the rank of Professor, but excluding any associate or assistant Professor, in the position of Professor Emeritus on the conditions and privileges determined by Council.

26 Degrees, diplomas and certificates

- (1) Subject to subsection (2), the University may –
- (a) confer any degree, and
- (b) any diploma and certificate, as it may consider expedient to confer.
- (2) Subject to section 28, the University shall not confer a degree, diploma or certificate upon any person unless such person has –
- (a) attended, as a student thereof, the University for such period, and satisfied all the curricular and such other requirements; and
- (b) attained the standard of proficiency in assessments, as determined by the Senate.
- (3) (a) The university may by resolution of the Council on recommendation of Senate and without examination confer a degree *honoris causa* of doctor upon a person whom the Council on recommendation of Senate considers worthy of such a degree.
- (b) The holder of a degree conferred in terms of Subsection (a) shall not by reason of the conferment of a *honoris causa*, be entitled to practice a profession.
- (c) The Council may on recommendation of the Senate revoke such a degree conferred on a person, should it be found, in the discretion of Council and Senate, that the holder is no longer worthy of such a degree.

27 Admission to equivalent status at the University

Subject to the provisions of the statutes, the Senate may –

- (a) admit a graduate of any other tertiary institution, whether in Namibia or elsewhere, to such status at the University as the Senate may determine; and

(b) admit as a candidate for any degree, diploma or certificate of the University any person who has obtained credits at any other tertiary institution, whether in Namibia or elsewhere, considered by the Senate to be equivalent to or higher than such credits which is a prerequisite for such degree, diploma or certificate of the University.

28 Registration and discipline of and fees payable by students

- (1) The requirements, conditions and terms for registration as a student at the University and the renewal and cancellation of such registration shall be determined by the Council, on the recommendation of the Senate.
- (2) Every person who registers as a student of the University shall be registered for one year of study or for such shorter period as the Council may in general or in a particular case determine, and after the expiry of such year of study or period, that person shall, if he or she wishes to remain a student of the University, renew his or her registration.
- (3) Subject to the provisions of this Act, the Council may, after consultation with the Senate -
 - (a) prescribe minimum requirements of study for the purpose of the renewal of the registration of a person as a student of the University;
 - (b) refuse permission to a student who fails to satisfy such minimum requirements of study to renew his or her registration;
 - (c) determine the number of students who shall be permitted to register for a particular course and select, from among the persons who satisfy the minimum requirements of study for such course, those who shall be permitted to register for such course;
 - (d) refuse permission to a person to register as a student of the University if the Council considers it to be in the interest of the University to do so.

- (4) The fees payable by a student shall be determined by the Council after consultation with the Senate.
- (5) A student shall be subject to the disciplinary provisions prescribed by the statutes.

29 Residence and place and medium of instruction

- (1) The Council may determine at which place under the control of the University a student shall receive instruction and shall reside for purposes of instruction, where appropriate.
- (2) The medium of instruction at the University shall be English.

30 Reports and financial statements

- (1) The Council shall not later than six months after the end of each academic year furnish to the Minister a report on its activities during the preceding academic year, together with certified copies of its audited financial statements in respect of that academic year.
- (2) The Minister shall lay the report and audited financial statements furnished to the Minister in terms of subsection (1) on the Table of the National Assembly within seven days after receipt thereof if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within seven days after the commencement of its next ensuing ordinary session.

31 Subsidies and loans to the University

The Minister, in consultation with the Minister of Finance, must out of moneys appropriated by Parliament for the purpose -

- (a) grant subsidies to the University in respect of capital and normal recurrent expenditure of the University in a fair and transparent manner and in accordance with the provisions of the Higher Education Act;
- (b) subject to such conditions as the Minister may determine, grant loans to the University in respect of -
 - (i) the erection of buildings and the acquisition of equipment of a permanent nature;
 - (ii) the acquisition of immovable property, including rights therein or thereto, and the defrayment of costs connected with the survey and transfer thereof;
 - (iii) the defrayment of the capital outlay on the improvement of immovable property of the University;
 - (iv) the purchase, lease or acquisition otherwise of movable property of a capital nature; and
 - (v) the payment of any other loan raised by the University for any purpose mentioned in subparagraphs (i) to (iv).

32 Vacancies not to affect powers of the University or Council or Senate

No vacancy in any office at the University or deficiency in the number of members of the Council or the Senate shall impair or affect the corporate existence of the University or any powers, rights or privileges conferred by this Act upon the University, the Council or the Senate.

33 Offences

Any person who, without the authority of the University-

- (a) establishes or conducts an institution, not being an institution established by or under any law, under a name that includes the words "Namibia University of Science and Technology";
- (b) in any way makes it known or pretends to any other person that he or she can offer any course of study or part thereof which shall entitle the person who has followed such a course or part thereof to the granting of a degree, diploma or certificate offered by the University; or
- (c) confers a degree, diploma or certificate purporting to be a degree, diploma or certificate granted by the University; or
- (d) performs any act which purports to have been done by or on behalf of the University,

shall be guilty of an offence and liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

34 Agreements

The Council may enter into agreements with any educational, other institution, industry association or organisation, whether in Namibia or elsewhere, with a view to the better carrying out of its functions.

35 Statutes and regulations

- (1) Subject to the provisions of subsection (2), the Council may frame -
 - (a) statutes relating to any matter required or permitted to be prescribed by statute in terms of this Act or any other matter which the Council considers necessary or expedient for the effective carrying out of the aims of the University or the achievement of the purposes of this Act;
 - (b) regulations for the better carrying out of the statutes.
- (2) No statute or regulation proposed to be framed under subsection (1) and which deals with any matter in relation to the activities of the Senate shall be adopted by the Council unless the Council has consulted with the Senate.

36 Transitional provisions

- (1) Notwithstanding the provisions of section 13, the first Vice-Chancellor of the University shall be the incumbent in the position of Rector of the Polytechnic of Namibia on the date of the coming into force of this Act, for the remainder of the unexpired portion of the position as Rector of the Polytechnic of Namibia.

- (2) Notwithstanding the provisions of section 7, the Council members of the Polytechnic of Namibia shall constitute the Council of the Namibia University of Science and Technology for a period determined by the Minister from this Act coming into effect and shall thereafter be duly constituted as provided for in terms of Section 7 of this Act, which appointment shall be deemed a first term of appointment as Council member.
- (3) Notwithstanding the repeal of the Polytechnic of Namibia Act, 1994 (Act 33 of 1994) by section 39 of this Act -
- (a) any regulations, statutes, and rules in force immediately before the commencement of this Act by virtue of that subsection; and
- (b) any directives issued, and statutes and rules made or framed, under that subsection and in force immediately before that commencement, shall, in so far as the provisions thereof are not inconsistent with this Act, remain in force until such regulations, statutes, rules, and directives are superseded by statutes and regulations framed under section 35 of this Act.
- (4) Any person who immediately before the commencement of this Act was registered or provisionally registered as a student of the Polytechnic of Namibia, shall, with effect from the commencement of this Act be so registered or provisionally registered, as the case may be, with the Namibia University of Science and Technology.
- (5) For the purposes of section 28(1) any period attended as a student of the Polytechnic of Namibia referred to in subsection (4) shall be calculated as a period attended as a student of the Namibia University of Science and Technology.

37 Transfer of staff

- (1) Subject to subsections (2), all persons who immediately before the commencement of this Act were employed in posts under the supervision and control of the Council of the Polytechnic of Namibia by virtue of subsections 1 and 2 of section 23 of the Polytechnic of Namibia Act, 1994, prior to the amendment of that Act by section 39 of this Act, shall, with effect from that commencement, be deemed to be in the employment of the University.
- (2) (a) the rights and entitlement in terms of tenure, remuneration, fees, allowances, expenses and superannuation enjoyed on the commencement of this section by persons who are employees, of the University to which this Act applies shall not, by virtue of the operation of this Act, be any less beneficial than those rights and entitlements enjoyed by persons as employees of the University immediately before that commencement; and
- (b) the conditions of service, restrictions and obligations to which such persons were subject to immediately before the commencement of this Act, shall unless they are

varied by agreement, continue to apply to such persons and shall be exercised or imposed by the University while such persons are employed by the University.

38 Transfer of assets liabilities rights and obligations

- (1) As from the commencement of this Act -
- (a) all immovable property of which the Polytechnic of Namibia was the owner before the commencement of this Act, together with all improvements thereon, including all fixtures and fittings;
 - (b) all furniture, equipment and other movable property of which the Polytechnic of Namibia was the owner before the commencement of this Act;
 - (c) all rights, liabilities, and obligations connected with any immovable or movable property contemplated in paragraph (a) or (b), respectively, shall vest in the University.
 - (d) Where, immediately before the commencement, proceedings to which the Polytechnic of Namibia was a party were pending in any court or arbitration, then, after the commencement, the Polytechnic of Namibia is substituted for the Namibia University of Science and Technology as a party to the proceedings and has the same rights in the proceedings as the Polytechnic of Namibia had.
 - (e) Any agreement lawfully entered into by or on behalf of the Polytechnic of Namibia is deemed to have been concluded by the University.
- (2) The Registrar of Deeds shall without payment of transfer duty, stamps duty or any other fee or charge and on production to him or her of the title deed of any immovable property which vests in terms of subsection (1) in the Polytechnic, endorse such title deed to the effect that the immovable property described therein is vested in the University, and shall make the necessary entries or endorsements in or on any relevant register or other document in his or her office.

39 Repeal of Act 33 of 1994

The Polytechnic of Namibia Act, 1994 (Act No. 33 of 1994) is hereby repealed.

40 Short title and commencement

This Act shall be called the **Namibia University of Science and Technology Act, 2014** and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

